

## **Another kind of crime**

Bangladesh's war-crimes tribunal is sullying its judicial and political systems



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IN 1961 Israel kidnapped Adolf Eichmann from Argentina and put him on trial for crimes committed 20 years earlier. Eichmann had been secretary at the Nazis' Wannsee conference that led to the Holocaust. His trial in Jerusalem was a model of meticulous process. The prosecutor was Israel's attorney-general; the defence lawyer, a leading German attorney; the proceedings were broadcast. They were everything the Holocaust was not: open, subject to evidence and challenge, and legal.

Now consider the trials under way at the International Crimes Tribunal in Dhaka, the capital of Bangladesh. There too, men are being tried for dreadful crimes committed many years ago, in this case in 1971, during Bangladesh's war of independence from Pakistan. The defendants have been accused of genocide, mass murder, mass rape and attempting to exterminate whole groups of people. But their trials have fallen a long way short of Israel's model of due process.

The government has interfered in the court's deliberations. Public discussion of the proceedings has been restricted. The number of defence witnesses was curtailed. One was even kidnapped on the steps of the court. In one case, the presiding judge resigned and the death sentence was handed down by three men who had not heard all the witnesses. In another, the defendant was represented by a lawyer who did not have nearly enough time to prepare a case. That also ended in a death sentence. These are profound judicial failings, falling short not only of the standards of the Eichmann trial but also of the requirements of Bangladeshi law. They contradict repeated government assurances that the trials would be models of judicial process.

The ostensible and laudable aim of these trials was to help Bangladesh come to terms with its past by bringing to justice those responsible for the crimes that marred the nation's birth. By this measure, the trials have been an utter failure. Because most of the accused are linked to Jamaat-e-Islami, an Islamist group allied to the main opposition party, the court process has become enmeshed within the country's internecine politics. Jamaat thugs with home-made bombs have gone on the rampage; police have fought running battles with mobs; dozens have died. Bangladesh is descending into a spiral of intolerance. The

government talks of banning Jamaat; the opposition is becoming more aggressively Islamist; rumours are spreading that an election due this year may be postponed.

### The poisoned well

Sadly, most Bangladeshis are cheering on the tribunal's flawed proceedings. When the court passed a life sentence (rather than a death sentence), the crowds that gathered to protest against this leniency were the biggest that had been seen in Dhaka for 20 years. Now the government wants to rewrite the law to allow death sentences to be applied retrospectively. Few seem to care a jot for due process; rather, everybody thinks that the defendants are getting their just deserts.

The Economist has no sympathy for the views of Jamaat or its backers. But justice does not exist solely for those with a particular approved outlook. As the Eichmann trial demonstrated, due process is essential to provide true justice to the victims of genocide. Eventually Bangladeshis will also come to recognise this and demand a proper accounting. But by then it will be too late. The war-crimes tribunal is poisoning the well from which Bangladesh will one day want to drink.

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### A rotten deal

The government's plan for regulating Fleet Street has ended up being a mess



THE regulation of the British press is an area where this newspaper usually treads lightly. It is not just that The Economist has an interest in opposing irksome rules—albeit a less obvious one than the tabloids, many though not all of them owned by Rupert Murdoch, which have hacked and harassed their victims for years. It is also that there is also no perfect way to regulate the press. Deciding how to balance two forms of liberty—freedom of expression and that from intrusion—is exceedingly hard. But even when the difficulty of the task is taken into account, the government has made a shameful hash of it.

In 2006 it emerged that journalists on tabloid newspapers had been hacking people's phones and, later, that they had been bribing policemen for information. The Press Complaints Commission (PCC), a self-regulatory body, failed to get redress for victims. The government ordered an inquiry, conducted by Lord Justice Leveson, who focused on tabloids

rather than serious journalism. His sloppy report came up with one good idea—that newspapers should be encouraged to join a tough version of the PCC in exchange for some relief from Britain's stringent libel laws—and several bad ones, notably giving a big role to the state-backed TV regulator. The Liberal Democrat and Labour parties accepted it before they had even read it. The prime minister, David Cameron, opposed it, but the Tories have now done a deal with the other two parties, concluded at 2am over pizza in the presence of representatives of Hacked Off, a celebrity-heavy victims' group.

Under the deal, a new National Press Regulator (NPR) would be set up by a royal charter, underpinned by statute, and monitored by a new recognising body, whose first set of members will be appointed by yet another committee, itself partly government-appointed. The charter could be changed only by a two-thirds majority in Parliament. Membership of the NPR would be encouraged by the carrot of a simplified libel system; but newspapers that fail to sign up will be subject to harsh exemplary damages.

### **Scummy, but essential**

This proposal has several problems. The idea of using a supermajority to bind future parliaments violates the notion of parliamentary sovereignty. The exemplary damages are unfair. The plan fails to deal with the migration of the press onto the internet, and the resulting difficulty of defining what is, and is not, journalism. And although the proposal involves bizarre institutional contortions to distance press regulation from the government, it raises the spectre of state regulation.

To oppose this proposal is not to deny that much has gone wrong. Yet virtually all Fleet Street's worst abuses can be dealt with under existing law. Thanks to the scandals of the past few years, that law is now being enforced, and some 60 journalists face charges. Intrusions that stay within the law—such as the note a journalist slipped into the satchel of J.K. Rowling's child—can be dealt with by a stronger system of self-regulation, which should in future involve more outsiders.

Here it is important for any newspaper to be honest. A system where journalists police journalists will be more abusive than one run by politicians. But, in the end, society has a choice. If it values freedom from intrusion more than freedom of expression, it needs state regulation. If it regards the press as so important that freedom of expression must be protected at all costs, then it must avoid state regulation like the plague.

For us, the choice is clear: we believe society gains more from a free press than it loses from the tabloids' occasional abuse of defenceless people. Because that view has held sway in Britain, the press has remained free of state intervention for over 300 years. Fleet Street does not have an impeccable record. It has broken the law and victimised innocent people. But it has also, time and again, exposed the lies and incompetence of politicians. Now a late-night deal between politicians could give politicians power over it. Fortunately, their proposal is such a mess that it looks as though it may fall apart.

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