

Restorative Justice Lessons from Libya

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Abstract

A failed restorative justice in Libya is described. Shooting breaks out in a reconciliation meeting. The shooting spirals into a ‘small town war’ (van Klinken, 2007). The State’s inability to ensure security for the reconciliation, and to stand behind enforcement of the agreement, was a problem. The first lesson in the logic of deterrence from the case is that where deterrence is most needed, it is most dangerous. Secondly, the logic of restorative justice is that where it is hardest to do, it is most important to do. In places like Libya, traditional tribal justice informed by evidence-based restorative justice is imperative for smothering sparks that might reignite civil war. It is also important in transitional zones beyond state authority for controlling transnational crime and terrorism.

Beautiful theory hits ugly practices again

One of the things we often say in lectures on restorative justice is that we do not know of any case where angry words in restorative justice conferences escalated to violence with physical injury. This is remarkable because stakeholders are often extremely angry. The explanation, we argue, is that even the worst and most violent among us, have multiple selves. The restorative justice conference is a strategy that coaxes us to put our ‘best self’ forward.

We always wince as we make this claim. We wonder if some of our practitioner colleagues really had restorative justice cases that had concluded with violence, but decided not to mention them because it was not a great accomplishment for this to happen. The day might come, we thought, when someone would jump up and say they knew of cases where violence broke out in conferences!

¹ Declaration of interest: Tamim Rashed fought in the Zintan Militia against the Gaddafi regime in 2011.

Though no one has put their hand up to contest our claim until now, a good methodological prescription is to keep searching for the deviant case so that its theoretical implications can be fathomed. John Braithwaite's experience with what we now call restorative justice conferences began 34 years ago with mine safety and nursing home exit conferences following regulatory inspections. One deviant case was of a New York City nursing home he visited in the 1980s. A Mafia member owned it. At an exit conference following an inspection of his facility, he put his gun on the table around which the participants were seated. This was used in lectures to illustrate extreme power imbalance, intimidation and asymmetrical threat in business regulation, rather than actual infliction of violence.

Failed reconciliation in Sebha

Now that we have found a case where violence did break out in a process that we would call restorative, it is an extreme one. It was a reconciliation between the Tebu tribe living in southern Libya (most Tebu live in northern Chad, but also in northeastern Niger and northwestern Sudan) and Arab tribes in Sebha (southern Libya) in March 2012. The inter- and intra-tribal reconciliation traditions in this part of the world have been described as fully restorative (McCold, 2000) in the past (eg Braithwaite, 2002: 4). These Islamic tribes follow the pre-Islamic, pre-Christian traditions of the Sulha (Jabbour, 1997) that were probably widespread across the ancient worlds of the Middle East and the Maghreb of North Africa. They were traditions that Jews and Christians used as well in conflicts with Muslims in Galilee.

The reconciliation at issue was geopolitically important. During the Libyan Revolution of 2011, many Tebu who were illegal immigrants in Libya at the time were promised citizenship by Gaddafi if they fought for him. Before and after the revolution, other Tebu claim that promises of future Libyan citizenship were also made in return for specific kinds of service, such as providing security for oil production facilities. It is unlikely that any electable future government of Libya could grant citizenship to large numbers of Tebu who were not longstanding residents in Libya. Tebu leaders complain they have been constantly harassed and attacked by Arab militias since the fall of Gaddafi.

One response of Tebu militias has been to march into oil production facilities in the south of Libya, where most oil can be found, ordering at gunpoint that plants be switched off. Early reports that Libyan oil production had returned to pre-conflict

levels (Vandewalle, 2012: 14) have reversed at the time of writing, with production variously estimated at between 20 and 50 per cent of pre-conflict levels.² Sebha has always been a rather lawless frontier town. In centuries past Sebha was on a caravan route across the Sahara where African slaves were traded north. Sebha is still a conduit for human trafficking and drug trafficking north and gun smuggling south as well as various other kinds of cross-Sahara smuggling in fortified trucks. Members of two tribes have fought in recent times for the domination of organised crime in Sebha, the Tebu militias and the Arab militia of the Awlad Sulayman tribe. The conflict started between the Tebu and another Arab community with whom the Sons of Suleyman militia sided.

The reconciliation of 26 March 2012 was convened in the traditional way, conducted mainly by Misratan wisemen of tribes who were not involved in the original conflict. The tribes involved in the conflict were the Tebu, the Awlad Suleiman and the Abu Saif. We heard various disputed versions of the initial spark of conflict, but it seems likely to have been the killing of an Abu Saif member by Tebu carjackers. A firefight broke out during a heated argument at the preliminary ('understanding') phase of the reconciliation process in the 'People's Hall' – long before the desired reconciliatory Sulha outcome was achieved. Three Tebu were killed inside the reconciliation meeting. The Tebu then took the fight out onto the streets of Sebha. In no time fighting had escalated to what van Klinken (2007) has called a 'small town war'. On some estimates, at least 147 people were killed and 500 wounded (International Crisis Group, 2012: 7). The Tebu took control of the airport, presumably to prevent military aircraft from flying in with troops, also took control of the hospital to ensure that the predominantly Arab staff did not neglect the needs of their wounded. However, the other normally rather disunited tribes in Sebha united to get on top of the Tebu fighters with heavy shelling of Tebu shantytowns, which were attacked by tanks and Katusha rockets. This ended Tebu mortar fire into Awlad Suleiman neighbourhoods of Sebha.

