



### Top Stories

#### New Zealand National Party leader, Don Brash, resigns



New Zealand National Party leader, Don Brash has resigned as the leader of opposition. Dr Brash made the announcement at press conference held in parliament, stating that ongoing media speculation about his leadership was damaging the party's reputation

#### Harper to recognize Quebec as nation within Canada



Stephen Harper announced at 3:00 p.m. Wednesday that he will recognize Quebec as a nation within Canada, despite the Bloc Quebecois' motion to separate Quebec completely from Canada.

### Featured story

#### Judging the Courts: Wikinews interviews Prof. Lawrence Douglas



Wikinews interviews Lawrence Douglas, Professor of Law, Jurisprudence and Social Thought at Amherst College about the trial of Saddam Hussein and the purpose, conduct and impact of courts trying crimes such as genocide.

### Wikipedia Current Events

- Hinting at Iran, Israeli Prime Minister Ehud Olmert tells Orthodox Union (OU) in Jerusalem: "Israel's main problem is threat that comes from those who openly talk about wiping us off the map; we have heard these voices in the past; we can't afford to listen and not to react".
- General elections in the Netherlands have resulted in a landslide gain for the Socialist Party. The Christian democratic CDA remains the largest party, but no two parties can form a cabinet with a majority in parliament.
- The Prime Minister of Lebanon has asked the United Nations for help in investigating the assassination of Pierre Amine Gemayel.
- Flooding in southern Somalia causes 73 deaths. Up to 1.8 million people have been affected by the floods.
- The United Nations claims that 3,709 Iraqi civilians died during October 2006 as sectarian violence worsens.
- United states district judge for the Eastern District of Louisiana Eldon Fallon rules that over seven thousand federal lawsuits against pharmaceutical company Merck claiming that its drug Vioxx caused heart problems could not be combined into one class action suit.
- Seven foreign oil workers are

### Wikipedia Current Events

- taken hostage in Nigeria. Four people die in a rescue effort including one hostage, a soldier and two of the kidnapers.
- According to UK Foreign Secretary Margaret Beckett, British troops stationed in the Iraqi city of Basra could hand over control to local authorities as early as next spring. (The Times)
- The Prime Minister of Nepal Girija Prasad Koirala and Maoist guerilla leader Prachanda sign a peace treaty ending 11 years of civil war in Nepal.

#### NZ National party leader wants book based around his emails published

Doctor Don Brash, New Zealand National party leader, is seeking legal advice to see if the injunction he has placed on his emails to stop them from being published will still be valid if he lets a new book based around those emails to be released to the public. Dr Brash, however, wants the people who he sent emails and received emails from not named.

"As I've said earlier, I want to see the book by Nicky Hager published so that the claims can be exposed to daylight," Dr Brash said, "On the strength of the initial discussion with Mr Brown [legal counsel], I am confident that there are ways in which the book can be released, even in the next few days. These are being actively explored.

The book in question is by Nicky Hager and has been given the title: *The Hollow Men: A Study in the Politics of Deception*. It includes emails that were, allegedly, given to him by insiders in the National party, who Mr Hager will not name, it also includes interviews with unhappy people inside the National party. Despite the claims made by Mr Hager, Dr Brash is still adamant that they were stolen from his computer.

The book includes political strategies behind the Orewa speech, the input into Nationals campaign from neo-conservatives in America, industry lobby group influences, donors to National and also the election spending strategy that was thought up by Australian advisers. The accusations that the author, Mr Hager, has made are wild according to Dr Brash.

The injunction that was issued from the High Court stops anyone from broadcasting, publishing or giving the emails to anyone, in any form, which includes the internet.

Michelle Boag, the person who got Dr Brash to enter the National party, said: "Mr Hager has no credibility. The media is giving the author and activist too much attention. He got access to some stolen property, he selectively took bits to try to reinforce it and now people are believing this man who has never in his life published anything that has had any credibility. All the media is doing is help Mr Hager to sell his book in time for Christmas."

The book has been published by Craig Potton Publishing.

### **Chemical plant fire decimates Danvers, Massachusetts neighborhood**

According to outgoing Massachusetts governor Mitt Romney, an explosion that was "equivalent to a 2,000 lb. bomb" and registered 0.5 on the Richter scale decimated an area of Danvers and is also a "Thanksgiving miracle."

The explosion occurred around 2:45 am EST, this morning in the Danversport area of Danvers, Massachusetts at the plant for solvent and ink manufacturer, CAI Inc. The explosion, which was caught on security camera and was heard up to over 25-50 miles away in southern Maine and New Hampshire.

The explosion damaged over 90 homes, blowing out windows and knocking some houses of their foundations. Officials believe that some of the more extensively damaged houses will have to be leveled and rebuilt. Some of the buildings damaged included a bakery, boats at a close by marina and the New England Home for the Deaf, an assisted-living facility for people who are deaf or deafblind and elderly residents requiring constant care. "These people are extremely fragile," said state Rep. Ted Speliotis, D-Danvers, whose district includes the affected area. "Many of them have Alzheimer's and other illnesses. It's clear they can't stay here long, but it's clear they won't be able to return for quite a while."

