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Leopold II on Trial

In 1885, Europeans took it upon themselves to divide up Africa at the Conference of Berlin. At this time, Belgium was under the leadership of King Leopold II, whom took it on himself to become a big player in the Conference. Leopold II sold his request of the Congo as a humanitarian mission in the region. The Belgians were going into the Congo, the basically unexplored middle portion of the African continent to educate the savage population, to bring western business, and as a philanthropic venture. However, in reality Leopold's mission was anything but philanthropic, instead he made it a goal to exploit the people and take every resource available for his own profit. "In setting up this structure, Leopold was like the manager of a venture capital syndicate today. He had essentially found a way to attract other people's capital to his investment schemes while he retained half the proceeds" (Hochschild 117). By covering his tracks and silenced those against him, he was able to loose half of the Congo population to starvation, manual labor, and diseases. However, his biggest cover of his Congo massacre was economic stimulation. The biggest industry, rubber harvesting was worst of all. Congo had an unending amount of rubber at a time where rubber was gold, and Leopold knew it. Leopold created an enforcement army for Force Public to make sure that the men would do their work, which included climbing tall trees to harvest the rubber. Each man had meet a quota if not he would torture the man with whipping or later when the men collapse the Force Public would shoot them or cut off their hands. Not even women or children were protected. Instead, women and children were brutally raped and murdered and treated like animals. They were even hunted like animals for sport. Limb amputation was a delight of many Belgium soldiers. Congolese

hands, heads, and other body parts were severed for not only proof of kill, but for the cannibalistic needs of these Belgium soldier. “For each cartridge issued to their soldiers they demanded proof that the bullet had been used to kill someone, not wasted” (Hochschild 165). Even the homes of some Belgium officers were lined with the skulls of the Congolese people for decoration. However, the majority of the Congolese men, women and children died of starvation and exhaustion resulting from the inhumane living conditions and unimaginable mandatory rubber harvesting circumstances present at the time. While the death toll in the Congo Free State can never be truly known due to a lack of accurate records, historians have offered estimates as high as 10 million dead between 1885 and 1908 (Belgian Embassy in London). With these atrocities, would it have been possible to bring Leopold II to the International Criminal Court to try him on charges of genocide and/or crimes against humanity?

The criminal offenses of genocide and crimes against humanity are requisite parts of domestic legislation where a state or states wishes to prosecute persons for atrocities committed in a course of a conflict. However, while states are free to adopt legislation providing for prosecution of these crimes committed in the past, it is prohibited to retroactively prosecute person. “This is because Article 11(2) of the Universal Declaration of Human Rights, and equivalent provisions in all of the major human rights treaties (replicated in Article 3[3] of the MCC), declares that the rule against retroactive prosecution is not infringed if a crime was recognized previously under international law, and this is clearly the case for genocide, crimes against humanity, and war crimes” (UNSIIP).

The international legal definition of genocide is found in Articles II and III of the 1948 Convention on the Prevention and Punishment of Genocide. Article II was later included,

without change in the Rome Statute of International Criminal Court as Article 6 (Chalk). This conference was in reaction to the Holocaust and its discovered atrocities. The conference also was determined to make a document not only outlining types of crimes with legal terminology but also placing a stigma of the ‘crime of crimes’ to try to prevent future genocides from happening. Genocide was then defined in two parts, Article II, the definition, and Article III the punishments. Article II itself had two defining elements, the mental or the “intent” and physical including the five specific acts, of genocide (International Criminal Law Services). It states:

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”

In the second part of the legal definition, Article III examined the “five punishable forms of the crime of genocide: genocide, conspiracy, incitement, attempt, and complicity” (International Criminal Law Services). To be convicted, the crime must include both the mental and physical, the intent and action elements. Intent, which is different than motive, must be proven through direct orders or statements or inferred from a “systematic pattern of coordinated acts” (International Criminal Law Services). And, while the perpetrators need not destroy the entire group, most authorities require proof of intent to kill a substantial number of group members, a

mass murder. However, an individual can be guilty of genocide if he only kills one person, so long as he was a knowing participant of a bigger plan to destroy a larger faction of a national, ethnic, racial, or religious group (Chalk).

Crimes Against Humanity were modernly defined in Article 7(2)(a) of the Rome Statute of the International Criminal Court Explanatory Memorandum, however the idea of humanity charges has been around much longer. The term originated in the 1907 Hague Convention preamble, which classified the customary law of armed conflict. This categorization was based on existing State practices that derived from those values and principles deemed to constitute the “laws of humanity,” as reflected throughout history (Ignatieff). The legal terms came up again in 1945 when the United States and other Allies developed the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis and Charter of the International Military Tribunal (IMT), sitting at Nuremberg. Since then, crimes such as rape and torture have been added so to expand the scope of the crimes (Human Rights Watch). Today, Crimes Against Humanity are defined as those, which are “particularly odious offences in that they constitute a serious attack on human dignity or grave humiliation or degradation of human beings” (Human Rights Watch). These crimes are not isolated events, but instead are either part of a government policy or wide practice of atrocities tolerated by a government or de facto authority. Crimes include: murder, genocide, enslavement, deportation, imprisonment, torture, rape and sexual violence, persecution of an identifiable group, enforced disappearance, apartheid, and other inhumane acts (Human Rights Watch).

