I had a very pretty introduction planned
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Mr. Taylor, the Warlord

I had a very pretty introduction planned. Quotations from Gandhi (I'll get to that later) and carefully constructed platitudes (those are better left on the cutting room floor). But the Charles Taylor judgment came down this morning. Guilty (or 'criminally responsible,' rather). For aiding and abetting. Terror. Murder. Rape. Enslavement. Conscription of child soldiers. Eleven counts of war crimes and crimes against humanity. The news reporters tell us that this is a historic moment in the fight against impunity. I don't doubt it.

But reading the judgment summary,[1] I wasn't struck by that. Rather, I was preoccupied with the sterility of the page. Not the content but the form. Not the substance but the procedure. Times New Roman. Twelve-point font. Double-spaced. Numbered paragraphs. One-inch margins. The stark cleanness of black print against white paper. All the terror and loss and Hell of the War condensed into neat prose. It was a lawyer's work.

I watched the video on BBC News.[2] I was struck by how very civilized it all was. Judge Richard Lussick read the verdict in a quiet voice. Charles Taylor stood placidly in a beautifully tailored navy blue suit, with cufflinks and a deep violet necktie. I didn't understand it.

I asked myself: Is this what we do? Make this kind of order out of that kind chaos? And is it Right?

I think the answer is (a very complicated) yes.

[1] Prosecutor v. Taylor, Case No. SCSL-03-1-T, Judgement Summary, (Apr. 26, 2012), *available at* http://www.sc-sl.org/LinkClick.aspx?fileticket=86r0nQUtK08%3d&tabid=53.
[2] *Charles Taylor Verdict: As it Happened*, BBC NEWS (Apr. 26, 2012), http://www.bbc.co.uk/news/world-africa-17852257.

There's a hegemonic ring to that question. I don't deny it. Although, perhaps 'counter-hegemonic' may, for some of us, be the better term. To call what we do hegemony ignores the agency of those whom we serve, ignores the obvious power of those they work against. To call it hegemony, to claim it as ours, re-victimizes and perpetuates that damnable damning metaphor: savage-victim-savior.[3]

There's also a lot of anger in the question—it demands to know why Charles Taylor, or any criminal of his 'caliber,' should have the (cold) comfort of cufflinks and due process. Why Charles Taylor should receive the dignity of individuation when so many Sierra Leoneans and Liberians have been relegated to the indignity of the statistic, the proverbial (and literal) body pile.

I don't know that this would have been my response, if not for my Clinic work. More accurately, I don't know that I would have had the courage to claim this as my response, if not for my Clinic work. It has been a long 14 weeks, an important 14 weeks, for which I am immensely grateful.

Exclusio Alterius

Our team embarked on the Bangladesh project in an unanticipated way. Our introduction was a contempt case—frightening, exhilarating, and disheartening by turns. A journalist was charged with contempt of court for offering what, we judged, was fair criticism of the International Crimes Tribunal, Bangladesh (ICT or the Tribunal). Prof. Fletcher unexpectedly requested we write a memo on the contempt practices of other international criminal tribunals. So we wrote it, pulling our first of many long (but happy) meetings together, and sent it off. The journalist's barrister included it in the pleadings. He integrated it into his oral arguments. The Bangladeshi

[3] *See* Makau Mutua, *Savages, Victims, and Saviors: the Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201, 201 (2001).

papers quoted him, quoting us. Two weeks in and we were in the papers. It was a heady feeling (until Tribunal held the journalist in contempt).

Then the Fall 2011 team came back from Dhaka. They had experienced, what one of our team members, in his inimitable way, dubbed the "Ambush Rebuttal Crisis." The 2011 Team had given a presentation on the importance of non-retroactivity in international criminal law. What they got in return was a trial-by-fire in which they were denounced as neocolonial interlopers. "Why should we listen to you, a bunch of law students?" a Bangladeshi attorney demanded.

It is a question we, the Spring 2012 team, carried with us the rest of the way.

Our main project for the semester was to determine whether a certain series of atrocities, perpetrated in the last days of the 1971 Liberation War, could, by international criminal standards, be considered an act of genocide. We quickly learned that, any argument about genocide is never solely "about the state of the law," it is, inevitably, "one of symbolism and semantics."[4] It is an exercise in trying to fit terrible facts into the uncomfortable categories of legitimation we call law.

