

**Passion and Law in Iraq:  
Reflections on Saddam  
Hussein's Execution**



## **FORUM**

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### **Passion and Law in Iraq: Reflections on Saddam Hussein's Execution**

JURIST Guest Columnist Chibli Mallat, visiting professor at Princeton University and a Middle East human rights lawyer who in 2003 turned down an invitation to join what became the Iraqi High Tribunal which eventually tried Saddam Hussein and sentenced him to death, says that sound legal process in the Saddam case was overwhelmed by passions unleashed by his rule, chaotic Iraqi politics after the US invasion, and the trial itself...

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Passion runs high in Iraq, even by the standards of a Middle East where the Arab-Israeli conflict has been an emotional hotbed for almost a century. Every issue seems to befuddle rational action. The hanging of Saddam Hussein is the latest and perhaps strongest instance of Iraqi passion violently trumping reason and humanity.

In twenty years of academic and political involvement in matters Iraqi, I have learnt the dangers of passions over Iraq, and not only amongst Iraqis. Those have affected anyone who has dealt with the country. It is palpable in the United States nowadays, where Iraq hardly leaves the limelight of front page news, but it was also true in the considerable struggle within the US government between the State and Defense Departments in the run-up to and aftermath of the March-April 2003 invasion, not to mention the CIA's dogged support for its own candidates in a determination that borders on the irrational. Successive episodes since at least 1995 show the depth of passionate struggle over Iraq, within the US government, in ways unwarranted by traditional bureaucratic rivalry.

Nor did passion spare the UN: oil-for-food money consistently trumped any attempt to sway successive secretary-generals on the side of Iraqi human rights, and the period of direct UN involvement in Spring and early Summer 2004 was no less passionate, whether in the appointment and then brutal death of Sergio de Mello, or the heavy hand of his successor, Lakhdar Ibrahim, who got embroiled with a fierce battle between contenders to the prime ministership in ways for which Iraq suffers to date.

Passion over Iraq was not only American. In the 1990s, an extremely passionate argument developed between the late Edward Said and Kanaan Makkiyye, famous for authoring the Republic of Fear under the pseudonym Samir al-Khalil. Having then friendly ties to both, and not quite understanding the reasons why they should be so strongly opposed to each another considering their common inclination to denounce dictatorship and injustice, I tried to deflect the passion in their exchanges, which split the Arab intellectual community. I failed. Working with the Iraqi opposition leadership, I could see how passionate the animosity between its better protagonists despite their common goal of bringing Saddam Hussein's rule to an end. It proved extremely difficult to put together a working opposition, let alone a working government after their return to Baghdad in 2003.

So I wasn't surprised at the amount of passion which the trial and execution of Saddam Hussein triggered, and the conflicting, excessive reactions before and since. Nor was the ugly end surprising, embroiled as the execution was in Iraqi bloody politics, with relatives of Muhammad Sadeq al-Sadr and Muhammad Baqer al-Sadr, respectable religious figures whom Saddam had assassinated in 1999 and in 1980, wanting to have a last jibe at a clearly unrepentant assassin. At least Saddam was buried in his village, but one may wonder how many people will die in the battle over his sepulchre.

Passion and controversy will continue to run high. The trial is over for Saddam, but not for Ammar Bandar and Barzan Takriti, both now on death row. And in the middle of passion, few people noticed that the Appeals' Court of the Iraq High Tribunal sentenced on 26 December a third person to death, Taha Yasin Ramadan. The Court held that the lower court's life sentence was too lenient, reversed it, and remanded his case for harsher sentencing to conform with its judgment. As the Anfal trial proceeds, with 'Chemical Ali' standing in the dock for the killing of thousands of Kurdish Iraqis, passion will continue, this time of an ethnic-nationalist nature as opposed to the sectarian passion one has witnessed so far all the way to the gallows.

I know from experience that the rule of law is often sacrificed in the tide of passion. One should try nonetheless, and hold on to one's ideals and beliefs in adverse moments.

