

Battlefield

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Editor.*

Reconciliation is the path that leads from the battlefield to a peaceful society in which freedom is possible. Just fifteen years ago, fractured by war and institutionalised oppression, South Africa began this journey. Today, it bears witness to a miracle: communities bitterly divided regionally, ethnically and linguistically have become a nation. They did so by rejecting the punitive justice model regarded as the pre-requisite of reconciliation. Borrowing instead from its own traditions of restorative justice, a rainbow nation now looks back to the battlefield, and sees it has travelled over a very great distance.

Peace activists have long argued that reconciliation can only be found through justice. For generations, they clamoured for the establishment of the International Criminal Court (ICC)¹, and cheered its eventual creation in 2002. The ICC's emblem—the scales of justice nestled between the olive branches of peace—describes its remit. It is the institutional manifestation of the belief that reconciliation is the fruit of justice. Its Statute describes the way in which 'justice' is understood. Insisting that human rights violations 'must not go unpunished...their effective prosecution must be ensured', it imposes a duty upon all states to exercise criminal jurisdiction over those responsible for international crimes.² Justice, equated with criminal prosecutions, is presented as the 'reconciliation formula' for all peoples, in all places.

In 1994, South Africa was called upon to administer this punitive formula. Advocates argued that unless perpetrators were brought to justice – punished - there could be no reconciliation. But South Africa's new leaders understood the dangers of this approach. A sentence that satisfies victims' punitive impulse may be considered too harsh by the wrongdoer or parties connected to him or her, provoking resentments that may be expressed violently. A highly divided society at independence, the risk that criminal prosecutions in South Africa would provoke a violent backlash were substantial. Understanding that the punitive model risked generating new resentments that threatened to unravel the fragile new polity, South Africa looked to its own history for a path to reconciliation.

Traditional South African communities did not have the luxury of banishing those who had transgressed social norms to prisons. Faced with the reality that victims had to live alongside wrongdoers, these communities found ways to manage it: mechanisms for re-establishing social harmony, healing victims and restoring offenders to a healthy relationship with the community.³

1 As early as 1872, Gustav Moynier, one of the founders of the International Committee of the Red Cross issued a public call for an international tribunal (Thakur and Malcontent, 2004:21).

2 Preamble to the Rome Statute of the International Criminal Court, p.1, emphasis added. Crimes within the jurisdiction of the ICC (Article 5): the crime of genocide, crimes against humanity, war crimes, and the crime of aggression (over which it will have jurisdiction once agreement over what constitutes 'aggression' has been reached).

3 Tiemessen, 2004:58-60.

It was to this legacy that South Africa turned at independence. Eschewing the punitive formula, South Africa used truth to carefully tread a middle way between the needs of victims and of wrongdoers, asking just enough of each to restore social harmony. It asked victims to forgive but restored their dignity by enabling their stories to be heard and their suffering acknowledged. It gave perpetrators amnesty, but required the truth.

That this fractured, divided society has emerged from decades of repression and war as a nation by rejecting the punitive model of justice presented as the *sine qua non* of reconciliation and borrowing instead from its own rich heritage of restorative justice, has much to teach us about the contingent nature of reconciliation and the role of indigenous wisdom in locating it.

Lessons

South Africa teaches us that justice does not mean ‘trials plus sentences’. Necessarily contingent upon social circumstances, its meaning is nothing more substantial than that indicated by the image of the scales: justice involves taking from and giving to parties exactly that which is necessary to bring the scales into equilibrium. Where just relations exist between different groups in society—where the right amount is taken from and given to each—they are reconciled with each other.

Recognising that those communities seeking reconciliation may have a better idea of what they require to achieve it, we must move beyond universal prescription of the punitive model. In states in which that model is successfully instituted, security apparatuses are strong enough to bear the weight of the threat to stability that it may cause. They can manage the risk that punitive sentences may provoke resentments that are expressed violently. But all the ICC’s ongoing investigations are in Africa; a continent of divided societies in which the danger that criminal trials may produce a violent backlash is a real one, and where fragile states are unlikely to be able to control it.

When the ICC indicted rebel commanders in northern Uganda, angered combatants committed some of the worst atrocities that that country’s two decade long conflict has seen.⁴ Now refusing to sign the government’s Final Peace Agreement unless arrest warrants are withdrawn, the prospects of the million people languishing in refugee camps in northern Uganda do not look good. ICC indictments may not be withdrawn, the government does not have the power to revoke them, and the conflict goes on.⁵

Acholi people have expressed their desire to employ traditional methods of restorative justice to reintegrate combatants.⁶ That their calls are not heard in The Hague shows that the significance of South Africa’s transformation has not been understood. The lesson that South Africa’s story teaches—that a route to reconciliation may be found within a society’s own culture—has not been learnt.

The fact that South Africa’s historical triumphs have not been understood teaches us a great deal about ourselves. Self-identifying as ‘advanced’, we assign value to the

4 On 21st February 2004—just two months after the Lord’s Resistance Army’s referral to the ICC—some two hundred unarmed people were massacred at Barlonya camp (Allen, 2006:3). The general escalation of hostilities that followed the ICC’s indictments—which included the deliberate targeting of aid workers—led some relief agencies to suspend their operations (Ibid., 189-90).

5 The ICC Statute makes clear that perpetrators of crimes under the Court’s jurisdiction—without distinction based on official capacity—must be held criminally responsible for their actions. Article 19(7) allows that investigations may be suspended following a challenge made by a state, but that is all. There are no provisions for abandoning investigations.

6 Customary Acholi methods such as ‘matu oput’, ‘gomo tong’, and ‘nyono tong gweno’ represent a model of reconciliatory justice that restores wrongdoers to the community and that a majority of Northern Ugandans feel would be useful in bringing peace to their communities (See Allen, 2006:135, 136, 148, 156, 157. Also Hovil and Quinn, 2005:37).

‘modern’; to that which resembles us. Our eyes seek out modern things, and, looking at Africa, see only that they are lacking. Blind to what Africa is, we see only what it is not: Africa is not modern, not developed, not democratic, not industrialised, not economically advanced.

Failing to see that ‘backward’ Zulus achieved a great military victory on the battlefields of Isandlwana, accounts of the British defeat are explained in terms of careless mistakes. David Rattray insisted that it cannot be explained away thus.⁷ He told a story that affirmed the Zulus’ skill and bravery. Writ large, the lesson of his story is this: we must not remain blind to the capacities of traditional communities simply because they are not modern.

After all, it was a community that was not modern, that was not trained in modern combat, that did not have modern weapons, that utterly defeated the greatest army on earth; a society walking a path towards freedom that was not modern that overcame decades of bitter division to become a nation.

Aware of the richness of its own culture and unashamed to borrow from it, South Africa has borne witness to great miracles. It did so because it was strong enough to resist Western calls to do things the ‘modern’ way. Other African states, too weak to resist, do not have this luxury. The understanding of Africa as a continent of lack motivates and legitimates endless interventions to fill Africa’s putative void. Looking at Africa today, the achievements of the catalogue of measures that have been imposed as part of a plethora of good governance programmes, economic development agendas, and social reform projects is not obvious.

Perpetually an object of intervention, most African states are not able to do things their own way. Perhaps if they were, we might see that these states, like South Africa, have the solutions to their own problems. We might even see a few more miracles.

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⁷ Rattray, 2003.