

THE WAR CRIMES TRIBUNAL AS A MECHANISM FOR COHESION

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"We must never forget that the record on which we judge these defendants is the record on which history will judge us tomorrow."

American Justice Robert H. Jackson at the opening session of Nuremberg Tribunal

“Who are you? What are you doing here?...I don't answer this so-called court, with all due respect. And I reserve my constitutional right as the president of the country of Iraq, I will not go along...I don't acknowledge either the entity that authorizes you, nor the aggression because everything based on falsehood is falsehood” (“BBC NEWS—World—Middle East—Key Quotes Saddam Trial”). Saddam Hussein made this comment on the first day of his trial for crimes against humanity committed in Iraq. It may seem outlandish to some, but the former Iraqi dictator spoke shrewdly and deliberately when he questioned the legitimacy of the judge, the court, and the very principles that operated to bring him to justice in October 2005. By refusing to acknowledge the court's authority and affirming his own position in Iraq, he conveyed an understanding of the politics of war crimes tribunals. As Gary Bass notes, “The treatment of humbled or defeated enemy leaders and war criminals can make the difference between war and peace” (6). It can either establish the foundations for an enduring, nonviolent stability, or catalyze fresh outbreaks of violence and renewed hatreds.

This paper will propose that war crimes tribunals, particularly those that consider crimes committed in failed states, lay the groundwork for peace and reconstruction by identifying individuals, rather than peoples, as the perpetrators of violence.

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In doing so, tribunals help to dissolve some of the sentiments of fear and hatred associated with the security dilemma, and to allow conflicting groups to coexist peacefully. War crimes tribunals serve a much greater purpose than simply getting “rid of undesirables,” (Bass 6) and they serve a more immediate and practical purpose than the restoration of collective international moral conscience, as some scholars have argued (Moyn). Whether leaders are forced to assume more blame than they should is a separate matter. War crimes tribunals associate a small number of individuals with the direct or indirect actions of a very large group of people, and thereby unfetter the general population in its pursuit of post-conflict stability and peace.

GROUNDWORK: FAILED STATES, THE SECURITY DILEMMA, AND WAR CRIMES

This paper will cite three cases of war crimes tribunals to illustrate this concept: the 1945 Nuremberg Trials of Nazi leadership and intelligentsia, the 1993 International Criminal Tribunal for the former Yugoslavia, and the 2005 Supreme Iraqi Criminal Tribunal. In each of these instances, the former leader(s) of a failed state stood trial for war crimes committed under the auspices of their respective regimes. For the purposes of this paper, it shall be assumed that a primary objective of states, if not the primary objective, is their own survival. State failure entails an inability to self-sustain and a “formal loss of foreign policymaking power to another state” (Fazal 312). Nazi Germany prior to its collapse, the former Yugoslavia, and Saddam Hussein’s Ba’ath government in Iraq prior to occupation by U.S.-led coalition forces each represent states that were forced to cede their sovereignty to an outside government or intergovernmental association, several smaller autonomous governmental subdivisions, or a new regime.

The security dilemma arises in the anarchic arena of international relations when state actors contemplate their security *vis-à-vis* other states in the system. To maintain this security, actors feel compelled to pursue power in order to match the strength and

influence of others. In turn, other actors are rendered less secure and are spurred on their own quest for relative power and security (Herz 157). The distinctive anarchy that characterizes conflict and post-conflict situations generates particularly problematic behavior because of its sudden and often volatile nature (Snyder). In these circumstances, groups often resort to a rally-round-the-flag strategy of cohesion, self-isolation and self-defense. In pursuit of their own security, individuals and factions associate with the group that can offer them the highest return on their investment—pursuing the smallest possible winning coalition to maximize their own autonomy and private gains. All persons and groups seek:

a sense of community, which becomes a matter of mutual sympathy and loyalties; of “we feeling,” trust, and mutual consideration; of partial identification in terms of self-images and interests; of mutually successful predictions of behavior...in short, a matter of a perpetual dynamic process of mutual attention, communication, perception of needs, and responsiveness in the process of decision making (Adler 7).