Much of the work I did, both reflective and legal, centered on a single principle of statutory interpretation: *expressio unius est exclusio alterius*. The express mention of one thing excludes all others. Neat and tidy and enumerated. National, ethnical, racial, and religious—the only groups to be protected by the Genocide Convention.[5] Savage, victim, and savior—the roles we were supposed to play with the evitable certainty of hegemony.[6]

I don't like either of those lists. People, individuals, are much more complex, complicated, and varied than the categories we construct to put them in, than the roles we assign them. The act

[4] William Schabas, Genocide In International Law: The Crime Of Crimes 15 (2009)
[5] Convention on the Prevention and the Punishment of the Crime of Genocide art. II, Dec. 9, 1948, 78 U.N.T.S. 277.
[6] *See* Mutua, *supra* note 3.

of interpellation, of othering, is *per se* dehumanizing. "They cannot represent themselves, they must be represented,"[7] we think, as we make an object of the individual. This is dangerous thinking—after all, "the anti-Semite makes the Jew."[8] These divisions—the distance they create, the assumptions they propagate—are that which makes our crimes, indeed our 'crime of crimes,' possible. They are also, unfortunately, what makes our prosecutions possible. The Anti-Semite makes the Jew and the Lawyer makes the Genocide.

Again, I ask: Is this what we do? Make this kind of order out of that kind chaos? And is it Right?

I, Hegemon

I resisted the obligation to interpellate. I did not want to be the arbiter of Bangladeshi worthiness. I did not want to be the one to tell them that what happened was bad, but not bad enough. I did not want to deny genocide on a technicality. And yet, as an incipient international human rights lawyer, I knew with the certainty of a categorical imperative that I "must be competent in international law as well as the law of the jurisdiction, court, or tribunal"[9] in which I found myself. Call 'competency' hegemony, if you will. Perhaps the problem is that the legal system itself is a tool of hegemony, a power that blends "coercion and consent."[10] But competence in the international human rights sphere also includes cognizance of context: global interdependence and inter-determination, socio-cultural nuance, and the psychological and

[7] Karl Marx, The Eighteenth Brumaire Of Louis Bonaparte (Quoted In Edward Said, Orientalism 21 (1979) ("Sie Können Sich Nicht Vertreten, Sie Müssen Vertreten Werden.")(Author's Translation)).
[8] Jean-Paul Sartre, Réflexions Sur La Question Juive 84 (1954)("C'est L'antisémite Qui Fait Le Juif."(Author's Translation)).
[9] Rachel Barish, Professional Responsibility For International Human Rights Lawyers: A Proposed Paradigm 7 (Spring 2007) (Unpublished Manuscript) (On File With Author).
[10] Robert Cox, *Gramsci, Hegemony And International Relations: An Essay In Method*, 12(2) Millinium: J. Int'l Studies 164 (1983).

emotional complexities of the cases.[11] This means a responsiveness to local norms, a duty to the voice of the client, that moves us from hegemony to counter-hegemony and discourse.

Our client is an NGO in Dhaka—effectively this means two Bangladeshis: a book publisher and a barrister. They ask us questions of international law pertinent to the effective functioning of the International Criminal Tribunal, Bangladesh. I owe them my competence. They want and deserve correct answers. I recognize these as value laden statements, but they are values our client shares. Here, the notion of human rights as a "Eurocentric colonial project"[12] falls apart. Its central assumption, that the active West imposes values on a passive South, cannot hold: Bangladeshis are key players. This process is their choice and their justice—their mechanism for coping with the atrocities of the 1971 Liberation War. The Tribunal is a Bangladeshi court created by Bangladeshi laws to try Bangladeshis for international crimes. To call me a hegemon ignores their choice and power. It denies that in 1971 Bangladeshis fought and died for the right to self-determination, to representative democracy and equality before the law. That Bangladeshis drafted and enacted the International Criminal Statue of 1973 to prosecute atrocities committed during the 1971 war. That forty years later, the Bangladeshi people elected their present leadership on a platform of accountability for these crimes. That Bangladeshis established the International Criminal Tribunal and that the judges who sit, and the prosecutors who argue, are Bangladeshis.

Yes, there are power dynamics and politics, questionable motives and dangerous undercurrents, as in all things. But to label this as bare hegemony ignores the complexity of the situation and denies Bangladeshis their more than evident agency. It others, re-victimizes, and perpetuates the savage-victim-savior metaphor, the "historical continuum" that "keeps intact the

[11] Barish, *supra* note 9, at 7.
[12] Mutua, *supra* note 3, at 204.

hierarchical relationships between European and non-European."[13] Bangladeshis built Bangladesh and have a voice to which, as part of our competence if not our humanity, we are bound to listen. "No one does social justice alone"[14]—this applies to international work the same as to domestic. Do it alone, in either situation, and it ceases to be social justice. It becomes a crusade. It would be better for us to understand what we do as counter-hegemony, working as part of a struggle against the existing power structures and norms that would deny Bangladeshis the ability to try, with adequate due process and respect for rule of law, atrocities that would otherwise go ignored.