Danvers Fire Chief James P. Tutko toured the area by helicopter and said many residents would be kept from their homes for the foreseeable future. "It looks like a war zone, that's the only thing I can say," Tutko said. When asked about the loss of no life at all, he

responded "Somebody out there likes us." Finally, he said that finding out the cause of the explosion would take days.

Outgoing governor Mitt Romney toured the area and said the the explosion was a "Thanksgiving miracle" as the explosion was "equivalent to a 2,000lb bomb going off in a residential neighborhood," and that no one was killed and only about 10 people suffered only minor injuries in area that included over 300 residents. Residents of the area have been evacuated to the Danvers High School where temporary shelter has been set up by the American Red Cross of Massachusetts Bay. Donations are being taken for residents affected by the explosion. Residents are also being told to start filing insurance claims right away and to keep track of their expenses for items bought.

There were minor environmental concerns due to water runoff of chemicals. According the Environmental Protection Agency's on-scene coordinator Mike Nalipinski, preliminary tests showed low levels of toluene, a solvent, but said it was nothing of significance. Water runoff from the water used by firefighters left a purple sheen on the river and tests were being conducted. However, the water is not a local drinking water supply and the chemical evaporates quickly. Chief Tutko said there was no risk of toxic fumes getting into the air.

An Eastern Propane facility was also located near the area, however, it was not the source of the explosion. A spokesman for the company said that although the property suffered some minor damage, their tanks are secure.

According to WHDH television, a person who answered the telephone at CAI's Georgetown, Massachusetts headquarters refused comment, and a telephone message left at the company president's home was not immediately returned.

### **New Zealand National party pays back owed GST**

The New Zealand National party has announced that it will pay back the GST (Goods and Services Tax) it owes to five different advertisers, all television stations, by buying advertising time for the several different charities. The advertisements will appear on the owed media outlets. They have decided with the current path is it would "unlawful" to pay back the GST normally.

The GST amounted to NZ\$112,000.

National's original plan of getting a one time bill passed that it would allow them to pack the owed GST to the media outlets was ditched in favour of this new one. "With the prospect of legislation diminishing, it's time to accept that National cannot go down that path," Judy Kirk, president of the National party, said.

If National was to pay back the GST, they would be breaking the law by going over the electioneering cap set by the Broadcasting Act.

The owed media companies are TVNZ, TV3 and Sky Television. It also includes Sky's free-to-air channel, Prime.

Ms Kirk said: "We want to get some closure on the matter and have taken extensive legal advice on our options... We have secured clear advice that it would be

unlawful to pay the five outstanding media creditors, and that it would be unlawful for them to accept payment. We do not wish to break the law, and nor do we wish to place our creditors in the position of breaking the law."

"...we will purchase the media advertising time directly from broadcasters and ask that they allocate it amongst the range of charities currently supported by each," Ms Kirk said.

National said that their error on not paying for the GST did not effect the outcome of the election, unlike the Labour party's overspending.

### **Cabinet to discuss UK nuclear deterrent for the first time tomorrow**

The Labour Party's 2005 election manifesto read "We are committed to retaining the independent nuclear deterrent". Although there have been reports that planning and design work on replacement vessels and new designs of nuclear war heads has been proceeding for some years, the first Cabinet meeting to consider this pledge will take place tomorrow.

No Cabinet papers have been circulated before the meeting at which it is said there will be a "first run round the issues". A further Cabinet meeting is to be held prior to the publication of a White Paper just before Christmas. The principle of retaining a nuclear deterrent will be put to the vote in the House of Commons next year and, although it may split the Labour Party, is likely to be carried with the support of the Conservative opposition.

It is reported that some Cabinet Ministers have reservations about the prudence of maintaining the

nuclear deterrent when the apparent threats are from saboteurs and suicide bombers. They also have doubts about the legality of adding to the stock of nuclear warheads contrary to the spirit of the Nuclear Non-Proliferation Treaty and about the way that the decision is being pushed through without consultation with the Labour Party. Among those with doubts are the Foreign Secretary Margaret Beckett, Hilary Benn, Minister of State for International Development, and Peter Hain, Secretary of State for Wales and Northern Ireland.

The only other European country with nuclear capability is France. Prime Minister Blair and Chancellor Brown are agreed on the need to retain a nuclear deterrent. Their reasons include keeping the country's seat at the top table of international politics.

The Trident missile system is carried in four nuclear-powered Vanguard class submarines, the first of which was commissioned in August 1993. The current Trident system cost £12.6 Bn to introduce at 1996 prices, and requires £280m a year to maintain.

Replacements for the smaller nuclear-powered w:attack submarines are under construction and will be armed with Tomahawk missile tactical missile systems. The atomic weapons establishment at Aldermaston is reported to be developing tactical nuclear weapons, smaller and of shorter range than Trident suitable for firing using the same type of launcher as Tomahawks.

### **Israel's Supreme Court recognizes foreign same-sex marriages**

Israel's Supreme Court yesterday

ordered the Israeli government to recognize foreign-based same-sex marriages. Same-sex marriages legally performed outside Israel will be recognized as full marriages in Israel.

The vote on the ruling was 6-1 with the single no vote coming from a conservative Jew on the bench. The ruling immediately touched off controversy in the conservative and orthodox communities within the nation. Orthodox community leaders had been instrumental in canceling gay pride celebrations last month in Jerusalem.

