

"I'm no crusader"

An interview with James Cockayne



By Anna Lozynski, Articled Clerk, Minter Ellison

What is your background?

Middle-class WASP family based in Sydney – periodic family academic sabbaticals during my childhood (Berkeley, Beijing, Oxford, Paris) gave me the travel bug. Grew up in the 80s. Two older sisters (one a commercial litigator with PWC Legal; the other, a doctor in the Tiwi Islands) kept me in line.

Which adjectives best describe your personality?

Intellectual. Strong-willed. Human.

Do you recall how your interest in public international law originated?

One of the family sabbaticals involved three months in Beijing when I was 10. I noted the differences between my own life and that of Chinese people. The next year, I watched on TV at home in Sydney as students were gunned down and rolled over by tanks in Tian An Men Square, where I rode my bike the year before. I remember having a sense that there must be some way to prevent such atrocities, but I had not heard of the concept of "international law" then. It was only while studying both government and law at Sydney University that the overlap and match became obvious.

What was the highlight of your time as a Director of the International Crime Branch at the Attorney-General's Department?

While working at the Attorney-General's Department in Canberra, *West Wing* used to show around 11pm on Tuesday nights. During the Coalition invasion of Iraq, the Legal Task Force, some friends and I often used to meet for videoconferences with the White House Situation Room and the British Foreign Office – including every Tuesday at 11pm. I used to half expect Martin Sheen to walk into the Situation Room tableau we were viewing on a TV screen deep underground. We did a lot of work to make sure Australia's military operations were entirely compliant with the Rome Statute of the International Criminal Court. I have since learned of a number of occasions when US forces refused to take action because Australian legal advice indicated it might be illegal. That's exactly how international humanitarian and criminal law are supposed to work – preventing violations, rather than punishing



them. It's gratifying to have been part of a team that may have contributed to that, and to protecting a few lives in Iraq.

Tell us about your involvement with the United Nations?

I've had a couple of different connections to the UN. I interned in the Chambers of the International Criminal Tribunal for Rwanda in 1999-2000, and now I'm working on the defence of Chief Samuel Hinga Norman at the UN-backed Special Court for Sierra Leone in Freetown. I have been completing a Masters and now a Doctorate at New York University, my base for the moment. While there, I work as a consultant to the International Peace Academy, a peace and security think-tank attached to the UN. I work mainly on peace-keeping issues for them.

What is your "claim to fame"?

With a surname pronounced "cocaine", you're condemned to a life of infamy . . .

What are you currently involved in?

I am currently in Sierra Leone assisting the defence of a former Deputy Minister of Defence charged with war crimes, crimes against humanity and other serious violations of international humanitarian law during this country's 10-year conflict. The atmosphere is at times disturbingly similar to Graham Greene's *The Heart of the Matter*; but my hours chewing the fat with indicted war criminals are alleviated by trips to Freetown's beautiful beaches for a bodysurf and a beer on the beach. Better still, I occasionally get to go "upline" (into the provinces)

by puda puda (minivans crammed with 20 plus passengers, squawking chickens, bleating goats, crying babies) to investigate. I usually come back with rolls of film of Sierra Leonean kids posing and making monkeys of themselves – and a bigger monkey of me. Helps keep everything in perspective.

What motivates you to pursue a career in this area of law?

A life in this area of the law brings one face-to-face with many of the harsh, and often violent, realities of the world. In addition, I would like to think it is about a larger, social process: I see all law as a social tool, a discourse for non-violent

activism. This field simply makes that all the more obvious, and attempts to minister that non-violent alternative in places where violence is in some way a norm – whether that's in downtown Freetown or, in a very different way, in the ranks of the Australian Defence Forces. Often the law cannot prevent or control that violence; but sometimes, and perhaps increasingly, it can and does.

What concerns you about public international law?

Insufficient attention is paid by academics, practitioners and government officials to the ways that public international law reproduces massive inequalities between the global north and south. We're used to the law being value-neutral, but we also know how, in a domestic setting, that can favour the party with access to greater resources. The same goes in international law, not only in trading rules, the ill-fated Multilateral Agreement on Investment, with the World Bank and the International Monetary Fund, but less obviously in areas such as international humanitarian and criminal law. The recent dispute over the oil in the Timor Gap is a good example. Unless the authors of international law take these substantive concerns much more seriously, state failure, terrorism and poverty will continue to destroy the hopes and lives of people in the south, and increasingly dog the prosperity which those of us lucky enough to live in the north enjoy.

Ultimately, the law is just going to reflect the politics: governments won't take these issues seriously until their domestic constituencies do.

And on that note, I'm contactable at jdrcockayne@yahoo.com. ■