

## ***Restorative Justice on Trial:* Reconciliation in Kosovo through the Reconstruction of Serbian Orthodox Heritage**

*At the British Academy Postdoctoral Fellowship Symposium on 22 April 2009, Dr Alice Forbess contributed to a discussion on how scholarship can offer perspectives on 'global interactions'. Here she describes how a failure to understand local culture has complicated a well-intentioned initiative aimed at fostering reconciliation in Kosovo.*

Half way through my journey from Belgrade to Kosovo in October 2008, I glimpse the front page of *Kurir*, the Serbian equivalent of the *Sun*: 'War in Kosovo' screams the headline, over a fuzzy picture of men in balaclavas. As our bus nears the border, people grow thoughtful, families with children, friends and strangers huddled in a compact community behind the driver. 'Who do you work for?' asks a gypsy man dressed like an American Indian street fighter, eyeing me suspiciously. I am a social anthropologist, on my way to research how the Serbian and Albanian communities have received an international initiative for reconciliation, through the reconstruction of Serbian monasteries and churches destroyed in Albanian revenge attacks after the 1999 war.

A few months earlier, on an August evening, the Italian soldiers in their bulletproof shack at the gates of Dečani Monastery (in Western Kosovo) had witnessed an unusual spectacle. A gaggle of monks, all over six foot tall, emerged from the courtyard dragging a kicking and screaming monk from Gračanica monastery, lifted him up bodily and threw him in his jeep like a sack of potatoes – screaming that he was barred from entering Dečani. The monk was the favourite adviser of bishop (*Vladika*) Artemije, the leader of the Serbian Orthodox Church in Kosovo, and he had come on an errand to depose vice bishop Teodosije, the leader of Dečani. Granting the world a unique glimpse into the difficulties of his job, *Vladika* Artemije next published a detailed online account of the 'insurrection at Dečani', and an article accusing the Serbian Orthodox Church's Holy Synod (central council) of working for the Americans. At the centre of this conflict was a restorative justice initiative known as the Memorandum of Understanding.

My research focused partly on the two grandest 13th century Serbian royal foundations, Gračanica and Dečani, and their leaders' conflict over the Memorandum. *Vladika* Artemije, the bishop of Kosovo (a prominent diocese with over 1000 monasteries and churches), is a famous reviver of the monastic tradition, who re-populated numerous monasteries abandoned since the 1940s. He came to Gračanica in 2004, forced to abandon his palace in Prizren – later torched and left to smoulder for fifteen days. One of his monks was kidnapped and decapitated, and monastics now travel only under KFOR guard. Gračanica monastery (Figure 1) is at the centre of a cluster of villages



Figure 1. Gračanica. From top to bottom: the monastery; musicians from Macedonia who drive up weekly to play for wedding parties dancing outside the monastery; a godfather tries to offer the soldiers who stand guard at the monastery gates a bottle of rakija (moonshine). Photos: Alice Forbess.

Figure 2. *The monastery at Dečani. Photo: Alice Forbess.*



to which the Pristina Serbs fled after the war. Far from being enclosed, the 'enclave' is crossed by the main thoroughfare to Macedonia with traffic, both Albanian and Serbian, crawling at snail pace past the monastery's gates. Dečani (Figure 2) is contrastingly located in the hostile Dukadjin area, nicknamed Kosovo's Wild West for its gun culture and frequent inter-clan feuds. The KLA's insurrection started here in the 1990s, and in 2006 a young Albanian villager tried to hit the monastery with a rocket propelled grenade from a nearby hill. The monks picked up the unexploded projectile and threw it over the wall. Both monasteries are showcases of Serbian Orthodoxy and maintain close ties with a host of Western diplomats, generals and ministers who guarantee them protection. It must be mentioned that the destruction of shrines was not one-sided: Serbian army and paramilitaries also destroyed numerous mosques in Bosnia and Kosovo. The research reported here focused primarily on the lives of Serbian monastics, but relies also on contacts and friendships within the Albanian community.

