

LAW MATTERS

by Franny Rabkin

In early December last year, I saw a tweet about an *Al Jazeera* journalist whose family had been killed by an Israeli bomb while he was out on assignment. The tweet was a simple one: a list of names and ages. But it was very long. And the ages were devastating. Children, toddlers, elders – at least three generations. All dead.

It was difficult to take in. Even though he was a journalist, just like me, the outer limits of my imagination could not stretch to what it could be like, to be in that situation. In a single moment, your whole family, simply gone. While you remain, alone.

In writing this, I searched for the tweet. I wanted to recount each of their names and their ages here – to show you what I saw. No matter how many thousands of people have died, they are not numbers, their humanity erased. But I could not find it. Instead, it was a grim search, as I came across so many tweets, about different families. So many. Each of their stories was uniquely heartbreaking. Collectively, there are no words.

A question I have asked myself in the past in relation to South Africa is whether justice can ever assuage such grief. What will it mean for the families of those killed if the International Court of Justice, in three or four years, finds that Israel did indeed commit genocide in Gaza?

One thing courts should at least be able to do is prevent. Injunctions. Interdicts. The prevention of imminent, irreparable harm? Is that not what courts, at the very least, should be all about?

“Provisional measures.” I had not even heard of the concept before South Africa went to the ICJ in its case against Israel. South Africa put together an impressive case. It won. Interim orders were put in place. It was an important victory.

It was unlikely ever to be a silver bullet and indeed it wasn't. It has not even been a month and Israel is, as I write, about to launch a ground offensive on Rafah – the place where half of Gaza's population now shelters. That's about 1.4-million people, half of them children.

This should not diminish the importance of the case. I feel its most important achievement was the way it forced the world's attention to what is happening in Gaza. And, in a situation where every tiny fact is hotly contested, the court's judgment drew some clear lines, factually, about what we are talking about.

As James A. Goldston has said in an article published on the website 'Just Security': “the non-stop media coverage, widespread viewing of oral arguments and the live broadcast of President Joan Donaghue's reading of the Court's provisional ruling modelled, at international level, Hannah Arendt's vision of constitutional courts as ‘arenas’ for public debate about ‘moral and political’ issues.”

The case also provided “a common language, agreed by the vast majority of the world's states, with which to assess the highly contested facts in Israel and Palestine,” he argued.

For me, this common language is crucial. Reporting this case was my first time at the International Court of Justice and it was the oddest litigation I have ever seen. South Africa had set out its case beforehand in a detailed, written application. Normally, at least in all the cases I have ever reported in my years as a journalist, the other side answers the case. You know, allegation for allegation, admit, note, or deny. Not this time.

Instead, what I witnessed was a reframing of the narrative: *They* say this is about genocide, *we* say this is about self-defence. *They* say this is about people being displaced, *we* say this is about people being moved for their own protection. *They* say this is about aid being blocked, *we* say this is about Hamas “constantly stealing” aid.

While one sees this happening often enough in the world of public opinion, it was extraordinary to see it happen in a court of law.

Goldston argued that it was “of no small significance” that the court found that Israel's military operation had resulted in “tens of thousands of deaths and injuries and the destructions of homes, schools, medical facilities and other vital infrastructure, as well as the displacement on a massive scale”, that there was a “catastrophic” humanitarian situation in Gaza and that it was “plausible” that Israel had breached the Genocide Convention.

“In a world of competing narratives, the court recognised the gravity of the human suffering and assigned provisional responsibility for it,” said Goldston.

The court did not finally pronounce that Israel had committed genocide. It may never ultimately reach that conclusion. But because of the judgment, I can write here about genocide without being accused of hyperbole, or worse.

I would add that it is also of no small significance that it was South Africa that took the case to court. South Africa knows a thing or two about the denial of humanity to the majority of a population. South Africans know a thing or two about fighting against that. About the grief and trauma that remain.

During the apartheid era, South Africans were hip, also, to propaganda that conflated the rejection of a racist regime with hatred of white people. It was fed to us for years. We rejected it. Again, we are having none of it – we know that Zionism and Judaism are not the same. This does not mean we should be dismissive of anti-Semitism, which is a real thing and a product of centuries of structural discrimination against Jews.

