



THE RIGHTS OF TYRANTS

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Both the Universal Doctrine of Human Rights and the International Covenant on Civil and Political Rights address the importance of a fair and open trial¹, and the need for justice to be dispensed by an independent and impartial judiciary, not arbitrarily. The notions of natural justice and procedural fairness are commonly accepted in Australia and other Westminster systems, and domestically, this is applied to alleged rapists, murderers and paedophiles, with human rights given to those that have committed even the most repugnant acts. Nevertheless, internationally, this right is rarely given to the dictators and tyrants post-regime, with transparency and due process not seen as a priority in the transition of power. The examples of former dictators Muammar Gaddafi of Libya and Saddam Hussein of Iraq exemplify the challenges to reconciling the crimes of the past with future stability. Saddam Hussein was tried summarily, his gruesome execution captured on film and broadcast to an international audience, whilst Muammar al-Gaddafi was killed before facing trial, his body displayed as a symbol of the displaced

regime. In both cases, the absence of a fair trial has prevented the implementation of the rule of law and exacerbated regional conflicts.

This article seeks to promote the rights of tyrants, the perpetrators of horrific crimes, individuals that are admittedly not usually worthy of the sympathy of the international community. However, it is not simply for their benefit that transparent justice is the most desirable outcome. A fair trial, followed by incarceration if found guilty, deprives them of martyrdom, and sets the tone for a peaceful transition of power.

I. THE DISADVANTAGES OF DEATH WITHOUT TRIAL

In June 2011, the International Criminal Court issued a warrant for the arrest of Gaddafi, stating that under article 58(1) of the Rome Statute,² 'the arrest of Muammar Gaddafi appears necessary at this stage to... ensure his appearance before the Court',³ although this never eventuated. Instead, on the 20 October 2011, a targeted NATO drone strike hit a convoy of vehicles attempting

to flee westward from the coastal town of Sirteiv. This was followed by a skirmish with Misrata militiamen, whilst at the same time Gaddafi attempted to hide in two drainage pipes underneath a major road.⁵ From here, the truth is difficult to determine, as accounts differ on the precise details of how Muammar Gaddafi was killed. A United Nations report states that Muammar Gaddafi was alive on capture, subsequently dying in custody,⁶ although it draws no inferences as to whether this was an unlawful killing. Contrastingly, Human Rights Watch asserts that the militia abused Gaddafi upon capture, with one soldier stabbing him with their bayonet, Gaddafi consequently dying within two hours of capture.⁷ Furthermore, the Human Rights Council was not provided with autopsy reports by the authorities, preventing a conclusive determination.⁸ The gruesome images of a mangled but recognisable Gaddafi flooded the internet and news media upon his death, a cause for celebration for many of the people that suffered under his regime,⁹ although the violence of his death served as an ominous

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sign of the transition process to come. The legal response to the indeterminate cause of death has been insufficient, with the chaotic lack of proper legal inquiry demonstrating the obstacles faced by the new Libyan government in the enforcement of the rule of law, leading the Human Rights Council to call for further enquiry into the matter.¹⁰ Like the death of Osama bin Laden, the disputed

circumstances surrounding Gaddafi's death drew attention away from his crimes, and without a trial, Gaddafi's victims have lost the opportunity for his actions to be denounced. Furthermore, the deaths of Gaddafi and bin Laden without trials allows a tyrant and a terrorist to be spared the deserved shame and stigma of imprisonment, instead enjoying the luxury of death and the post-mortem glory of martyrdom.