These Crimes Against Humanity, though on much broader footing than the narrowly defined crime of genocide, are still hard to prove. Thus, to prove a crime against humanity, it is

sufficient to prove the existence of either a “widespread” or a “systematic” attack (UNSIP). The widespread characteristic refers to the scale of the acts perpetrated and the number of victim. A widespread criminal offense may also involve the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude” (UNSIP). However, though easy to prove existence of the attack, it is harder to prove personal responsibility. To prove personal responsibility, there must be some connection between the acts of the perpetrator and the attack itself. The perpetrator must have some knowledge that the attack is widespread or systematic. “A perpetrator who lacks such knowledge cannot be found criminally responsible for crimes against humanity, although he or she may still be liable for prosecution by national courts for underlying criminal behavior, such as murder” (UNSIP).

King Leopold’s African colony in the Congo gave him access to 1 million square miles and 20 million people he could use for labor. In order to satisfy the demand for rubber Leopold decided to unleash a reign of terror in order to get as much rubber as possible at little or no cost (Peterson). Villagers were flogged publicly, burnt to death and their hands were cut off if they didn’t produce enough rubber. Soldiers were ordered to cut off the hands of all those they killed as proof that they did not waste the ammunition they had been given (Peterson). In fact every soldier was supposed to produce a right hand for every shot fired. African lives were of no value to the Belgians. And, this was all done under the watchful eye of Leopold II.

Although Leopold II never stepped foot onto his African colony, there is no question he knew the happenings and the atrocities committed in the Congo. He was the captain of the operation and the men responsible for these acts of genocide were ordered and reported back to Leopold II. According to Article II of the Convention on the Prevention and Punishment of

Genocide, to be prosecuted the prosecution has to determine intent and determine the line of command that led to the committing of at least one of five specific acts of genocide (UNSIP). First, Leopold's intent to kill is evident in his discussions and orders he sent Henry Morton Stanley, a man hired by Leopold's International African Association (IAA), established in 1876 in Brussels by famous explorers. In talking with his London Minister he states, "I'm sure if I quite openly charged Stanley with the task of taking possession in my name of some part of Africa, the English will stop me... So I think I'll just give Stanley some job of exploration which would offend no one, and will give us the bases and headquarters which we can take over later on" (Hochschild 58). This misleading nature of hiding his real motives at first gives reason to look at further communication between Stanley and King Leopold. The King sent instructions to Stanley to "purchase as much land as you will be able to obtain, and that you should place successively under... suzerainty... as soon as possible and without losing one minute, all the chiefs from the mouth of the Congo to the Stanley falls..." (Hochschild 70). This shows his intent to act through Stanley, to get all the wealth and riches he wanted personally for himself, not for the Belgian people. He also shows intent to commit these acts of genocide when he publically campaigns to discredit any report of wrongdoing. He goes as far to even create a bogus Commission for the Protection of the Natives to root out the "few isolated instances" of abuse (UNSIP).

The second half of Article II is easier to prove. Subsections a) and b) allow for an easy view into the rule of Leopold II and the atrocities he commits. First, though no complete public record exists, the tiniest estimates of those killed during the rule of Leopold are 3 million men, women, and children (Royal Museum of Central Africa). This is no isolated incident but a mass killing. Secondly, even the symbol of Leopold's rule is the schicotte, a whip of raw sun-dried

hippopotamus hide cut into long sharp-edged strips which could quickly remove the skin from a man's back (Royal Museum of Central Africa). There is proof of the King establishing the Force Publique, led by white officers, in contact with the King that were in Congo to enforce the rubber quotas (Vallely). They would, as ordered directly from the King and his chain of command, supervise the burning of non-compliant villages and the torture and rape of those who were struggling to fill quotas (Vallely). These examples of both intent and physical acts of crimes lead to the grounds that the King be tried at the International Criminal Court for the Crime of Genocide (Vallely).

The opposite and slightly easier legal case to prove is for Crime Against Humanity. These crimes, laid out in the Rome Statute, give a broader classification of crimes which persons can be tried upon (Ignatieff). In the Congo, crimes such as murder, enslavement, torture, and other inhumane acts are easier to prove. Similarly to the Crime of Genocide, the proof of personal responsibility and connection between the perpetrator and the attack itself are harder to prove (Ignatieff).