Lawyers within Israel say the ruling is largely symbolic. Israel already gives gay couples many of the rights of heterosexual couples. The Supreme Court ruling will now allow them to adopt children and gain tax benefits, however.

This latest ruling was the result of a suit brought by five couples at least one of whom had been married in Canada last year when that nation recognized same-sex marriage.

Civil registration of marriages performed outside of Israel has a long history within the country dating back to a Supreme Court decision made in the 1960s. Actual marriage within Israel is overseen by rabbinical authorities under Jewish religious law and so all marriages within Israel are religious in nature. Not only has this been a difficulty when it comes to same-sex marriage, but issues have long been a problem in mixed marriages where one partner is not Jewish, or among people who can't satisfactorily prove their Jewish heritage. The power held by Orthodox leaders in Israel with regard to marriage has been a point of contention in the

country with Conservative and Reform sects for years indicating that while from a legal standpoint this latest ruling may be small, it may have far wider ramification in many related areas.

Israel is the first middle-eastern nation to recognize any form of same-sex union, and only the fourth nation in the world to officially recognize same-sex marriages. Israel has recognized same-sex common law marriage since 1994. Homosexual Palestinians often attempt to flee to Israel as they may be tortured or killed by the Palestinian Authority; however, Israel usually does not grant asylum on the basis of sexual orientation.

#### **Lebanese Christian leader assassinated**

Yesterday, Pierre Gemayel was shot in his car and was declared dead at the hospital. He was the Lebanese industry minister.

Today, his corpse was driven into his native town of Bikfaya followed by thousand of people mourning him. He is the fifth personality assassinated in Lebanon in one year and the fifth of the Gemayel's family according to his father, former president Amin Gemayel.

One week ago, Samir Geagea, the commander in chief of the Lebanese Forces, announced rumor of assassination of one minister.

The funeral of Pierre Gemayel will be held tomorrow in the cathedral of Beirut.

According to the White House National Security Council spokesman, President Bush, having expressed his condolences to Lebanon's Prime Minister Fouad Siniora, affirmed "the unwavering

commitment of the United States to help build Lebanese democracy, and to support Lebanese independence from the encroachments of Iran and Syria."

#### **Canada to have free vote on reopening gay marriage debate**

The Prime Ministers Office announced today there will be a free vote on reopening the gay marriage debate in the House of Commons. Stephen Harper had already talked about having a free vote many times but the date was never set.

The previous government lead by former Liberal leader Paul Martin approved same-sex marriage last year. Harper made this vote one of his promises during the federal election campaign. The 2005 legislation made Canada the fourth country in the world to legalize gay marriage after the Netherlands, Belgium, and Spain.

A gay marriage lobby group argued that it was not fair to "leave this issue hanging over our heads" and urged the Conservative government to have a vote soon. "Either get on with the vote or admit that the equal-marriage ship has sailed," Laurie Arron, national co-ordinator of Canadians for Equal Marriage said at a news conference.

It will not directly challenge the existing legislation but it will ask MPs if they would like to reopen the debate.

Because of the composition of the house of commons, the Conservative government's minority status and its lack of allies in the house on this question, the motion is almost sure to be voted down. Many see this motion as a symbolic gesture to satisfy the government's

conservative base.

Over 12,000 gay couples have married in Canada since since Bill C-38 passed.

The vote will have to happen before December 15, when the MPs go home for the Christmas holidays.

### **Handcuffed Philadelphia man shoots himself**

On Monday morning, a 26-year-old man named Oliver Neal was stopped in southern Philadelphia by police, who took him into custody after finding four packets of cocaine in his possession.

According to a police statement, Mr. Neal shot himself in the back of the head while handcuffed in the back of a patrol car, and after having been searched for a weapon. Neal was treated at the Hospital of the University of Pennsylvania, with news reports listing his condition as critical or stable.

Neal's family held a press conference on Tuesday. His father said, "He had his problems in the past, but that has no bearing on what occurred."

Both Internal Affairs and a Philadelphia homicide team are investigating the shooting.

### **Honda Civic tops Canada's list of most stolen cars**

The 1999 and 2000 year model Honda Civic SiR tops the list of Canada's most stolen cars.

Consumer popularity also assures the cars will be popular with thieves. Its the second year in a row the Honda SiR has topped the list.

Rick Dubin Vice President of

Investigations for the Insurance Bureau of Canada said "The Civics are easy targets."

Dubin said that once stolen, the cars are most often sold to "chop shops" where thieves completely dismantle the vehicles. The automobile's individual parts are worth more than the entire car.

The sheer numbers of the cars and their lack of theft deterrent systems make them thieves' preferred choices.

The Honda Civic does not come with an electronic immobilizer, which will be mandatory on all new cars sold beginning fall 2007. The devices enable an engine computer to recognize an electronic code in the key. If the code in the key and the engine don't match exactly, the vehicle can't be started.

In third place was the 2004 Subaru Impreza, while the 1999 Acura Integra came in fourth, with the 1994 Honda Civic rounding out the top five.

In sixth place, the 1998 Acura Integra, and the 1993 Dodge Shadow completed seventh.

When asked why early model vehicles are selected, he said that, "auto thieves continue to find it easier to steal older vehicles lacking an IBC-approved immobilizer. We've seen this trend developing for several years, and these results confirm it."

