

# Rough justice

Hard lessons learned in Africa can be applied to law and criminal justice here at home, says James Cockayne

By **Diana Simmonds**

**J**ames Cockayne (BA Hons '99 LLB Hons '02) is a senior associate at the International Peace Institute in New York. There was a flurry of media interest when it was announced earlier this year that he has been awarded the University of Sydney-WUN (World Universities Network) International and Comparative Criminal Justice Network Fellowship.

He takes up the inaugural Fellowship in August. Professor Mark Findlay, Deputy Director of the University's Institute of Criminology says: "The fellowship is the first major collaboration between an Australian law school and prominent universities and research centres in Europe and the US to explore global crime and justice."

For Cockayne, it is another step in a journey he began during his honours year. Sitting in one of the elegant atrium areas of the new Law building he grins and says, "I was over the road – at Merewether – nothing like this, of course!" He wrote a thesis for his honours year in Government and Public Administration (for which he won the University Medal) and decided to "wrap it up early and go and do something completely different."

"I headed for Gaborone, in Botswana, to take a course for a couple of weeks on international criminal law. There were students and teachers from literally all around the world, and I formed a couple of friendships that have remained important to me to this day. One of them was with a French woman, Cécile Aptel, who in her mid-20s was one of the first people employed by the International Criminal Tribunal for Rwanda. She indicated that an internship position might be opening up in the Chambers of the ICTR, and that I should think about applying."

With the course over, Cockayne decided to take the plunge and head for Arusha in Tanzania, where the Tribunal is based, hoping his application would be approved while he was en route.

"I ended up spending about three weeks travelling overland from Botswana to Arusha," he says. "It's about 3000 kilometres, and it opened up whole new worlds to me: the destitution of the slums around big cities like Lusaka and Dar es Salaam; the simplicity and traditions of rural life, and the way it has all been turned upside down by globalisation."

By the time he got to Arusha, however, the ICTR had still not determined whether they wanted him as an intern. He decided to hang on and persist.

"I kept knocking on doors, without much success," Cockayne says. "But eventually, they decided they did want me – at a price."

On his first day, he was sent to the office of the then-President of the Tribunal, Navi Pillay. She is a formidable human rights advocate from South Africa who is now the UN's High Commissioner for Human Rights.

"I was nervous and rightly so. She made her position clear in no uncertain terms. The ICTR was reluctant to accept me just because I was on their doorstep. They realised that if they set that precedent, then rich young white people with the money to finance such trips to Africa would get a lock on their internship positions, at the expense of people with fewer life opportunities. She had a point. I didn't really think it would help to point out that I was travelling on scholarship money, nor that I would be working for free. I realised the value of the lesson she was teaching me, even if it did make for a tough start!" What he also learned at the ICTR is every bit as valuable to him now. He quickly discovered that international bureaucracies are constantly struggling with the different life perspectives of their employees, and other stakeholders. All too easily, policy and personal differences can be masked as questions of race or culture.

"It turned out that part of the reason for the delay in approving my internship was that I'd arrived at a time when the Chambers (the judges) and the Registry were battling for control over the internship program. I was the first successful appointment by the Chambers, over the heads of the Registry. Judge Pillay's dressing down was in part a hat-tip to the Registry."

As well as politics, Cockayne found the cultural differences a source of fascination and inspiration. He worked closely with a Swedish judge, and his French and British-Kenyan associates. He shared different houses and offices with Americans, Ugandans, Belgians, Canadians and South Africans.

"One of the things I saw very quickly was how there were lots of little, quite distinctive, but overlapping communities, particularly based on language. The challenge was finding ways to work across these dividing lines of identity, to find the common interests."

The biggest challenge though was to make any real connection with the local populace. The economic gulf between the expat community (of all races and colours) and the Tanzanians is a wide and deep one.

"I don't think I was very successful, back then, at bridging that gulf," says Cockayne. "Inspired in part by one of my sisters, who is a doctor in Arnhem Land, one method I tried was to catch a bus, once a week, into the countryside – towards Mt Kilimanjaro – then walk for about 15 minutes to a leper colony of a couple of hundred people that I'd been told about."

He met with village elders and in their broken English and his limited Kiswahili, convinced them he was sane and serious. So they let him spend time trying to teach English to the kids.

"The language barrier between us was so deep that, to be honest, we basically just ended up playing games



most of the time. I'm not sure I achieved anything except an hour of distraction and fun for the kids for a few months. They didn't get many visitors, and certainly not many who would bring them pencils and paper and have a bit of rough and tumble with them."

Looking back, he says, those visits also left him reeling – at how entrenched the inequalities in our global society are, and what a real and immediate impact they have on what different individuals can expect from their lives.

In Africa expats deal with such psychological complexity in different ways. One of the most common is to enjoy the incredible natural and cultural splendour in the region. Weekends are spent on expeditions to such wonders as Ngorongoro crater, or to the coast, and the fascinating mix of African, European

and Arabic cultures on Zanzibar. Or out into Masai country, to sleep under the stars with the sounds of hyenas and lions drifting through the night.

"One weekend a local guide dragged me up Mt Meru, [a 4556m volcano], literally crawling through wind and rain and fighting giardia and finally summiting just before the sun appeared behind Mt Kilimanjaro to the east, as it has for millions of years and will when all our war and crime has gone."