In politically unstable climates, this can result in deliberate and violent out-group exclusion in the form of war crimes and other systematically destructive behavior. War crimes tribunals are mechanisms used to capitalize on this rally-round-the-flag mentality. Often, individuals in post-conflict situations feel as if they are victims of circumstance—as if the failing state’s security dilemma compelled them to act in ways they otherwise would not have.

International tribunals typically prosecute specific violations of international and domestic laws of war. These include crimes against humanity and genocide. These can include any number of wrongs, including murder, enslavement, the forcible transfer of populations, torture, rape, sexual slavery, apartheid, forced termination of pregnancy, the deprivation of fair trials, and the taking of hostages. These crimes are considered particularly atrocious when they are carried out with the intention to destroy a specific, identifiable population, be it religious, ethnic, political,

national, or gender-based (United Nations).

NAZI GERMANY AND THE NUREMBERG TRIALS

In the 1930s and 1940s, Adolf Hitler and the Nazi government in Germany commenced a campaign of terrorizing and exterminating minority social and ethnic groups. Specifically, the Nazis engaged in massive, systematic extermination of Jews, Roman Catholics, Communists, mentally and physically disabled persons, Poles, Serbs, Jehovah's witnesses, homosexuals, Africans, Freemasons, members of the clergy, political dissidents, and prisoners of war. Nazi extermination camps, localized purges, work camps, and aggressive warfare resulted in the deaths of tens of millions of people, more than half of whom were civilians, making the Second World War the single most deadly conflict in human history (Bergen).

Some commentators suggest that the full extent of the Nazi genocide was not known until the aftermath of the war. Still, evidence suggests that many inside and outside of Europe were at least aware of the nature of the atrocities, if not their scope. Furthermore, many nations have been implicated not only as complicit witnesses to the Holocaust, but as active collaborators in its violent campaign—Bulgaria, Croatia, Vichy France, Greece, Hungary, Fascist Italy, Latvia, Lithuania, Romania under Antonescu, Serbia, Slovakia, and the German-occupied Soviet territories, among others. The United States and Great Britain, once aware of the Nazis' campaign, refused to bomb the concentration camps or the infrastructures, such as trains and certain industries (Bergen). Even the International Committee of the Red Cross decided not to speak out against Hitler's "final solution" (Moyn).

It was in this atmosphere of global indifference and acquiescence that the Second World War ended. The international community was left to cope with and attempt to rectify its inaction. Much of Europe was completely destroyed. Nearly every country in the Western world had suffered considerable, if not devastating, losses. The psychological atmosphere of distrust and despair led

many to believe that international and domestic politics, as well as relationships between different ethnic, religious, and other groups within countries, would never be the same. There was a pervasive desire across Europe and the rest of the world to gain some semblance of justice for the victims of the Holocaust. But the European community had learned from the implementation of the 1919 Versailles Treaty—which formally concluded the First World War and compelled Germany to assume full responsibility for the war and to pay substantial reparations—that placing the full blame for an international war on one country resulted in dangerous resentment and damaging economic and political instability. The international community recognized that it would be neither prudent nor constructive to hold the entire populations of the Axis powers accountable for the atrocities of the Second World War. Thus, they settled on another alternative: the Nuremberg Trials (Persico).

The concept of crimes against humanity was developed in the aftermath of the Second World War and featured prominently in the Nuremberg Trials, which lasted from 1945 to 1949. The sheer magnitude of the brutality perpetrated by the Nazis, and its transnational scope, meant that trying the offenders was beyond the jurisdiction of any one government's judiciary. Furthermore, it was crucial for the international community to present a united front in opposition to the blatant human rights abuses that characterized the Nazi regime. The highest-ranking Nazi officials were tried at Nuremberg before a panel of American, British, French, and Soviet judges. Those found guilty were handed down sentences of life imprisonment or execution. Many expressed repentance, while others remained steadfast until the end, uttering last words of "Heil Hitler" (Persico). This enduring defiance may suggest that the Nuremberg Trials failed in at least one of their missions: to cultivate remorse and penitence among those being tried. According to many scholars, war crimes tribunals often seem to fail in other senses as well. Some argue that they are one of the most bureaucratic and time-consuming methods of dealing with "vanquished enemies." Victorious leaders have come up with an

impressive array of non-legalist fates for their defeated foes...Of all things, why bother to go to the trouble of a bona fide trial?" (Bass 7). Still, as we shall now see, the Nuremberg Trials were critical for the survival and advancement of Germany, Europe, and the rest of the world.

