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## Narratives of Oppression

by Michael Tigar

The following piece is based on Professor Michael Tigar's keynote address delivered at the "Strategic Litigation in International and Domestic Fora" event on October 12, 2009, at the American University Washington College of Law (WCL). Professor Tigar is a Professor Emeritus at WCL and a Professor of the Practice of Law at Duke Law School. Ten years ago, he founded the UNROW Human Rights Impact Litigation Clinic, which has represented, among others, the indigenous people from the Chagos Archipelago in their lawsuit in United States federal court. The Chagossians were forcibly uprooted from their homeland in the Indian Ocean in the 1960s and 1970s by the United States and the United Kingdom to make way for the U.S. military base on Diego Garcia.

Although I hope there are some general lessons to be drawn from my remarks, I am going to focus today on our continued struggle to secure justice for the Chagossian people. We have litigated this matter in the courts of the United States,<sup>1</sup> in the courts of the United Kingdom,<sup>2</sup> and now in the European Court of Human Rights. I am proud to have participated with UNROW students, with co-counsel in the United Kingdom and Mauritius, and with the lead plaintiff, Olivier Bancoult, in building a narrative about the fraud, violence, coercion, condescension, and unconcern that characterized the actions of the United Kingdom and the United States against the Chagossians.

Despite some remarkable successes, in many instances we were rebuffed by judges who spoke with condescension and in a certain imperial tradition about Olivier Bancoult and the Chagossian people. They seemed to say, "How could it be wrong what was done to the Chagossians? After all, we didn't do anything more to them than we have done to other colonial peoples at other times and in other places."<sup>3</sup> Therefore, in some kind of Jonathan Swiftian sense, it must be right. As Swift pointed out, decisions against common justice are written down by lawyers so that they may be cited and followed in the name of precedent and authority.<sup>4</sup> Or as Karl Marx put it more pungently, this backward looking view of history "shows nothing but its [sic] a *posteriori* to the people, as did the God of Israel to his servant Moses."<sup>5</sup>

The narrative of oppression needs to be not only a narrative about what is done *to* people, but also about what is taken *from* them. It is our job as lawyers to look at this from two perspectives: first, that of the imperial power that regards what was taken from people as valueless, and therefore not subject to compensation; and second, the progressive, or left, perspective on national liberation (sometimes called self-determination) which has, at times, characterized the progressive dialogue. The imperial tradition, in which we were raised and educated, helped us to fashion a powerful narrative. The question that then arises is:



Courtesy of Michel Tigar.

UNROW Founder, Professor Michael Tigar.

What do lawyers need to supply to represent indigenous populations and to do an even better job in the future?

First, I turn to the empire's perspective. For the empire, the value of indigenous people is based only on what could be extracted from them. It was irrelevant to the colonial design that whole cultures were dispossessed, or that tribe was set against tribe, population against population. As the British historian and Africanist Basil Davidson famously pointed out, the colonial powers virtually sabotaged all possibility of stable governing structures in liberated colonies because they systematically destroyed all of the institutions of social cohesion and power upon which people — having gained the right to govern themselves — would base a society.

This imperial attitude is not a new one. At the 1903 debates in the Belgian Parliament, the socialist parliamentarians, led by Emile Vandervelde, called out the horrors of colonial rule. Referring to the use of the *Force Publique*, which was designed to set tribe against tribe, they declared that "the work of civilization, as you call it, is an enormous and continuous butchery."<sup>6</sup>

Hugh MacDiarmid, the Scottish poet who tried to establish the independence and value of Scottish culture in the 1920s, found that, from the perspective of the imperial power, Scotland had been a part of the United Kingdom since 1707. That was simply the end of the discussion. MacDiarmid famously remarked that the British conquered other cultures simply by ignoring them, which is another way of saying that they did not attach any value to them.<sup>7</sup>

All this was done in the name of something with which lawyers are very familiar: the myth of transparency and universality of language. In turn, this view leads to the myth of transparency and universality of *cultures* based on language, and the impo-

The attitude that progressive forces have tended to take towards colonial liberation has made it hard to fashion a narrative that can be used to describe what has been taken from colonial peoples. To prevail, we must describe what is taken as the measure of exploitation, lay bare the laws of motion of the system of colonial oppression, and then take that narrative and weave it into our claim for justice.

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sition of dominant cultures on other cultures. The legal rules might speak of rights and states' duties, but the content of those rules was always based on the idea that the law meant what the rulers said it meant.