Another Honda automobile, the 1996 year model Civic filled eighth place, with the 2000 German Audi TT Quattro in ninth.

The American 1996 Chevrolet/GMC Blazer rounded out the top ten.

None of the above cars had an electronic immobilizer.

### **State funeral for last World War I veteran approved by Canadian House of Commons**

The House of Commons approved a state funeral for the last standing World War I veteran Tuesday. Three of them are still alive, Percy Wilson 105 years old, Lloyd Clemett and John Babcock 106 years old. There are only three veterans among the 619,636 Canadians who served between 1914 and 1918.

The motion, introduced by the New Democratic Party, was favored by all party leaders. The motion was prompted by an online petition by the Dominion Institute, a national organization which promotes Canadian history.

State funerals in Canada, by tradition, are reserved for prime ministers and governors general. This bill, which is now in affect in Canada, means that state funerals are not only for prime ministers but for people who have served the country.

"We want to thank the tens of thousands of Canadians who signed our petition in support of state funeral," said Rudyard Griffiths, the director of the Dominion Institute. "By passing a motion to offer a full state funeral today the Parliament of Canada will allow a grateful nation to pay proper tribute to our last Great War veteran on his passing and honour the over 600,000 Canadians he served with under arms from 1914-1918."

Australia, also held a state funeral for the final veteran of the Battle of Gallipoli. A State Funeral was offered for Steve Irwin in September 2006, but the offer was

declined by his family's wishes. Canada is the fourth country to have a funeral honoring the last war veteran that served in any war.

"We won't be able to look them in the eyes anymore and thank them for their service the way we should for everyone who is willing to serve our country the way they did and our armed forces personnel still do," NDP Leader Jack Layton said.

Since November 6, around 100,000 Canadians had signed the online petition.

### **Nine killed in Kolkata leather factory fire**

Nine people are confirmed dead in a fire in a leather bag factory in Kolkata's South 24 Pargana district in Topsia area.

Eighteen people were seriously injured and admitted to the National Medical College and Hospital.

Inspector General of Police (Law and Order) Raj Kanojia said that the fire broke out at about 3 a.m. local time, when the victims were inside the factory and all the doors were closed.

Director General of Fire Brigade Gopal Bhattacharjee said that it was an illegal factory in Kolkata located at third floor of the building. At the time of fire, all the exits were shut and workers could not come out from the factory.

The cause of the fire is yet to be ascertained. Kolkata Mayor Bikash Ranjan Bhattacharya suggested that a short circuit or an unattended cigarette may have caused the fire.

Five firetenders were rushed to the

spot. Firefighters fought the blaze for hours and rescued the people who were residing in the building at the time of fire.

### **French postal service is back on the rails**

The French postal service La Poste has reached agreement with SNCF, the national rail company, to create a joint rail-based high-speed courier service. The planned joint venture was announced on Monday by the two state-owned businesses.

La Poste's return to rail was prompted by stiff competition and rulings of the European Commission. In the late 1990s, mail train services were largely replaced by road and air shipment. Faced with European prohibitions on night flights, and the harmful effects of carbon emissions, La Poste changed its policy.

There will be 3 TGV high-speed mail trains in the new fleet, soon expanding to 10. Environmentally speaking, the trains will contribute a reduction in atmospheric pollution from fossil fuels.

### **Winter session of the Parliament of India begins today**

The winter session of the Parliament of India has begun today. Both the houses, Lok Sabha (Lower House) and Rajya Sabha (Upper House), were adjourned after paying obituaries to BSP leader Kanshi Ram and four other former MPs.

The Rajya Sabha was adjourned without transacting any business today as a mark of respect to Lalit Suri, a sitting member of Rajya Sabha who passed away on October 10, 2006.

Six newly elected members,

including BJP leader Shahnawaj Hussain, newly elected Lok Sabha member from Bhagalpur constituency, and Narahari Mahato from Purulia constituency, took their oaths of office.

Three new members of the Union Council of Ministers were introduced in the Lok Sabha. The members are Defence minister A K Antony, Minister of State for Information and Broadcasting M H Ambareesh and Minister of State for Water Resources Jay Prakash Narayan Yadav.

### **Bush's daughter's purse snatched**

Barbara Bush, daughter of U.S. President George W. Bush had her purse stolen while on a two-week trip in Argentina.

Unnamed law enforcement officials told news agencies that the 24-year old Miss Bush was "not in the immediate proximity" of her purse when it was stolen. Her cell phone was among the items stolen.

According to the source, "at no point were the protectees out of visual contact and at no point was there any risk of harm."

Miss Bush was having dinner in the San Telmo neighborhood of Buenos Aires during her first night there when the incident occurred. According to the reports, Secret Service agents guarding Miss Bush failed to notice the theft.

According to additional unnamed law enforcement sources, an agent member of Miss Bush's advance party Secret Service was badly beaten during an "altercation" on his personal time, which the agent reported as an attempted mugging. The agent's condition is fine.

A Bush administration official confirmed that "a theft incident" involving Barbara Bush had occurred, but declined details. The Secret Service, which is charged with the protecting the First Family's personal security, declined comment, as did the White House, and the First Lady's office.

There have been recent reports that Miss Bush has been living and working in Panama as an intern for UNICEF.