The overwhelming military might rested with the Awlad Suleiman, who in February 2012 had paraded 50 tanks and scores of 'Grad' missiles through Sebha (Pelham, 2012: 544). Then there was a slightly more successful reconciliation

² http://www.upi.com/Business_News/Energy-Resources/2014/01/21/Libyan-oil-production-up-2-percent/UPI-50951390309219/. Accessed 30 January 2014.

process, tearful and heavy with apologies, again conducted in the traditional way by wisemen with little support from the state. It produced a ceasefire. This was broken at different times by both sides; there was no state capacity to enforce the ceasefire (ICG, 2012: 28–34) and only a ceasefire had been accomplished, not full reconciliation. After the ceasefire, it was reported that there had been frequent raids on arms stores around the Sebha area. One example was the Brak al shaty air base just north of Sebha being raided on a number of occasions, with a lot of heavy weaponry taken. A theory is that this ceasefire was seen by both sides as an opportunity to strengthen their tribes with the full intention of reconvening this ‘small town war’ at a later stage. Neither side has committed the time or intent needed to enable the ceasefire to develop into a form of reconciliation.

The ceasefire did succeed in ending conditions approaching all-out tribal warfare until January 2014, when very serious fighting flared again. One might argue that the failure to prevent stakeholders from taking weapons into the reconciliation was less a failure of the mediators than a failure of the state’s policing capacity to prevent participants from taking guns into the room for such an important event.

Where deterrence is most needed, it is most dangerous

Of course the policy prescription that comes from this story is a rather banal one: it is not a good idea for stakeholders to carry guns into restorative justice conferences! The context here is interesting, however. A gun culture has always existed in Sebha. In one meeting with four female leaders of Sebha, one of the women argued that, ironically, gun violence had reduced in Sebha because it had moved from a place where only some could dominate because they owned the guns, to a world where people were afraid of provoking others because everyone has guns. A practical implication of her point is that in this atmosphere of mutual fear and preparedness for violence, it would be difficult to run a reconciliation process that kept guns out of the room. Others seemed to agree with her analysis.

However, the March 2012 and January–February 2014 small-town race wars show the limits of this analysis. International relations theorists have advanced a similar analysis about nuclear weapons and the absence of war between NATO, Russia and China since World War II. With nuclear weapons, war became too dangerous for rational states to countenance. The folly of this analysis based on a sample of three national adversaries is illustrated by the behaviour of nuclear-armed

India and Pakistan, who may have suffered the implications of exactly the reverse of this analysis (Snyder, 1965). Pakistan in particular believed it could push the envelope with conventional warfare and terrorism in Kashmir because India would not let it go too far for fear a nuclear exchange. India and Pakistan have fought five minor conventional wars over Kashmir since World War II. Imagine the accidental disaster where the nuclear trigger is pulled unintentionally, where reaching for a weapon is misinterpreted as an imminent threat. Imagine the large nuclear state equivalent to the small-town war of the Tebu versus the Arabs. One recent estimate is that a billion people could perish long-term from the effects of a nuclear exchange between India and Pakistan, mostly from enduring famine in large swathes of rural China devastated by nuclear fallout.³ There could be few more anti-restorative outcomes for our dear planet.

Mutually Assured Destruction (MAD) can be the alternative to reconciliation in the contexts where it is hardest to make reconciliation work. Yes, maximal armament can achieve a kind of terrorised deterrence, even for quite a long period, as with the Cold War (though with proxy wars in that case in Africa, Asia and Latin America). The logic of deterrence is that where it is most needed, it is most dangerous. The logic of restorative justice is that where it is hardest to do, it is most important to do.

We read this as restorative justice being the better theory of the state of exception than response to lawlessness, violence and tyranny with state lawlessness, state violence and tyranny (Agamben, 2005; Schmitt, 1922; see also Chenoweth and Stephan, 2011). Nelson Mandela's life was testimony to the challenge that where restorative justice is most institutionally difficult to do, it is most important to do. And that restorative justice can take place, to an important degree, in conditions of extreme violence and tyranny.