All this is familiar history because we live in the center of the empire. But let us turn to the progressive perspective and ask what has been missing from it. What was it that perhaps made it more difficult for us on the left to see the Chagossian people's struggle? Here, I must confess that much of what I say I stole shamelessly from the work of Professor David Vine, author of *Island of Shame: The Secret History of the U.S. Military Base on Diego Garcia*.<sup>8</sup> Progressive people have had difficulty imagining a liberationist perspective and putting it into our worldview. The attitude that progressive forces have tended to take towards colonial liberation has made it hard to fashion a narrative that can be used to describe what has been taken from colonial peoples. To prevail, we must describe what is taken as the measure of exploitation, lay bare the laws of motion of the system of colonial oppression, and then take that narrative and weave it into our claim for justice.

Since at least the beginning of the twentieth century, many progressives have decried imperialism. In 1913, Joseph Stalin wrote *Marxism and the National Question*, acknowledging that the problem of nationality did indeed exist, but that the task of the left was to create an international movement that would bring about an entire world based upon more just principles, and therefore an asserted universality. The task of the left was to form such a movement and to frame and to enforce ideas about justice with the same characteristic of universality as the imperialist counter-narrative. Now, had *Marxism and the National Question* simply gone into a library somewhere or been denounced by Nikita Khrushchev in 1960, all might have been well. But, beginning after the First World War, many on the left submerged the national liberation idea in the name of the international struggle to discountenance movements for the liberation of peoples. Thus, again a Universalist narrative, which rests on this same myth of transparency and universality of language and values presented in a language that purports to be international, got in the way.<sup>9</sup>

Between the First and Second World Wars, the international leftist movements opposed nationalist tendencies among progressive groups and tended to dismiss them as bourgeois. I concede that national movements can carry within them dangers of pitting group against group, based on supposed differences and characteristics. However, much if not most of those situations are the products of deliberate sowing of differences as a means to divide people, who despite their differences have common objectives. That was the design by which Belgium controlled the Congo; it was the way in which people were set against people in Ireland; and the list goes on.

This is not just a phenomenon that exists in foreign countries, but is also reflected in the African-American movement for liberation in the United States and in the manner in which whites in position of power attempted to divide workers to prevent the organization of labor in the American South. W. E. B. Du Bois referred to "the pent-up resentment" of the oppressed. He wrote, "Some day the Awakening will come, when the pent-up vigor of ten million souls shall sweep irresistibly toward the Goal, out of the Valley of the Shadow of the Death, where all that makes life worth living — Liberty, Justice, and Right — is marked 'For White People Only.'"<sup>10</sup> Throughout the rest of his life, DuBois had to contend with sniping from those who regarded his perspective as a diversion from a supposedly internationalist movement that required people to submerge their individual differences.

I want to emphasize that this phenomenon is not simply a matter of a choice of values, neither of which can be rationally preferred over the other. This is about ideas that have demonstrably contributed to the wellbeing of peoples, and that were systematically destroyed by the colonial powers. The colonial powers began by taking land, then imposing their language, and then imposing their customs, eventually destroying ways of being. The Chagossian saga illustrates the destruction of an indigenous culture with particular eloquence and poignancy. Family ties, methods for educating children, the most intimate aspects of human development, and the most powerful motivators of social formation were destroyed. The colonial powers dispossessed people. They took from them — and not simply in ways that can be measured in free enterprise capitalist terms.

## Olivier Bancoult's Struggle for the Chagossians' Right of Return

Over forty years after being expelled from their homeland, the Chagossians are still fighting for the right of return. The Chagos Archipelago, a part of the British Indian Ocean Territory (BIOT), was leased in 1966 by the British government to the United States, which built a U.S. military base on Diego Garcia, the largest of the islands. Subsequently the British government forcibly expatriated the native Chagossians to nearby island nations, principally Mauritius and the Seychelles. Today the Chagossians are prohibited from visiting their homeland.

Olivier Bancoult, leader of The Chagos Refugee Group, fights for the Chagossians' right of return. Bancoult was born in Chagos and, with his family, was expatriated to Mauritius, where he currently lives. He decided to join the right of return movement after seeing his mother, Rita Isou, cry after being told she could not return to Chagos. He describes her as "one of [his] inspirations" and speaks of how she always encouraged him to "never give up, carry on."

Chagossian women, including Isou, began the right of return movement. "They started the struggle by demonstration. They started the struggle by hunger strike. They have been arrested by policemen . . . They could not watch their children, their family, die without having anything, die without any food. They showed to the world that life in Chagos is very different than life in Mauritius. Even though [they] were living in a small place, [the Chagossians] existed as one family in peace and harmony, and [they] had [their] culture, [they] had [their] tradition." Although Bancoult now leads the right of return movement, he says he will "never forget the strength of those women who have led the [movement] since the beginning."