The aftermath of the Second World War posed a paradox to the international community: having just survived the deadliest conflict in history, which transcended borders, wealth, race and creed, the desire was still alight to create a cohesive and cooperative global spirit. For this reason, it was important not to implicate the German, Japanese, or Italian peoples, or the countless others who were likely complicit in the genocidal atrocities of the 1930s and 1940s. Were entire populations cast off as criminals, it would have been impossible to truly foster the desired sense of global community. To this end, thousands of Nazi soldiers were permitted to walk away from the Holocaust with no punishment or with light sentences, according to the principle that their duty to follow orders created mitigating circumstances (Persico). Even Winston Churchill, who later declared that Hitler should be executed without a trial, was adamantly opposed to executions for "political purposes" and denounced the idea of "cold blooded execution of soldiers who fought for their country" (Churchill). German noncombatants were portrayed as unwilling participants, and some writers have even gone so far as to describe them as victims in their own right. Robert Jackson, the chief prosecutor for the United States at the Nuremberg Trials, said:

Civilization can afford no compromise with the social forces, which would gain renewed strength if we deal ambiguously or indecisively with the men in whom those forces now precariously survive...These men created in Germany, under the *Führerprinzip*, a National Socialist despotism equaled only by the dynasties of the ancient East. They took from the German people all those dignities and freedoms that we hold natural and inalienable rights in every human being. The people were compensated by inflaming and gratifying hatreds

toward those who were marked as "scapegoats" (Jackson).

Jackson was cognizant of the need to separate the architects and leaders of the campaign from those perpetrators who were carrying out orders and enacting commands. It was vital for the Allies' hope for the future to associate the crimes of the Holocaust with individuals, rather than with entire nations. The most notorious perpetrators had to be dissociated from their governments, their political positions, and the people they governed. This principle was even outlined in the charter of the tribunals: "The official position of defendants, whether as Heads of States or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment" (Nuremberg Principles). Top Nazi officials received no pardon for their crimes simply because of their position within the infrastructure of the Nazi government. In this way, the Nuremberg Trials sent the message to the international community that the crimes committed in Nazi-occupied Europe were the decisions of persons, rather than political positions, governments, or entire peoples.

The Second World War left Germany economically and politically destroyed, partitioned into Eastern and Western regions, and bearing a legacy of guilt that would endure for generations. Despite these considerable burdens, the post-war system was one of cautious hope, even for Germany. The Allied powers occupying Germany experienced an ideological shift toward reconstruction in the years immediately following the war. The United Nations was formed in 1945 to prevent another world war, and both East and West Germany were admitted in 1973. West Germany was admitted to NATO even earlier, in 1955. This spirit of political cooperation was fostered by Nuremberg's validation of the suffering endured by all of Europe during the Second World War and attainment of some form of tangible justice. Germany was incorporated into the postwar community because someone—Nazi leaders—had paid the price for the atrocities committed in its name (Brady).

THE INTERNATIONAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

After the Second World War, Yugoslavia was, in many ways, an ideal archetype of how to construct a multinational state. Yugoslavia's stability was maintained by the mutual desire of the USSR and the United States to defend its neutrality in the midst of the Second World War clash among superpowers, and this political aplomb held fast until the country's economic collapse in the 1970s and 1980s created an atmosphere of national desperation and misery. Popular elections as late as 1990 suggested that the populations of Yugoslavia's separate and ethnically diverse republics and provinces—Bosnia, Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia—were committed to the preservation of the Yugoslav state, but the liberalization of the economy (and the plunging production and living standards it entailed), the structurally and materially weak central government, and the increasing power of the republics portended the country's collapse (Finlan).