Reconciliation imperatives for Libya

There are few more important places to carry out restorative justice today than Libya. Tribes mostly drive groups affiliated with Al-Qaeda, such as Ansar al Sharia, out of the large towns and cities including Sebha. But in the mountains and deserts outside the towns of the south, the jihadists run training camps that supply the salafist terror

³ Report to the Summit of Nobel Peace Laureates, Warsaw, September 2014.

groups in Iraq and Syria, where more than a thousand Libyan fighters exported into Syria from such training camps have been killed. Reconciliation between the Libyan people and those exiled salafist fighters is imperative and may require international support, if requested. The people who should undertake the reconciliation are radical Islamist leaders and wisemen who nevertheless believe that violence is the wrong path for Islam and that jihadist exiles must be reintegrated into mainstream Libyan society.

Resumed fighting in Sebha

At the time of writing, this small-town war had broken out again as a result of the failure to achieve a genuine reconciliation in 2012. It started in earnest when Tebu gunmen stormed a Traghen police station (140 kilometres south of Sebha) on 9 January 2014. High-value targets were ignored as they searched specifically for al-Haq Brigade leader Mansur al-Aswad, deputy commander of the Sebha military zone. The brigade leader was murdered, allegedly in retaliation for crimes committed by his Abu Seif militia during the 2012 clashes in Sebha.⁴ In January 2014, 88 people were reported to have been killed in the renewed fighting. One pro-Gaddafi group seized the opportunity created by the lawlessness to take over the Tamenhint airforce base, 30 kilometres east of Sebha, leading to much speculation of outside influences, possibly from Gaddafi family exiles, in order to destabilise the south through the Sebha tribes. This gave the small-town war a new national meaning, triggering mobilisation of both the military and the Misrata militia in order to return control of the airforce base to the state. In another southern oasis town where fighting is taking place between Tebu and Arab tribes, leader of the Kufra Tebu fighters, Isa Abd al-Majid, warns: 'We are fighting al-Qaeda. They want to eradicate us to occupy our land and control the frontiers with Chad and Niger, which will permit them to attack the French military base in Niger and kidnap Westerners'.⁵ So from the two sides, two very different narratives of international destabilisation are advanced, one about Al-Qaeda, the other about Gaddafi supporters.

The local response to the renewed crisis has been a creative one, to invite in leaders of the Zintan militia, headed by Mohammed Imbisher, to be trusted third-party mediators in a new reconciliation process. The government is also represented in the

⁴ *Libya Herald*, 10 January 2014.

⁵ *Paris Match*, 20 January 2014.

reconciliation at a high level through the Justice Minister, Salah Bashir Al-Marghani, Labour Minister, Mohamed Fitouri Sualim and Head of Intelligence, Salem Al-Hassi. What is interesting about this is that the Zintan militia was one of the two most militarily-powerful militias of the Libyan revolution that ousted Gaddafi. It is the militia that still holds Saif Gaddafi in its private prison. The Zintanis retain in many ways a more formidable security capability than the Libyan state. So the hope is that they might have the authority, the 'street cred', and the deterrence capacity to ensure that no guns are fired during reconciliation conducted under their authority. As this goes to press, it remains to be seen whether this beautiful theory might also become an ugly practice, or if it might succeed. At least the commencement of the reconciliation process temporarily suppressed fighting in late January 2014, though prospects of a permanent Sebha peace still seem extremely fraught.

Conclusion: restorative justice and transnational crime threats

The failure of the west here is the same as it was in Afghanistan after the Soviets were forced out in 1989. Instead of working to support an imperfect Sharia-influenced transitional government to gradually build on the state institutions that remained and to improve the state education infrastructure for girls that the communist regime had built, the west walked away and left the game to competing mujahideen and Pakistan's ISI to destroy remaining state institutional infrastructure. This continued until the Taliban marched to power and imposed a pathological form of law and order that became a profound threat to the west.

As the French have come to realise in dispatching troops to Mali to contain the jihadists there who gained ascendancy with mercenaries and heavy weapons trafficked through Sebha, failures to offer reconciliation and life opportunities to unemployed, young jihadists push them towards Al-Qaeda-affiliated recruiters in certain mosques. In the badlands of the south of Libya where state control is absent, a lawless vacuum has attracted large swathes of control by Tebu organised crime groups and pockets of Al-Qaeda control, both of which are profound transnational crime threats. Of course, gradual building of the authority of a new democratic Libyan state in such anomic spaces is imperative for reducing these threats. Had state security been able to insist that disputants leave their guns at the door for the reconciliation meeting where shooting broke out, this spiral of violence may have been nipped in the bud. But assertion of state authority in southern Libya is certain to be very gradual

and contested. In the meantime, the hope of security for the frightened people of Sebha is traditional tribal reconciliation by trusted wisemen. That might create the kind of peaceful space where the voices of wise women will also be heard in the future. The more the situation deteriorates, the more reconciliation that gradually displaces guns becomes increasingly the way forward.

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