### **Judging the Courts: Wikinews interviews Prof. Lawrence Douglas**

Wikinews interviews Lawrence Douglas, Professor of Law, Jurisprudence and Social Thought at Amherst College, on questions of the fairness and credibility of the Saddam Hussein trial, and the purpose, conduct and impact of courts trying international law crimes such as genocide, crimes against humanity and war crimes.

Prof. Douglas is the author of *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (Yale University Press, 2001), an acclaimed study of war crimes trials. His writing has appeared in venues including the *Los Angeles Times*, the *Washington Post*, and *The New Yorker*, and he is a frequent contributor to the *Times Literary Supplement*.

#### The Dujail trial

WN: Did Saddam Hussein get a fair trial?

LD: Clearly the trial suffered from numerous and substantial flaws which never would have been tolerated had the trial been staged before an international tribunal, as many human rights observers advocated. All the same, the trial was not a complete sham. The

prosecution was able to present strong evidence connecting Saddam to the killings in Dujail. The judges apparently struggled long to weigh the evidence brought against the various defendants (though their compendious written judgment has not yet been made public). So if the Hussein trial failed to live up to the hopes of some that Iraqi jurists would quickly master the rules of the rule of law, it also disappointed the doomsday prognostications of others who foretold a legal catastrophe.

WN: Saddam is believed to have committed atrocities on a huge scale. Do such crimes merit a fair trial, one with the same standards as that for a "common" crime?

LD: The magnitude of the crimes should not change our commitment to a fair legal process. This is not to say that the identical rules of evidence that apply in the trial of a "common" criminal must be applied to a spectacular trial of a high-level perpetrator. For example, the Nuremberg and Eichmann trials both permitted hearsay and entertained a more capacious notion of relevance than would have been permitted in a "common" trial. But these unorthodox evidentiary rules did not erode the fairness of the proceedings.

WN: Saddam's defense lawyers, rights groups and observers have questioned the fairness and validity of this trial. What do you make of the concerns raised by them?

LD: The fact that the judge who finally took the reins of control, Raouf Rasheed Abdel-Rahman, frequently got into shouting matches with the defendants and

suddenly curtailed the calling of defense witnesses certainly did little to contribute to the image of a neutral, even-handed tribunal.

WN: Some of the issues raised concern matters that were outside the Court's ambit and control (e.g., the murder of three defense team members, the opposition to the use of the death penalty, the effect of the verdict on the continuing violence in the country). Leaving these aside, what do you make of the concerns raised about the Court's own proceedings, its decisions and actions?

LD: Clearly the Tribunal made all sorts of missteps and questionable moves. It's worth bearing in mind, however, that even the best-intentioned court would have faced staggering problems given the tactics of Saddam and the larger political climate outside of the courtroom. Saddam himself placed the Tribunal in an extremely difficult position. The first presiding judge, Rizgar Mohammed Amin, was faulted for his failure to restrain the defendant, and this failure arguably made the court look impotent. His replacement, Judge Abdel-Rahman was faulted for the opposite reason: for dragging the defendant from the courtroom at the slightest provocation, a strategy that undermined the dignity of the court and its appearance of neutrality. So the court was caught in a difficult position, which was not improved by the periodic news that a member of the defense team had been assassinated. That said, the fact that one of the accused was acquitted is a good sign. At the very least, the judges appeared to have learned the Nuremberg lesson that nothing legitimates the death sentence of an architect of

atrocities better than the acquittal of a lackey.

WN: Have the actions of the Iraqi authorities undermined the fairness or independence of the Tribunal?

LD: The tribunal was subjected to withering political pressure from the Iraqi government, resulting in the resignation of the first presiding judge and in the withdrawal of a possible replacement. Clearly this kind of political pressure is inappropriate. At the very least it undermines the perception of the tribunal's independence, and matters of perception play an extremely important role in legitimizing the legal process.

WN: The trial has been criticized by Saddam's defense lawyers as having a "pre-determined verdict". What is the line dividing a trial with a "pre-determined verdict" and a trial where there is a widespread belief that the accused is guilty? Can there be a fair trial in this latter circumstance?

LD: Clearly the likelihood of a guilty verdict cannot be a measure of the fairness of a trial. If it were, then the strongest cases could be deemed the least fair. It's important, then, to distinguish between the assumption of guilt, as a factual matter, and the presumption of innocence – the legal norm that requires the state to assume the burden of proving guilt, even in cases in which many people may assume that the accused is guilty. The assumption of guilt can never replace the state's obligation to assume the burden of proof. If it does, the trial is a farce.

[International criminal and humanitarian courts](#)

WN: How significant is the Saddam trial to international criminal jurisprudence? Will it impact other trials?

LD: Taken in tandem with the Milosevic trial (which ended, after more than three years of trial, with the death of the former Yugoslav president in March), the Saddam trial makes clear how difficult it is to control the court behavior of former strongmen. Saddam clearly took a page from Milosevic's playbook, mounting a defense of disruption that continuously challenged the legitimacy of the tribunal. I think prosecutors and judges need to come up with new ways of dealing with such recalcitrant defendants. As a further matter, I suppose the irregularities of the Saddam trial will lead some jurists to strengthen the call for international trials of former dictators; clearly, opponents of the death penalty will likewise petition in favor of relying on international courts to deal with the legacy of atrocious crimes.