South Africa has, as I write, urgently approached the ICJ once again, asking it to intervene. It has asked for additional provisional measures to prevent a bloodbath – “beyond our worst nightmares” – quoting from Save The Children.

South Africa, and our lawyers who argued the case, must be commended for a job very well done. By the time this column is published, we will know whether the court did indicate further provisional measures, and what effect these had, if any.

The courts and justice may not be a full answer. That morning, when I looked at that tweet, what immediately came to my mind was a painting that, through most of my life, hung on the wall of my grandmother's house.

In the foreground are several people in a row – painted in bold black and coloured brushstrokes, they look happy - one is smiling - and vital. Behind them, looking down on them, is another figure – pale, painted delicately in white and grey – ethereal, almost not there. His face is wistful and sad.

The story behind the painting, my granny told me as a child, was that the artist lost his whole family in the Holocaust. He was the only survivor. Yet for him, he was the one who died, she said. He was the ghost.

As art can do, the painting struck a chord in me, even as a child. It seemed to express things that words could not precisely capture. Such is the grief of genocide. And the ghosts it leaves behind. It is no wonder it is called “the crime of crimes”.

The painting, and the story behind it, was one of many early lessons I got from my two grandmothers, both of whom lived through WWII. There were many stories – funny ones about being in the army in Simonstown, stern ones about my Jewish identity, sad ones about Zenka, the child my other granny took in from the “kindertransport” – the trains of orphaned children that came out of Nazi Germany.

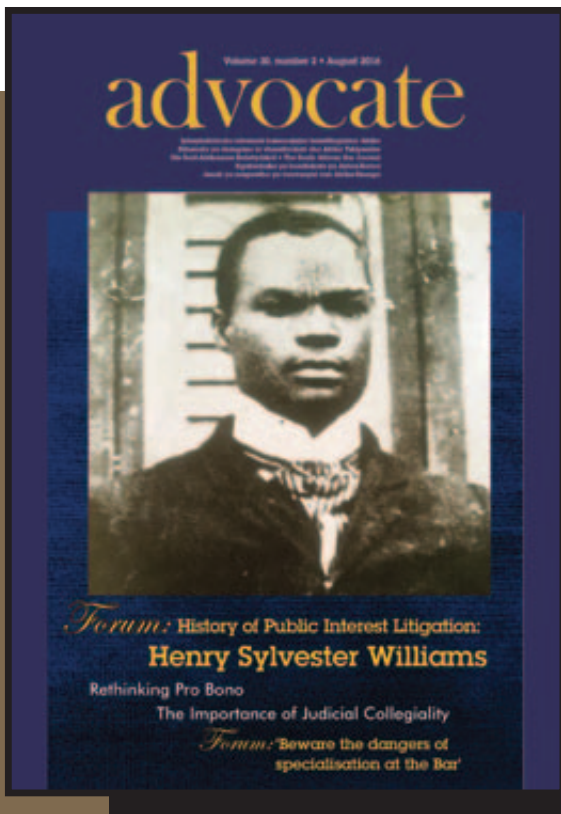


But if I had to distil a single lesson from all their stories, and from their example, it was this: at the heart of everything is humanity. We seek, find and affirm humanity in others and ourselves. Humanity transcends all. The Holocaust was not evil because of what Hitler did to Jews, it was the denial of Jews’ humanity (and, said my granny, the denial of the humanity of homosexuals, gypsies and communists, who were also sent to concentration camps). We hated apartheid because it denied human beings of their humanity. We hate the oppression of women, racism, colonialism, slavery, imperialism for the same reason.

In her later years, my granny sold the painting. It was too sad, she said. She didn’t want to look at it anymore. I understood my granny’s decision – she carried much grief in her life.

But after that tweet, I looked for the painting and, with the help of my aunt, found it on the internet. It is called *The Dream* by Jankel Adler.

Even where words fail, even where courts do not give a full answer, our humanity demands that we can’t look away from genocide. **A**



advocate

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