In his struggle, Bancoult has challenged the British government's decision to deny the Chagossians the right of return by vigorously pursuing legal solutions. The High Court of Justice, one of the highest legal institutions in the United Kingdom, has held three times that the Chagossians have a right of return. The Queen's Bench, a division of the High Court, held in 1998 that the provisions of the 1971 Immigration Ordinance calling for removal of BIOT residents were invalid. The High Court supported this decision, and in 2000, allowed Chagossians to return to the smaller islands, but not to Diego Garcia.

In 2004, however, the Queen of England issued an Order in Council prohibiting any person from entering the BIOT without a permit. Bancoult brought another claim before the High Court, challenging the Order's validity. Despite strong public criticism of his efforts, Bancoult again prevailed when the High Court issued a verdict overturning the Order, proving that "everyone has the same rights, even the Queen." But this victory was

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\**Human Rights Brief Staff Writer Whitney Hayes, a J.D. candidate at the Washington College of Law, wrote this article based on an interview with Olivier Bancoult.*



By John Vine.

Olivier Bancoult.

short lived. In a 2008 judgment which "surprised everyone," the House of Lords reversed the High Court's decision. Advocates, including Bancoult, were left wondering how such a reversal could be justified given the High Court's previous grant of the Chagossians' right of return.

After exhausting all domestic remedies in the United Kingdom, the Chagossians applied to the European Court of Human Rights, claiming violations of Articles 3, 6, 8, and 13 of the European Convention on Human Rights and Article 1 of the First Protocol. They strongly believe that their "fundamental rights should be respected" and that the rights of all human beings include the right "to be able to live in [their] birthplace." Although not explicitly acknowledged, the Chagossians argue that the Convention, nevertheless, protects such a right. The British government has rejected the Court's suggestion of a friendly, out-of-court settlement and expressed its intention to fight the case.

In addition to his legal advocacy, Bancoult continues to "make people more aware of [the Chagossians'] situation" through education and appeals to the international community. He has received considerable support from "different heads of state, different countries, organizations, and many people who are devoted to help respect human rights." Bancoult, however, is "upset with the United Nations." He has both spoken at international assemblies and written to the UN Secretary General, "[b]ut unfortunately [the Secretary General replied] that he cannot treat the matter" because "it should be presented by a state." The Chagossians "are still waiting" to see "[which if any] state will support [them]."

Most recently, Bancoult has focused his efforts on garnering assistance from the United States where his cause has largely been ignored. In October 2009, Bancoult spoke at the Washington College of Law, along with UNROW founder Michael Tigar. Although Bancoult understands that the "United States needs Diego Garcia for its defense," he emphasizes that "the United States must not forget that there were people that have been uprooted."

The great lawyers of this or any other time have been students of human history, not skilled carnival barkers. That must be our study, so that we can make these connections. The story, therefore, is told from human experience. It is mediated by us — who are in that sense translators — but its foundation is authentic human experience.

It is now incumbent on lawyers, as we construct a narrative, to value these things in a way that can persuasively describe what has been taken. I will cite three thinkers who illustrate this point.

The first is the French intellectual Régis Debray, who drove home a very fundamental point. Some regarded his writing as an attack on historical materialism: the very foundation of an international progressive movement that sought to transform the world. Debray exposed the difficulties in the progressive narrative and challenged its purported universality. In the process, he helped those of us in the First World understand the violence that accompanied the building of these empires and that continued as they were maintained. We can understand the building of the empire because it has been done in our name. We can unearth the documents, and we can find the proof. We simply had not understood those who wanted to speak the language of national liberation or the people whose rights we thought we were defending. Of course, Debray was propelled in his understanding by what had happened in the wake of the Second World War: the liberation of colonies; the formation of governance institutions; the expansion of the membership of the General Assembly; and the spread of norms of customary international law reflecting our desire to do something about colonial liberation. According to Debray, “It would never be the same after that.”

The second thinker is the Kenyan writer, Ngũgĩ wa Thiong’o. The title of his principle book is *Decolonizing the Mind: The Politics of Language in African Literature*, which I think says it all. It reflects what we in the metropolitan countries need to do: decolonize our own minds in order to see and appreciate what has been taken from indigenous peoples.

The third thinker on my list is author Frantz Fanon, who was born and raised in Martinique. When the Germans blockaded the Martinique ports during the Second World War, he escaped to Dominica and joined the French army. After the war, the French thanked the forces that had liberated France or contributed to it by “bleaching them.” They drummed all of the black people out of the army and exterminated large portions of the Algerian population who dared to believe that the goals proclaimed by the so-called “free French” might include independence for Algeria. At first, Fanon accepted his situation, but upon returning to

Algeria, his perspective changed. He saw the effects of French colonialism and began to write about it. As a result of his writings, he was stripped of his university post and moved to Tunis, where he edited a newspaper for which he wrote *Les Damnés de la Terre* (translated, *The Wretched of the Earth*). He showed us the effects of colonialism from the standpoint of a social scientist, as Debray had done from the standpoint of a historian and political thinker.