WN: Do international tribunals such as the ones set up to try crimes committed in the former Yugoslavia, Rwanda, Sierra Leone, Cambodia... etc do a good job? What have they succeeded in? What problems have they experienced?

LD: We should distinguish between international tribunals, such as the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) and the hybrid courts that have been constituted in Sierra Leone and now in Cambodia. None of these courts have compiled perfect records, but mostly they have been quite effective. Notwithstanding the missteps and disappointments associated with the Milosevic trial

– the former president's death in March cheated the tribunal of the opportunity of ever passing judgment – the ICTY has brought other high level perpetrators to justice and has contributed importantly to the growth of international criminal law. One problem that all these courts have faced are the start-up costs. As ad hoc tribunals, these courts have been created out of nothing, and the cost of building courts, hiring staff, establishing competence has been extraordinarily high. As a permanent institution, the International Criminal Court (ICC) promises to solve some of these problems.

WN: How effective have national courts and individual countries been in bringing high-level leaders to account for abuses?

LD: The record is uneven. In the wake of the atrocities of World War II, thousands of domestic trials were staged. The most spectacular of these – the Eichmann trial in Jerusalem in 1961, the Barbie trial in Lyon in 1987 – were enormously important, despite their flaws, in establishing a responsible account of terrible crimes. Other countries have been less successful. The fact that Pol Pot died peacefully without ever having to answer for his crimes is regrettable, indeed, but not entirely unexpected. A country that is still very much in the grips of its traumatic history is hardly in the position to engage in a reckoning with its past in a manner that accords with the rule of law.

WN: How do the two (domestic versus international courts) compare?

LD: Clearly there are tradeoffs. International trials inevitably arouse resentment in the nations



most directly implicated in the commission of the adjudged crimes; international tribunals convey the message that domestic national courts are not up to the task of doing justice. Moreover, as these trials may unfold thousands of miles removed from the site of the crimes, they fail to be organically connected to the communities that should be most involved in the case. Conversely, domestic national courts invite the charge of being insufficiently distanced from the crimes under consideration; these courts thus may be assailed as partisan instruments of victor's justice, or, conversely, as instruments lacking the legal resources and political will to bring perpetrators to justice. If – and it's a big if – we can trust domestic national courts, I think they are to be preferred over international tribunals for the reasons suggested above. International tribunals should be courts of last resort, relied upon in situations in which domestic courts should not be taxed, or cannot be trusted, to deal adequately with the legal legacy of atrocity.

WN: One of the reasons for setting up the International Criminal Court and other international courts has been to serve as a deterrent against committing crimes under international humanitarian law; to work around the impunity enjoyed by some leaders in their home countries. How well is this purpose being served?

LD: I'm not sure I would necessarily associate the goal of deterrence with the goal of ending impunity – that is, I believe it is critical to fight impunity, even if bringing perpetrators to justice appears to do little by the way of deterring other leaders from engaging in atrocious acts. That said, I think it's awfully difficult to

measure deterrence inasmuch as it's a negative effect. The fact that atrocities continue to occur around the globe doesn't mean that some potential perpetrators might not have thought twice about engaging in criminal acts.

WN: In the efforts to secure an end to the conflict between the Ugandan government and the Lord's Resistance Army (LRA) rebels, LRA leaders have demanded that crimes against humanity charges filed against them by the ICC be dropped, as part of the deal. Is there a tension between ensuring justice for the victims of past crimes and preventing/mitigating future suffering? How can such a tension be resolved?

LD: The problem resists easy solution. Once you indict a head of state as, say, a perpetrator of genocide, it becomes extremely difficult to work to a political solution with that leader. At the same time, the ICC is a legal institution, not a political device, and it does not take its orders from negotiators or other political actors. It would be nice to say that the dilemma is false – that perpetrators of atrocities always reveal themselves to be unreliable, treacherous parties to political settlements – though I'm not sure this is correct. Qaddafi, arguably responsible for crimes against humanity, is now the West's poster boy of the rehabilitated strongman.

WN: International law tribunals have been criticized for selectively trying certain perpetrators. Does this selectivity make the process any less valid?

LD: Selectivity can be as benign as it is necessary. All criminal trials are selective inasmuch as only a

small percentage of those who break the law ever find themselves in the dock at a criminal trial. It is well accepted that trials of organized crime figures will invariably focus on the conduct of a few. Obviously the goal is to go after the leaders of a criminal organization. The ICC has specifically set itself the goal of going after leaders, not underlings. Problems arise when selectivity is the consequence not of an effort to conserve prosecutorial resources, but born of a political calculus. The ICTY, for example, has wisely brought prosecutions against Croats as well as Serbs. Still, some critics have attacked the ICTY for failing to bring charges against NATO nations for the air war over Kosovo and Serbia in 1999. I am not convinced of the merits of this specific critique, but all fair-minded persons must agree that international justice binds the strong as well as the weak.

WN: The International Criminal Court was set up in part to counter this problem, with a promise for "universal justice" Has this attempt at ensuring fairness worked?