Indeed, sometimes those trips merely drove home the potential gap between the law being developed and the realities on the ground. Cockayne worked on judgments on two different cases – one concerning a Hutu militia leader instrumental in fomenting the 1994 genocide; the other, a business leader who

used his control of large parts of the tea sector (one of Rwanda's main exports) to facilitate massacres.

He recalls listening to the heart-wrenching tales of the witnesses and watching the enormous courage they summoned up to retell their experiences to a roomful of strange people in robes, wearing headphones. "And the architects of their pain were watching them the whole time." Cockayne shakes his head.

"The legal work we were doing was fascinating and ground-breaking. But I became more and more worried, while I was there, that the law we were making was very disconnected from these people's worlds. We were so caught up on the intricacies of the law that there was a danger that it would lose its connection to the reality of what these people – 'victims' and 'perpetrators' – had actually lived through."

A common question is to wonder whether the hundreds of millions of dollars being spent on these trials produces little more than a kind of self-righteous farce that reassures us of our moral superiority and objectifies these foreign communities as victims and evil-doers.

"I've continued to think about and struggle with those issues," says Cockayne. "How do you argue for universal rights and obligations when people's lives and life expectations are so different? I think ultimately the answer can only come on a human level. Good law and good policy requires thinking about human impacts. And that requires understanding humans: getting out there and seeing their lives, hearing their stories, sharing a meal or a dance or music with them. Seeing the world through their eyes."

And that experience led him probably quite naturally, to the IPI and its advisory role to the UN.

"Ban Ki Moon [UN Secretary General] has called us the brains trust of the UN," says Cockayne. "They look to us to bring fresh thinking or say things they can't say. International criminal justice is very much to the forefront. We look at ways of dealing with the larger strategic relationships."

Does this mean he can speak freely or is he now constrained to be diplomatic? Another wry grin.

"I can definitely say what I think."

What he thinks, coming home to Sydney for the first time in some years, is that he's uneasy about what he sees as the glamour phenomenon of *Underbelly* and how organised crime is portrayed on TV.

"The way we treat organised crime in popular culture needs to be thought about," he says. "There's a danger of both demonising and glamorising people we label as 'criminals', and not thinking about them as ordinary human beings, pursuing profit and power and protection. This is a real problem at the international level, when you start labelling whole communities – like poppy farmers in Afghanistan – as criminals. Increasingly, our efforts to make peace between and within communities are going to be closely connected to how we deal with organised crime."

In Afghanistan and Pakistan, Mexico, Colombia and parts of Africa – where legitimate governments are under threat – Cockayne's concerns become even clearer.

"War and crime are increasingly intertwined around the world. Even in places like Iraq and the Balkans, ethnic and sectarian militias often function indistinguishably from organised crime groups. And civil wars increasingly involve criminal attacks by government leaders on their own populations, leading to international war crimes charges like those in Darfur."

Speaking to students at the University in a class from which he graduated less than a decade ago, Cockayne illustrates his point by reminding them of the recent assassination of the president of Guinea-Bissau. "The country has been targeted by the South American cocaine cartels," he says. "It's become their supply base for Europe." And the president wasn't playing ball.

The challenge for the international community is to protect international security and ensure international justice without excluding whole communities – poor communities – in doing so. This applies to the Somali pirate industry too, which also brings with it another element – post-colonial attitudes and history. Cockayne points at Sudan as an example of how this is happening.

"IPI has worked closely with the African Union over past decades to develop their peace policies for the continent. Indicting the president of Sudan is forcing real division between African leaders and the West, for historical as well as political and economic reasons. We need to think creatively. There needs to be sustained engagement because there is a danger of criminalising segments of societies and we – in the West – all too often infantilise and trivialise African nations."

What does he mean by this last statement?

"The Australian government is seeking African nations' support for a seat on the Security Council in four or five years time, but Australia has only a handful of embassies on the continent. It does raise questions."

Before heading to New York, Cockayne worked for the Australian government's Transnational Crime and Extradition Units. He was just 25 and led a team that provided advice on international criminal law issues, such as the Bali bombings, Australia's obligations to the International Criminal Court, and legal aspects of military operations in Afghanistan and Iraq.

"There are ways to use the bureaucracies to have an easy life," he told the Sydney students. "Or you can work through it to get to where you want to be: if you want to have an impact on public policy."

In the face of his cool passion and quiet commitment, it's hardly worth asking why someone so able and talented chose such a hard row to hoe, when Phillip or Macquarie Streets would have opened their arms to him. He smiles again, "I believe New South Wales is the second most litigious jurisdiction on earth after California. There are lots of people who love to do that kind of work."

So where did this dedication to social justice come from? He shrugs and frowns, "I've no idea. I'm from Strathfield, a good healthy middle class upbringing. Sydney Grammar, singing and cello although I only sing in the shower now. I have two sisters and I suppose we had it drummed into us early on by our parents."

What does he hope for in coming home to Sydney for a while?

"I've spent a lot of time overseas and being part of other communities; there's a constant struggle in my head about belonging to more than one community," he says. "I think there are a lot of lessons for us in Australia because we are such a multinational society. We have to talk and reason with one another. The knee jerk labelling of 'other' is something you come up against in quite a different way when you live overseas. When you're the 'other' you find yourself thinking much more about speaking across community lines. Exclusion is no longer so easy." **SAM**

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