Courtesy of U.S. Navy.

Camp Justice, a U.S. military base located on Diego Garcia.

These three thinkers provide important insight about how lawyers should tell their clients' stories. As those who are privileged to be licensed to practice law, we must talk about narratives and carry out our appointment as the ones who tell the story. Typically, our client's experience is quite far from our own, and quite far from that of the judge and the jurors. As a result, often what the client wants to say simply will not be listened to because of this fictitious transparency and universality of language. It is the job of the lawyer to bridge these gaps. Those who have worked with the Chagossians saw it in the United Kingdom. When the colonial witnesses spoke, they were believed. When the Chagossians came to speak in the official language of the tribunal — not their own language, which had been taken from them — they were uniformly disbelieved. We as lawyers have the job first to understand, then to get help, and then to move forward.

I do not wish to simply describe the dichotomy between the imperial powers and the perspective of liberation; I would also like to address how to move forward. How are we supposed to make this narrative work? How do we give this narrative some

value, in the sense that it can be approximated with money damages or other remedial measures? Fortunately, there is a growing political consensus on national liberation and national identity. It works both in a reactionary and in a progressive sense, but has an inherent progressive component.

Our task — and the reason why the Chagossian litigation is so important — is to construct the narrative of what was taken from indigenous people. It is a reflection of basic truths about advocacy that our task as lawyers is not only to have ways of *seeing*, but also ways of *saying*. In our culture and our tradition, the story always precedes the lesson, and we must make the story effective. Here, I confess, I have a disagreement about advocacy with some of my wonderful colleagues, here. We do not need to read books about the psychology of persuasion; we need to read books about the course of human history. The great lawyers of this or any other time have been students of human history, not skilled carnival barkers. That must be our study, so that we can make these connections. The story, therefore, is told from human experience. It is mediated by us — who are in that sense translators — but its foundation is authentic human experience.

## ENDNOTES: Narratives of Oppression

<sup>1</sup> See *Bancoult v. McNamara*, 445 F.3d 427, 438 (D.C. Cir. 2006) (holding that all claims presented non-justiciable political questions and affirming the lower court's decision to dismiss the Chagossians' claims against the United States).

<sup>2</sup> In 2000, the High Court ruled in favor of the Chagossians, effectively granting them the right to return to their homeland. After that decision was overruled with royal legislation, the High Court again ruled in the Chagossians' favor in 2006 and the Court of Appeals affirmed in 2007. In 2008, the Law Lords ruled against the Chagossians. The case is currently on appeal in the European Court of Human Rights.

<sup>3</sup> See *R. (on the application of Bancoult) v. Sec'y of State for Foreign & Commonwealth Affairs* [2008] UKHL 61, [2009] 1 A.C. 453 (upholding the 2004 order denying the Chagossians' right of abode in the Chagos Archipelago); *Chagos Islanders v. Attorney Gen., Her Majesty's British Indian Ocean Territory Comm'r* [2003] EWHC 2222 (QB) (denying the Chagossians' claims for compensation).

<sup>4</sup> See JONATHAN SWIFT, *GULLIVER'S TRAVELS* (1735) ("It is a maxim among these lawyers that whatever has been done before, may legally be done again: and therefore they take special care to record all the decisions formerly made against common justice, and the general reason of mankind. These, under the name of precedents,

they produce as authorities to justify the most iniquitous opinions; and the judges never fail of directing accordingly.")

<sup>5</sup> KARL MARX, *INTRODUCTION TO THE CRITIQUE OF HEGEL'S PHILOSOPHY OF RIGHT* (1844).

<sup>6</sup> See generally ADAM HOCHSCHILD, *KING LEOPOLD'S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA* (1999); MARK TWAIN, *KING LEOPOLD'S SOLILOQUY: A DEFENSE OF HIS CONGO RULE* (1905).

<sup>7</sup> I, and many others, heard MacDiarmid use this phrase.

<sup>8</sup> Professor Vine, an expert in Chagossian history and culture, has worked with the UNROW Clinic and the Chagossians, serving as an expert in the litigation for nearly ten years.

<sup>9</sup> Since giving this lecture, I have been reminded by my friend John Mage that this assertion is perhaps too sweeping. Social democratic leaders between the World Wars did consistently support imperialism. The Communist left, while opposing the aspiration of some indigenous peoples, did notable work — in, among other places, India and South Africa. The point remains, however, that this was in the context of opposing the hegemony of imperial powers, and not always or even necessarily seeing the problems of indigenous peoples within a particular colony.

<sup>10</sup> W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 89 (1903).