II. THE INTERNATIONAL CRIMINAL COURT - A MODEL FOR JUSTICE?

Ideally, tyrants such as Gaddafi would be brought to justice through the International Criminal Court, which provides the most impartial and authoritative body for the trial of war criminals. The international legal environment has developed significantly since the creation of the International Military Tribunal at Nuremberg, which introduced the notion of individual responsibility for crimes of the state. The ad hoc tribunals created in response to regional crises, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) have been critical to reforming the culture of impunity, by taking effective measures to enforce individual criminal responsibility.¹¹ The most important development in recent years has been the increasingly accepted place of the ICC in the international judicial regime. The ICC has the broad consent of the states behind its establishment, and even those that have opted not to consent to ICC jurisdiction support mechanisms of international accountability. Although the ICC has faced criticism on the basis of procedural fairness, and attacks on its legitimacy,¹² it provides the best hope for holding leaders accountable and enforcing the standards of the wider international community. Furthermore, the creation of a permanent, independent judicial body has led to 'not only a punitive but also a restorative function' through the participation

and reparation of victims and affected communities. The legal force of the ICC is enhanced by the legitimacy it has earned through the consent of over 120 nations to its jurisdictions, processes generally seen as fair and impartial, and the universally desirable goal of achieving peace and stability.

III. THE QUEST FOR LEGITIMACY

From the trial of Charles I in 1649 to the trial of Saddam Hussein, trials of former heads of state have been frequently challenged on the basis of illegitimacy, with the defendants contending the court does not have jurisdiction over their actions. In the ICTY and ICTR, the cases of *The Prosecutor v Tadic*¹³ and *The Prosecutor v Kanyabashi*¹⁴ challenged the legality and legitimacy of the tribunals. In addition, Antonio Cassese, Former President of the Special Tribunal for Lebanon has outlined a test of legitimacy to be applied to international tribunals. As Cassese states, an institution is considered legitimate when the 'majority of the population, or the majority of the institution's constituency, expresses a high degree of consent and approval for

IV. THE TRIAL OF SADDAM HUSSEIN

A prime example of this is the farcical trial of Saddam Hussein initiated in 2004, with the lack of due process creating a crisis of legitimacy for the court. Furthermore, the court lacked procedures to safeguard it against accusations of being a 'show trial', as the US and Britain exercised a high degree of planning and control of the trial.¹⁸ Salem Chalabi, a member of a powerful Iraqi family allied with the US, was appointed to head the trial despite being a trial lawyer with no judicial experience. Additionally, public access to the trial was denied, and proceedings were subjected to heavy censorship.¹⁹ Consequently, the trial and execution of Hussein had a detrimental impact on the transition of power, as many of his crimes were left unaddressed and large sections of the Iraqi people refused to accept the legitimacy of the decision. As former Egyptian President Hosni Mubarak stated at the time, 'No-one will ever forget the way in which Saddam was executed - they turned him into a martyr, and the problems in Iraq

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it'.¹⁵ The values, principles and goals are the institution's 'legitimizing grounds'¹⁶ and a legitimate tribunal must have the consent of the wider population, a legitimate purpose based on universal values of truth and justice, and must achieve performative legitimacy through due process.¹⁷ The ICC strives to meet these goals, as have the ICTY and ICTR before it, although trials of former leaders often fail to meet these basic standards.

remained'.²⁰ In contrast, the trial of former Serbian leader Slobodan Milosevic was given sufficient resources to defend himself, and was also allowed to publicly challenge the legitimacy of the ICTY.²¹ This sometimes led to Milosevic frustrating the trial proceedings, but it ultimately assisted the court gain legitimacy, as justice was done publicly and the facts of the case unfolded in a manner unbiased by legal processes.

V. CONCLUSION

Satisfying the rights of victims, defendants and the wider population has proved to be a difficult balancing act in the pursuit of international justice. The ICTY has recently come under criticism for its failure to convict Croatian generals in the Balkan conflict and not doing enough for the victims of the war crimes. However, those indicted by the ICTY include heads of state, prime ministers and army chiefs-of-staff and this has assisted the

reformation of a culture of impunity and facilitated a healing process. Contrastingly, show trials and executions only serve to exacerbate conflicts, exemplified by the consequences of the premature deaths of Gaddafi and Hussein. If heads of state are to be held accountable in the future, then the rights of tyrants and the most abhorrent war criminals must be upheld as due process is a necessary precursor to the achievement of peace, stability and reconciliation.

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