It is time to stay the hand of the executioner. Being for or against the death penalty is a strong personal choice, one that arouses great passion the world over. I have chosen to be against it, with no exception. That includes Saddam Hussein, who, of all mass murderers on earth since the end of the Second World War, probably deserved it most. This is not a mere personal conclusion about Saddam's rule. In the 1990s Max van der Stoep was in charge of the human rights file as UN Special Rapporteur for Iraq. He concluded in one of his reports that the exactions of Saddam Hussein's government were the worst since World War II. Still, no death penalty means no death penalty, and examples abound on the wisdom of its abolition, from the wide revulsion at the execution of Nicolae Ceaucescu and his wife in 1989 - a sad blot on Eastern Europe's non-violent revolution - all the way back to the French Revolution. History would have kept a better place to 'the Incorruptible', Maximilien Robespierre, had he been consistent with his declared opposition to the death penalty. Instead, he turned into the architect of Terror, which claimed through judicial means thousands of

innocents, after leaving his beliefs at the door of Louis XVI's trial in December 1792. 'Louis must die', Robespierre said, 'so that the Nation can live.' Surely France did not need Louis to die, nor will Iraq owe its survival to the execution of Saddam Hussein.

These are times that grip one's conscience. Maybe I could have saved Saddam Hussein, when colleagues on the then-Iraqi Governing Council asked me to sit on the Court. But I couldn't join the Court: there was a conflict of interest because I had helped establish Indict in 1996, whose mission was to bring Saddam and other mass murderers to trial. It was also difficult to contemplate living in Baghdad through what turned out to be an unprecedented butchery of witnesses, defence lawyers, and judges. But I made the case as strongly as I could that Iraq would be better served by an appropriately monitored 'reality camera' for the rest of Saddam's life, rather than his execution, at a meeting held in Amsterdam in preparation of the Tribunal. I also made the argument that when Saddam Hussein was arrested, the death penalty had been frozen by the 'occupation forces' in an order issued by Paul Bremer, and that a harsher penalty could not be meted on him without undermining basic principles of criminal law.

Before the first decision was issued last November 5, I worked for the court to be moved abroad. Afterwards in a JURIST column I urged that the appeal of the verdict be moved outside Iraq, and I even looked for jurisdictions where the death penalty was not officially banned to make the possibility more acceptable to Iraqis. I also made the argument that the Iraqi constitution, no less, required the president to sign the death warrant for Saddam. Why should the Prime Minister end up doing so against an explicit Article 70 vesting that essential responsibility in the president?

Only in a place not overrun with high human emotions, as Iraq is, can one avoid the contradictions between law and a reality gripped by passion. In Saddam's death, I can see the fate of so many Middle Eastern dictators and their families. When Saddam was arrested and filmed coming out from the spider-hole, Libyan dictator Qaddafi stayed mesmerized hours on end before the television set. Since then, his international policy has somewhat changed, though not his brutal home practice, and one knows that Saddam's copycat rulers in the Middle East will be shaken by his brutal demise. And so they should. What has Saddam Hussein achieved? His whole family, including wives and daughters, lives in exile and in fear of being surrendered to the Iraqi government when it stabilizes. Saddam Hussein killed his two sons-in-law, along with a grandchild. His two sons, and another grandson, were killed in a battle where they were doomed. He was removed from a hole, his head full of lice, to be incarcerated for two years while continuing to fan the flames of death and killings. His trial was the occasion of so many unnecessary deaths: almost a dozen people were killed in direct connection with the trial, including witnesses and families of witnesses and judges, and three defense lawyers, including two innocent souls assigned to him by the tribunal and one who served by his own choice. For what? Does any of his family or supporters believe that it was worth it? Wouldn't Saddam and his family, and so many others, be still alive had he relinquished power in March 2003 and gone into exile? More importantly, will those lesser figures than Saddam who rule the Middle East end up differently as hatred in society, their clinging to power for life, and the resulting spiral of death, turn them into increasingly harsh despots?

What struck me most this past week is the contrast in the death of two former

presidents. I could not stop thinking of Gerald Ford and Saddam Hussein's deaths, and the way their respective publics dealt with them. What explains the chasm between the controversies swirling in America in the last week of 2006, one about the pardon by Gerald Ford to Richard Nixon, the other about the way Saddam Hussein was put to death? What is it that makes us in the 21st century appear to be living on different planets?

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