LD: By its very terms, the ICC cannot deliver "universal justice," as it has no jurisdiction over crimes committed in a conflict in which neither belligerent is a member of the court. Also, the hope that the court would bind the strong as well as the weak has obviously been frustrated by the Bush administration's concerted efforts to undermine the fledgling body. The one ray of hope here is the fact that Bush did not block the referral of the Darfur crimes to the ICC. The ultimate efficacy and fairness of the ICC will be demonstrated in the years to come.

Courts and writing history

WN: You have suggested in your book, *The Memory of Judgment*, that the Holocaust trials have a pedagogical value - they document events and serve as a historical record, in addition to serving the cause of justice. How well does a criminal trial capture the history of the events underlying the crimes?

LD: I think it's fair to say that trials are not well equipped at rendering history in its full complexity. What they can do very effectively is use document and testimony to construct a historical account that reaches a huge audience. This account may never match the most nuanced renderings of the past that issue from the pen of the professional historian. But it can establish a baseline of indisputable fact that discredits the apologists of perpetrators and gives the lie to those who would baldly falsify the historical record.

WN: What does the historical account presented by a judicial process offer that scholarly or journalistic or propagandist accounts don't?

LD: Certainly trials have the power to galvanize national and international attention in a way that other accounts rarely can. Prosecutors can often call upon extraordinarily powerful tools of discovery for the purposes of accumulating and organizing vast amounts of evidence. Survivors are given the opportunity to present stories of victimization in the form of legally potent evidence. Spectators of the trial - either those present in the courtroom or those who follow the proceeding on television - directly witness the presentation of evidence and testimony. In this way, they become witnesses to the

witnesses.

WN: Is the pedagogical purpose served even when the trials are or are seen as, selective and less than fair?

LD: One of the central pedagogic aims of these trials is to make visible the workings of the rule of law. This is a particularly important goal in transitional societies that historically have lacked a robust commitment to the rule of law. Clearly this aim cannot be realized if the trial is perceived as deeply flawed. As a further matter, the quality of the justice will inevitably influence the way observers perceive the quality of the history presented in the courtroom. A biased proceeding will not be viewed as a neutral forum for the presentation of history.

WN: Many rights and humanitarian groups document abuses and crimes to serve as a record of events. Do trials offer more?

LD: I think of the documentary work of human rights groups and of trials as complementary. The work compiled by humanitarian groups can make its way into the prosecution's dossier. Conversely, researchers can further mine the archival trove compiled by prosecutors. Yet as I've already mentioned, trials enjoy the power to galvanize national and international attention. One cannot underestimate the drama of seeing a former head of state or a high-level perpetrator standing before his accusers, victims, and judges.

WN: How about truth and reconciliation commissions, which are usually explicitly charged with the task to record events in addition to punishing those guilty of a crime?

LD: Again, I see the work of trials and truth commissions as complementary, not antagonistic. Trials are about adjudicating guilt; they issue in the imposition of a coercive sanction. This fixation on fixing guilt and imposing punishment may serve the interests of reconciliation and transition, but that is not its principal purpose. Moreover, because trials assign blame and impose sanctions, it is critical that they be performed fairly. Truth commissions, by contrast, are often explicitly geared toward advancing the goals of reconciliation: they are part of an instrumental calculus that seeks a smooth transition to a more humane political order. Truth commissions may, then, be better suited to the experiences of certain nations than trials. That said, the two are not mutually exclusive and can often work in tandem with one another. As time passes, a nation that, in the interests of stabilizing a fledgling democracy, originally accepted a truth commission may come to see, as its institutions strengthen, the attractions, if not the necessity, of trials, too.

WN: You have written that law has responded to the Holocaust by creating and expanding on the concepts of genocide and crimes against humanity. Are these additions to legal discourse and legal apparatus adequate to handle the events since then, such as the Rwandan genocide, the breakup of Yugoslavia? Do these events show a need for, or did they spawn, a fresh expansion?

LD: I think we need to distinguish between the substantive crimes that high-level perpetrators stand accused of have committed - e.g., genocide, crimes against humanity, war crimes - and the

principles of criminal accountability that prosecutors use to organize and prove their case. Here I have in mind concepts such as the "joint criminal enterprise," which has been usefully elaborated by prosecutors at the ICTY to facilitate complex prosecutions of high-level perpetrators. Some have called for the expansion of the substantive crimes to include novel offenses, such as "the crime of atrocity." I, for one, think it counterproductive to proliferate the number of major international crimes; "genocide" and "crimes against humanity" are both clearly enough defined yet capacious enough to embrace the full spectrum of atrocity.

#### Back to Saddam's trial

WN: How well did the Saddam trial fare in writing history?

LD: The tribunal's written decision is yet to appear, so it's difficult to answer this question. Perhaps more to the point, the trial dealt with a relative minor set of crimes, those pertaining to the reprisal killings of 148 Shias in Dujail in 1982. While such a focus made for a more manageable case for the prosecution, it did not serve the broader interest of demonstrating the full sweep of atrocity perpetrated by Saddam's regime.

WN: Does the court's record of events really matter? Don't "Iraqis know Saddam's crimes, trial or no trial"?