Ultimately, Yugoslavia's downfall was the result of both foreign and domestic forces. In 1988, Slobodan Milošević, the president of the Serbian party, launched an aggressive campaign to reassert Communist and Serbian hegemony over the rest of Yugoslavia. Non-Serbs—Croats, Macedonian Slavs, Montenegrins, Muslim Slavs, and Slovenes—became increasingly unsettled by Milošević's fiery rhetoric and his seizure of leadership in Kosovo and Montenegro. In January 1990, the ruling Yugoslav communist party collapsed when the leaders of the various republics could not come to an agreement on addressing the political crisis. The Slovenes and Croats declared their independence the following year, and war immediately erupted in Croatia. Macedonia and Bosnia, which both contained substantial majorities that were unwilling to remain in a Serb-dominated Yugoslavia, reluctantly moved toward independence as well. Civil war erupted in Bosnia almost immediately and it became the arena for a vicious triadic conflict between, Serbs, Croats, and Bosnian Muslims that included systematic ethnic cleansing (Finlan).

Milošević's rise to power coincided with an intensification of ethnic nationalism in all of Yugoslavia's republics. Milošević himself demonstrated this trend. At one point, he advocated a Serbian state, rather than just a republic. This notion was based on the premise that the Yugoslav constitution, as well as a number of international legislative provisions, allowed for national self-determination. Because Serbs lived throughout Yugoslavia's republics in ethnically heterogeneous areas, however, Milošević's proposal implicitly suggested the mass migration of one or more ethnic groups. Milošević and his cohorts established the Republic of Serbian Krajina in Croatia, the goal of which was to facilitate the forcible exodus of the majority of the non-Serb population from the state. Serb forces went on to capture as much as 70 percent of Bosnia and Herzegovina, after which hundreds of thousands of citizens were forced to leave their homes. International sanctions and hyperinflation hastened a downward economic spiral, compelling Milošević to negotiate the Dayton Accords. In much of the West, he was lauded as pillar of Balkan peace for securing a nonviolent resolution to the conflict. Only four years later, however, Milošević would be condemned for the atrocities that he engineered in Kosovo (Finlan).

During the International Criminal Tribunal for the Former Yugoslavia (ICTY), Milošević faced sixty-six counts for crimes against humanity, genocide, and war crimes committed during the Balkan wars, in which tens of thousands of Bosnian Muslims were killed or forced to flee because of Milošević's direct or indirect actions (CNN.com). He refused to acknowledge the tribunal's legal jurisdiction throughout the case and represented himself in court. That Milošević and the 160 other persons indicted in the ICTY were held accountable for their crimes facilitated the restoration of order. His Serbian supporters in the former Yugoslavia, who still lionized Milošević as a peacemaker, closely followed his trial (Lebor). By this time, ethnic conflict was so widespread and systematized that the forced migration of nations and the arbitrary violence perpetuated by his regime became, in the minds of his supporters, secondary to his pursuit of an ethnically homogeneous

Serbian state. It became necessary for the authors of the Dayton Accords and for those involved in Milošević's trial to "break the link between [a leader] they saw as inciting nationalist hostility and the vulnerable mass of the population" (Woodward 86).

In Yugoslavia, Milošević and other elites were successful in "manufacturing fears and defensiveness" through the use of top-down methods such as nationalist propaganda and calls to violence. Not only would the indictment of leaders responsible for ethnic cleansing pave the way for elite-level cooperation, but it would also delegitimize the very principles of ethnic distillation to which they clung. Criminalizing Milošević and, by extension, his politics and divisive rhetoric and strategies allowed for the possibility of the virulent ethnic nationalism that characterized the renunciation of post-Cold War Yugoslavia (Woodward).

A phenomenon reminiscent of post-Nazi Germany occurred within the context of the ICTY. Prior to its initiation, Yugoslavia was split along so many literal and figurative lines that a peaceful resolution to the conflict seemed impossible. When Milošević stood trial, all of Yugoslavia was watching. Bosnian Muslims and Kosovo Albanians have voiced their respect for the court, and some have cited it as the reason for their resigned satisfaction with the outcome of the conflict (Lebor).