First, murder and torture as explained above were rampant throughout the entire Belgian rule of the Congo. With over 3 million men and the brutality that surrounded the entire rubber harvesting and trade there is enough to convict on the crimes of murder and torture. There was also enslavement and forced labor in Congo. Each community was also told to provide 10 per cent of their number as full-time forced laborers, and another 25 per cent part-time (Vallely). It was a form of slavery. With the overnight boom of rubber popularity, no one owned more land like this than King Leopold II, as rain forests, dotted with wild rubber vines, comprised half of his Congo state (Vallely). This availability was great however there was a new need to have the

most rubber, at the quickest pace, at the cheapest price. And, to do this there needed to be not only fear but also full enslavement. Last, in the category of other inhumane acts, the perpetrators can be prosecuted for causing “serious physical and mental injury, falling short of murder” (Human Rights Watch). This category should be the one the prosecution should emphasize the most because of the horrendous dismemberment that went on during the entire time of the rubber harvesting. The countless amounts of men, women and children’s hands, feet, and other body parts chopped off for the pleasure of the soldiers is easily the worst crime of the Congo (Royal Museum for Central Africa). Not only does it inflict torture and fear into the person and those surrounding him, but it also leaves a lasting impression and scar so to never be able to remove oneself from the residual pain caused by the Belgians.

To prove Crimes Against Humanity, there needs to be proof of the connection between the perpetrator and the acts themselves. This is harder, but yet possible through the direct line of command the King had set up within the state. The king's colonial officials, under his orders quickly set up a brutal but effective system for harvesting wild rubber (Royal Museum of Central Africa). A detachment of soldiers would march into an African village and seize the women as hostages. To secure their wives' release, the men would have to disperse into the rain forest to collect the sap of wild rubber vines. Army officers and colonial officials earned bonuses based on the amount of rubber collected in areas under their control (Royal Museum of Central Africa).

Though the evidence is stacked against Leopold II, there is little the prosecution can do to bring him to trial. First of all, the use of the term ‘genocide’ is debatable because of the lack of clear intentions to destroy a population on nationalistic, ethnic, racial, or religious grounds (Belgian Embassy of London). The fact that neither King Leopold II nor his administrators ever

deliberately ordered the extermination of the Congolese population, especially not anything in writing or preserved as a direct quote. This lack of evidence of his orders and the addition of the Congo administration only in search for local labor for rubber cultivation leads to the instability within the prosecution's argument and the ultimate dropping of the case for cause of lacking legal standing (Belgian Embassy of London). Also, the population drop cannot actually be attributed to anyone because disease and famine were such large players in the high death rate of the population. Disease and famine are not warring tools, there is no legal determination to where these devastating effects originated.

Secondly, there is, in writing orders from Leopold II to Colonel Liebrechts, the last officer for the Congo Free State that states, "These horrors must stop or I will retire Congo. I refuse to let me splash of blood and mud; absolutely must stop all abuses" (Belgian Embassy of London). This order from Leopold II, demonstrates that he wished for all abuses to be stopped. Whether or not this was a false or misleading order can never be known. So, without the knowledge of intent, the judge must side with the words in writing, which state he wanted abuses to stop.

Lastly, in conclusion, with all the horrific abuses and atrocities committed in the time of Belgian rule of the Congo, there is little the international community can do today. The International Criminal Court specifically does not take up cases of atrocities committed in the past so there can be no reparations from the Belgian government to help the Congolese (UNSIIP). However, there have been actions taken by the Belgian government such as the large amount of troops sent to the UN missions in the Congo, aid money to help rebuild the Congo, and international support to help improve the Belgian governmental system.

Bibliography:

Adam Hochschild, "King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa." Houghton Mifflin, Boston; 1998.

Andrew Peterson, "History of the Belgian Congo: Imperialism, Genocide & Atrocities." Teach For America; May 2009.

Belgian Embassy in London, "Congo Under Leopold II." London; 2004.

Charles Chernor Jalloh, "What Makes a Crime Against Humanity a Crime Against Humanity" University of Pittsburg, Pittsburg, PA; 2012, pp 391-428.

Frank Chalk & Kurt Jonassohn, "The Legal Definition of Genocide." Prevent Genocide International, The Hague, Netherland. 2008.

Human Rights Watch, "CRIMES AGAINST HUMANITY Article 5)." *Case Law of the International Criminal Tribunal for the Former Yugoslavia*; Feb. 2004.

Michael Ignatieff, "The Genocide Convention - A Crime against Humanity." RSA Journal, London; 2000, pp 60-65.

International Criminal Law Services. "Genocide." Mansell, London; 1988. pp 1-39.

Paul Vallely. "Forever in chains: The tragic history of Congo." independent.uk.co. London; July 28 2006.

Royal Museum of Central Africa, "Memory of Congo—The Colonial Era, Selection of Exhibition Text." Royal Museum of Central Africa, Tervuren; 2005.

Stefan Geen, "A Trial for Leopold II." Geens.org; September 17, 2004.

United States Institute of Peace (UNSIIP), "Section 1: Genocide, Crimes against Humanity, and War Crimes." Washington DC; 2011.