LD: I think a court's record of events can make a difference. Though many Germans were aware of the "excesses" of the Nazis, the Nuremberg trial made clear to them the extent and depth of atrocity perpetrated by their leaders. This accounting helped erode whatever residual sympathy the Nazis enjoyed among the

German people. Ideally, the Hussein trial would have achieved a similar end. I doubt though that this has happened. Unfortunately, in the minds of many Iraqis, the crimes for which Saddam has been sentenced to death pale in comparison to the violence that grips the Iraqi nation on a daily basis. If anything, a sizeable percentage of the population probably now longs for a strong leader capable of reimposing conditions of security and order.

WN: Should the trial have been conducted by an international tribunal instead of an Iraqi one?

Clearly an international tribunal could have avoided some of the more unseemly problems that vexed the Iraqi court. Still, I believe an international court would have been plagued by other problems. As the Milosevic trial made clear, the fact that a trial is conducted before an international tribunal does not guarantee that it is perceived as legitimate or independent – the ICTY was dismissed in Serbia as the lapdog of NATO. And as I mentioned earlier, removing a case to an international court sends the implicit message that the Iraqi legal system is deficient, something guaranteed to breed resentment. And as the Milosevic trial made clear, there is no reason to believe that Saddam would have been more deferential to his international judges than he was to Iraqi jurists.

WN: There is a possibility that Saddam may be executed without facing trial over other, far more significant crimes such as the Anfal killings, in which an estimated 100,000 people died. How important is it, for serving justice and for establishing a historical record, for Saddam to face trial for

the Anfal killings, the repression of the 1991 Shia uprising, and other alleged acts?

LD: In August, just as Saddam's first trial was winding down, his second began – this one involving his regime's alleged atrocities committed against Iraqi Kurds during the Anfal military campaign in the late 1980s. Needless to say, this trial involves far more serious crimes than those at issue in the first trial; in terms of the role of the trial as a tool for clarifying a horrific past, this proceeding promises to do far fuller justice to the abominable crimes of Saddam's regime. This fact alone creates a strong case for delaying Saddam's execution until at least the completion of this second trial. Indeed, it would be best to delay his execution until all the crimes of his regime, such as the bloody repression campaign of 1991, can be submitted to legal judgment. Ideally this would serve the interests of history and justice, as Iraqi prosecutors and judges would grow increasingly familiar with conducting trials according to the rule of law.

#### International law and the United States

WN: The United States has moved to redefine its rules regarding the treatment of terrorist suspects, combatants and detainees. At the same time, it has sought to reduce judicial, congressional and public scrutiny of the government's conduct in its War On Terror. Do these moves conflict with the United States' obligations under international law?

LD: Two bodies of the United Nations, the Committee against Torture and the Human Rights Committee have concluded that the executive policy of secret detentions violates international

treaty obligations. The Military Commissions Act of 2006, passed into law in the end of September, permits the use of evidence against unlawful alien enemy combatants obtained through cruel, inhuman or degrading treatment; international law bars such use. From the summer of 2002 until the end of 2004, the executive branch operated under a definition of torture that was absurdly permissive – it made a mockery of both international and domestic law prohibiting the practice of torture. It's fair to say the Bush administration has treated international law not a code of binding norms but as a series of recommendations to be followed as it sees fit.

WN: The outgoing Defense Secretary, Donald Rumsfeld has been sued in Germany for alleged war crimes over the abuse in Abu Ghraib and allegedly, in the Guantanamo Bay detainment camp. Under what circumstances will senior commanders or civilian leaders be held responsible for abuse committed under their command? If the German prosecutors do open a case, is the United States or Secretary Rumsfeld obliged to respond or act upon it?

LD: I think it's fair to say that Angela Merkel would be horrified to see a German prosecutor bring forward war crimes charges against Donald Rumsfeld, Alberto Gonzales, John Yoo, and others named in the criminal complaint recently filed by the Center for Constitutional Rights. All the same, German courts have been receptive to exercising universal jurisdiction, so it's not completely unthinkable that a case might move forward – though not to trial. That could not occur in Rumsfeld's absence and there is

little chance that the former defense secretary would schedule a flight to Berlin if he feared being seized on arrival. I, for one, am not a fan of the aggressive reliance on universal jurisdiction as a way of achieving global justice – the opportunities for abuse are too great. In this case, Rumsfeld and the Bush administration would decry the entire proceeding as illegitimate and thoroughly politicized. And they would score big points domestically by presenting the Germans' actions as the most emphatic confirmation of the administration's worst fears of international criminal law run amok.

### Today in History

1644 - John Milton published *Areopagitica*, arguing for the right to free speech and against publication censorship during the English Civil War.

1869 - The Cutty Sark, one of the last sailing clippers ever to be built, was launched at Dumbarton in Scotland.

1971 - The People's Republic of China was given China's permanent seat on the United Nations Security Council.

1985 - Omar Rezaq and two others from the Abu Nidal terrorist group hijacked EgyptAir Flight 648 over the Mediterranean Sea.

2003 - Rose Revolution: Eduard Shevardnadze resigned as President of Georgia following weeks of mass protests over disputed election results.

November 23 is Thanksgiving in the United States (2006); Labour Thanksgiving Day in Japan, St George's Day in Georgia.

### Quote of the Day

What do we live for, if it is not to make life less difficult to each other? ~ George Eliot

### Word of the Day

kowtow; v

1. To kneel and bow low enough to touch one's forehead to the ground.
2. To act in a very submissive manner.

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