The ICTY provided a forum to discuss the otherwise unspoken atrocities that occurred in Yugoslavia. In Serb communities, Milošević was largely lauded as a hero for promoting the interests of his native people. His indictment in the war crimes tribunal, however, forced all ethnic groups in Yugoslavia to confront the widespread implications of his actions. In the clear light of day, the former republics of Yugoslavia were able to move toward a nonviolent settlement.

THE SUPREME IRAQI CRIMINAL TRIBUNAL

Saddam Hussein joined the incendiary Ba'ath party in Iraq at the age of twenty. In the 1950s and 1960s, the Arab world was rife

with revolutionary sentiment, the flame of which was fanned by the weakening of old elites' monopoly on power and the emergence of pan-Arab nationalism as a legitimate political principle. Hussein became a leading member of the Ba'ath party and, because of his participation in a nonviolent coup staged by the Ba'athists, was appointed to a deputy position under the new president. He quickly rose through the ranks of the government and consolidated power in Iraq, a state already rife with innate and acute tensions (Aburish).

Decades before the Ba'ath coup in which Hussein participated, Iraq was split along a number of cultural cleavages: linguistic, socioeconomic, religious, and ethnic, for example. As deputy, Hussein attempted to promote domestic social and economic stability through the implementation of programs such as modernization of the economy and agriculture, a sturdy security infrastructure, compulsory free education, improved healthcare, urbanization, and governmental control of international oil interests within Iraq (Aburish).

To many Iraqis, Hussein was personally responsible for the reforms implemented by the Ba'athist government. Still, domestic conflict among Iraq's many cultural groups impeded Hussein's program for progress. His government became increasingly concerned about the potential influence of Shi'a Islam on the Iraqi population, as well as the perpetual hostile threat posed by the non-Arab Kurds of northern Iraq who sought greater political autonomy. Still, Saddam became increasingly associated with Iraqi nationalism because of his passionate rhetoric about Iraq as the locus of the birth of civilization and because of the cult of personality that he developed across the country. Furthermore, he promoted Iraq's role as a key player in the Middle East and abroad (Balaghi).

Hussein's efforts to improve economic and social conditions in Iraq were overshadowed by his brutal attacks against the Kurdish minority, the Iran-Iraq War, the annexation of Kuwait, and the Gulf War. The devastation wrought by war with the United States unearthed old social divisions in Iraq. Members of the U.S. government accused Hussein of violating the terms of their ceasefire

agreement by pursuing weapons of mass destruction. Hussein's Iraq was infamous for its authoritarian rule and its mass murder and torture of civilians. Still more human rights atrocities came to light after Hussein's capture during the U.S.-led invasion of Iraq in 2003. Hussein was tried by the interim Iraqi government in 2005 and 2006 for crimes against humanity (Balaghi).

The first set of charges brought against Hussein included crimes against humanity that allegedly took place in the small Shi'ite town of Dujail after a failed assassination attempt in 1982 ("Trial of Saddam Hussein"). During the second trial, Hussein was accused of perpetrating genocide against the Kurds of Northern Iraq ("BBC NEWS—World—Middle East—Timeline"). Hussein also destroyed the food sources of rival ethnic groups and political factions and made use of chemical weapons to exterminate entire communities at a time. Furthermore, the secret police force that he employed was authorized to carry out targeted assassinations, systematic and widespread torture, restriction of domestic and overseas travel, campaigns of extermination of minority groups, destruction of homes, businesses, and religious edifices, and the imposition of severe penalties for petty crimes (HRW: Justice for Iraq). Hussein was found guilty of crimes against humanity and was sentenced to death by hanging on November 5, 2006; he was executed on December 30th of the same year (Raman).