Tough Work

Who can we blame for the atrocities of the 1971 Liberation War? For the 3,000,000 dead, the 200,000–400,000 raped, the 25,000 war babies, and the 10,000,000 refugees? For the frightful statistics, for the body pile? The easy answer is the Pakistani military and their Bangladeshi collaborators. Dig a little deeper and you find The Tilt: Nixon and Kissinger, who, in their Cold War relationship with the Pakistani junta, provided military support to genocidaires.[15]

This knowledge did not infect my team with the "pathology of self-redemption,"[16] we could not, were not, redeeming ourselves by 'saving' the Bangladeshis. Rather, it fostered in us a humility:[17] a certainty that we could not take the moral high ground and a knowledge that if no one wanted to listen to us—more American interlopers—they had reason for it. It made us more than

[13] *Id.* at 243.
[14] William Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. SOC. JUSTICE 7, 21 (2007).
[15] *See, e.g.*, Confidential Telegram from Archer Blood, American Consul General to Dhaka, East Pakistan, to Henry Kissenger, United Secretary of State, Extent of Casualties in Dacca (Mar. 30, 1971), *available at* http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB79/BEBB5.pdf; White House, Confidential Telephone Conversation (Telecon) (Dec. 4 and 16, 1971) (transcript of telephone between President Richard Nixon and Secretary of State Henry Kissinger, with cover sheet dated Jan. 19, 1972), *available at* http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB79/BEBB28.pdf;
[16] Mutua, *surpa* note 3, at 208.
[17] *See* Quigley, *supra* note 14, at 22.

"willing to be uncomfortable"[18] and more than eager to find a way to make ourselves worth listening to—"Real education is tough work, but it is also quite rewarding."[19]

'Work' has meant drafting a sprawling Genocide Memorandum—careful and persistent research coupled with an unwillingness to take 'no accountability' for an answer. It also meant work on myself.

I thought before that I needed to listen, both to words spoken and to silences.[20] I still think this is emphatically true. Listening is "one of our most important skills for providing effective service to traumatized clients."[21] But so is speaking. Generally, I do not speak enough. This is from the fear that I do not have anything to say that might be worth listening to. Working on the Bangladesh project has begun, incrementally, to change my mind about me. A large part of this is the exceptional people I worked with—who gave me the space and encouragement to be myself out loud—who brought me around to the idea of owning my voice and using my voice. This came with the concomitant realization that I cannot Witness for others if I cannot speak for myself—"we cannot give what we do not have."[22]

I thought before that our work came from empathy.[23] I eschewed identification with the other. That was both cowardly and incorrect. Love was what, in my hesitancy, I called empathy. Identification, I learned, is necessary as the antithesis of interpellation. It does away with categories and lists. "Love ends up at the center of social justice advocacy."[24] Love may be "love

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[18] *Id.* at 15.
[19] *Id.* at 19.
[20] Megan Ines, Assignment No. 1: Learning Goals Memo 4 (Jan. 18, 2012) (unpublished manuscript) (on file with author).
[21] David Gangsei, *Vicarious Trauma, Vicarious Resilience and Self-Care* 1.
[22] Quigley, *supra* note 14, at 28.
[23] Ines, *supra* note 20, *in passim*.
[24] Quigley, *supra* note 14, at 28.

in action,"[25] as in Gandhi's *satyagraha,*[26] but it can also be more personal: Human rights and social justice, occur "at the level of the individual,"[27] such that by love, I mean recognition of shared humanity. I mean giving victims the dignity of individuation, that elusive form of acknowledgement so often lacking in international criminal justice. I mean approaching the work with implacable patience, humility, and hope.

Difficult Argument

In our last client telephone call, one of the Bangladeshi barristers who volunteers for our client and with whom we worked, thanked us—he knew that we had taken on a hard case and done our best, searched out every argument, to see if the genocide charge could stick. It seemed like an answer, indirect but clear nonetheless, to that earlier, persistent question: "Why listen to a bunch of law students?" The answer is trust—always hard earned, never taken for taken for granted—and the assurance that we, too, are listening. Listening and not othering. I do not expect this to be the outcome every time, but this time, it was good. For now, we are no longer savagevictim-saviors; no more neat, tidy, useless lists.

We are (soon to be) lawyers. People trust us with their stories. They trust us with their words. With their lives. Should we make this kind of order out of that kind of chaos? It is another difficult argument, one that must be made by each individual for and by themselves. My answer is yes, because people entrust us with that responsibility; entrust us to transmute their suffering into truth and acknowledgment and maybe reconciliation; entrust us to work justice and make peace. We are not obligated to complete this work, but neither are we free to abandon it.

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[25] *Id.*

[26] *Satyagraha* Is The Term Coined By Mohandas Gandhi For His Non-Violent Civil Resistance: "Truth (Satya) Implies Love, And Firmness (Agraha) Engenders And Therefore Serves As A Synonym For Force." Mohandas Gandhi, Satyagraha In South-Africa 72 (1928).

[27] Mumtaz Soysal, The Nobel Peace Prize 1977: Amnesty International Nobel Lecture (Dec. 11, 1977).