The trials of Saddam Hussein and other former senior officials of his deposed regime are germane to the formation of a unified Iraq under the auspices of a new government. Since the invasion of Iraq by the U.S.-led coalition in 2003, insurgent attacks have increased steadily. While this is to be expected, the insurgency itself has been divided into various militias and guerilla factions that have formed in response to an increase in sectarian violence. The full-fledged civil war occurring in Iraq today is a continuation of the religious, ethnic, and political conflict that Hussein initiated during the early phases of his regime. The relationship between Iraq and the deposed Hussein is not unlike the one that existed between the former Yugoslavia and Milošević: both intensified the ethnic tensions already present, and both were inextricably

associated with the fervent nationalism that epitomized their regimes. In order for the inter-group violence in Iraq to subside, this nationalism must remain associated with Hussein and not with Iraq itself. Such an association will permit ethnic nationalism and its concomitant sectarian violence to gradually subside. For Iraq to press forward toward peace, prosperity, and autonomy, the violent nationalism and brutality that characterized Iraq under Hussein must be dissociated from both the Iraqi people and the new government. As Iraq's national security adviser, Mowaffak al-Rubaie, said shortly after Hussein's execution: "this dark page has been turned over. Saddam is gone. Today Iraq is an Iraq for all the Iraqis, and all the Iraqis are looking forward...The [Hussein] era has gone forever" (Raman).

COUNTER-CLAIMS

One of the major critiques of war crimes tribunals in general is the claim that law, in the face of aberrantly atrocious crimes, is ineffectual in bringing about moral, social, or political change. As Hannah Arendt wrote in a letter on August 17, 1946:

The Nazi crimes, it seems to me, explode the limits of the law; and that is precisely what constitutes their monstrousness. For these crimes, no punishment is severe enough. It may well be essential to hang [Second-in-Command of the Third Reich] Hermann Göring, but it is totally inadequate. That is, this guilt, in contrast to all criminal guilt, oversteps and shatters any and all legal systems...We are simply not equipped to deal, on a human, political level, with a guilt that is beyond crime and an innocence that is beyond goodness or virtue (Arendt).

This concern is misguided because it seems to abdicate any responsibility or ability to address the horrors of the Holocaust or any other systematic abuse or denial of human rights. Certainly, blaming several dozen Nazis for the deliberate or complicit crimes

of what amounts to an entire generation is wholly insufficient, but the message that it sends is not. The lack of a resolute and public condemnation of atrocities serves the same end as their authorization.

In a more immediate way, especially in the cases we have seen, ignoring the exclusionist in-group rhetoric that promotes unabashed violence and cruelty, or dismissing it as impervious to change, is tantamount to tacitly legitimizing those sentiments. War crimes tribunals are a mechanism through which the international community may affirm not only that different ethnic, religious, and other groups can peacefully coexist, but also that they must do so in order to secure the survival of all. Essentially, the international community believes that war crimes tribunals are necessary to provide a sense of closure and optimism for people who live in countries that are reeling from genocide. Pursuing international war crimes tribunals implies a consensus as to the utter unacceptability of the crimes they address.

Another argument against the use of war crimes tribunals is that the proceedings constitute little more than victor's justice. This case is sometimes even made by the victors: "I suppose if I had lost the war, I would have been tried as a war criminal," said Curtis LeMay, who targeted some sixty-three Japanese cities for annihilation by American bombing during the Second World War" (Bass 9). One of the Serb paramilitary leaders indicted alongside Milošević echoed this sentiment. "I will go to a war crimes tribunal," he said, "when Americans are tried for Hiroshima, Nagasaki, Vietnam, and Panama!" (Bass 9).

This method of understanding the politics of war crimes tribunals is dangerously reductive. As Gary Jonathan Bass writes, "The kind of justice one gets depends on the nature of the conquering state. The question is not whether tribunals reflect victor's justice. They probably do. But which victor is benefiting? And what justice is being enacted?" (16). In any sociopolitical situation, those in power make the rules. Saddam Hussein's Iraq was wrought with the miserable fruits of victor's justice, as were Nazi Germany and Yugoslavia under Milošević. The difference between the victor's

justice of these authoritarian regimes and that found in war crimes tribunals is the absence of sanction from the international community in the former. This *tu quoque* schema falls short for another reason. The fact that not every crime of a certain type can be punished does not imply that all crimes of a certain type should escape punishment. It is better to prosecute as many of the worst crimes as possible than to prosecute none at all, particularly in light of the in-group cohesion that international tribunals foster. Political and military successes allow one to pursue the type of behavior that one sees as prudent, appropriate, or necessary. What matters, then, is that the intentions and perceptions of the victors support a positive aftermath of the tribunals. If war crimes tribunals help to foster peace and inter-group cohesion in the absence of a despot, then the victor versus failure argument is rendered irrelevant.

Finally, many cite failed tribunals as a reason to reject them altogether. Among the tribunals they mention are the “abortive treason trials of Bonapartists in 1815 after the Hundred Days, botched trials of German war criminals after World War I, [and] an abortive prosecution of some of the Young Turk perpetrators of the Armenian genocide” (Bass 5). Again, many produce an argument that suggests that a practice is completely ineffective if it is not unflinchingly effective. This paper has demonstrated that such all-or-nothing rationalizations do not hold true.

CONCLUSIONS

In the warring Europe of Adolf Hitler, the crumbling Yugoslavia of Slobodan Milošević, and the culturally divided Iraq of Saddam Hussein, certain circumstances existed throughout. All three situations involved a leader who manufactured a security dilemma through which he mobilized his people. In the Nazi case, Germans had to guard against the “racially inferior” groups whom they were led to believe were the root of all of their troubles. Milošević accused non-Serbs of depriving ethnic Serbs of their natural right to construct political boundaries congruent with national boundaries. Finally, Saddam Hussein perpetrated a pan-Arab nationalism that

entailed the violent and active exclusion of non-Arabs, political dissidents, and the religiously dissimilar. What is unique about these three failed states is that the former high-ranking officials of each all faced war crimes tribunals, whether in person or in absentia. Furthermore, these tribunals have served—or, in the Iraqi case, have the potential to serve—as mechanisms for fostering cohesion or, at the very least, nonviolent coexistence between formerly warring factions.

The utility of war crimes tribunals is manifold. Tribunals affirm that law is one appropriate response to international criminal atrocities and they announce the international community's dedication to this ideal. They concern a distinct category of crime, unparalleled in its intolerability. And, as we have seen, they advance the prospects for peace in failed states with deposed leaders. For the international community to condemn the crimes of a despot is to render those crimes forever tainted in the eyes of his former subjects. In the wake of a conflict people need closure, but they also need validation. War crimes tribunals provide both. On the one hand, groups who were victimized are provided with a tangible antagonist to hold responsible for the abuses they suffered. On the other hand, parties complicit in the atrocity are able to acknowledge their wrongdoing without being cast out of a society of which they may be a fundamental part. In this way, both are able to reconcile the past while looking together toward the future.

Bass notes Henry Kissinger's succinct claim about the nature of war crimes tribunals and their contribution to peace:

Realists often fear that war crimes tribunals will interfere with the establishment of international order. Carrying the hatreds and moral passions of war over into a peace settlement is dangerous. Kissinger admired the Congress of Vienna's generous treatment of France after the Napoleonic Wars: "A war without an enemy is inconceivable; a peace built on the myth of an enemy is armistice. It is the temptation of war to punish; it is the task of policy to construct. Power can sit in judgment, but statesmanship must look to the future."

Overheated moral judgments and particularly “personal retribution,” Kissinger implied, risk undermining a peace (Bass 10).

Although Kissinger intended to discourage war crimes tribunals, his words can be interpreted otherwise. Kissinger argues that peace constructed around the myth of a mutual enemy merely results in a temporary suspension of hostilities. This paper claims, however, that war crimes tribunals serve to extract the architects of genocide and human rights abuses from the context of regional or international rehabilitation. Further, they channel the fear, indignation, and pride of those victimized toward those most responsible for brutality, rather than toward any particular state or ethnic group. In this way, those who survive can move forward without forgetting the past but without transferring past hatred to the future.

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