The Memorandum, signed in 2005 by a clerical delegation to Washington DC, laid down rules for the reconstruction of some of the 150 or so destroyed churches and monasteries. It was to be funded by the Albanian government in Pristina and supervised by a five-member commission of church and government officials from Pristina and

Belgrade, chaired by a European Union representative. In the wake of the signing, *Vladika* Artemije was persuaded to drop a case brought by his diocese at the International Court of Human Rights in Strasbourg against four NATO nations whose soldiers failed to stop the destruction of churches after the end of the war. In 2008, with the reconstruction almost completed, he raised serious concerns over the quality and safety of the repairs, quoting engineers' reports that some of the rebuilt churches were too dangerous to use (in one case the roof was several tonnes heavier than the original, threatening to collapse the load bearing walls). The issues pointed out by the reports, and the use of Albanian contractors despite reassurances to the contrary, split the Church leadership, with Artemije withdrawing his support, whilst Teodosije and Artemije's superior Metropolitan Amfilohije stood by the initiative – most likely because they knew the monasteries, particularly Dečani, would not be safe without international protection (Figure 3). Artemije also raised the issue of the ownership and future custodianship of the buildings, pointing out that international agencies seemed to be re-framing Serbian patrimony as 'Kosovar' or Byzantine. Despite reassurances to the contrary, he feared Albanian involvement in the reconstruction was a first step towards the incorporation of Serbian Orthodox heritage under the administration of Pristina. The ownership of the sites by the Serbian Orthodox Church is straightforward, but the problem of state jurisdiction remains. Until

2008 the churches were Serbian state patrimony but, being on Kosovo territory, can hardly retain this status. Finally, Artemije argued that the Memorandum glossed over the issue of accountability for the damage. He viewed this initiative as a sort of 'justice lite' which denied the Serbs a chance to have 'real' justice. It was felt that, whilst Serbian war criminals were publicly branded at the International Criminal Tribunal for the former Yugoslavia (ICTY), this standard of justice was not applied across the board – particularly in light of Ramush Haradinaj's acquittal, owing to insufficient evidence after a witness was assassinated. Haradinaj, Kosovo's former prime minister and a KLA leader, was accused of butchering kidnapped Serbs for organs during the Kosovo war (more than a thousand Serbs are still missing), and the evidence against him was compelling enough to be included by the ICTY's chief prosecutor Carla Del Ponte in her autobiography.<sup>1</sup> The Memorandum was equally resented by Albanians, many of whom disagreed with the implied admission of guilt. At kiosks, one could buy academic pamphlets arguing that Kosovo Albanians had a better claim to this territory than the Slavs because they were descendants of the Illyrians, the indigenous population of the region.

### Justice and honour

Restorative justice is an umbrella term referring to alternative practices of conflict resolution. It became popular in the 1990s as an alternative strategy for dealing with juvenile crime, and is being used on an increasingly large scale, particularly in processes of reconciliation and the reconstruction of communities affected by violent conflicts and mass victimisation. Whilst penal justice processes tend to ignore the victim, the aim of restorative justice is to rebuild the social trust and relations destroyed by a crime by bringing together victim, perpetrator, representatives of formal justice institutions and of 'the community'. The focus here is on the idea of social capital, and the strategy is to maintain or restore a generalised reciprocity that guarantees mutual trust and strengthens community life.<sup>2</sup> Dealing with an intractable situation in Kosovo, the European Union is promoting such initiatives, which have much to recommend them. Why then did the Memorandum fail

to achieve the intended results? Succinctly put, my argument is that such initiatives are not applied *in vacuo*. Local forms of customary law and dispute resolution practices are already in place, and ignoring these, and the cultural logics that underlie them, is likely to backfire.

Kosovo Albanians and Serbs are usually portrayed as radically different, and in some ways they are. However, the code of honour associated with traditional clan structures stretching from Bosnia to Albania is mutually intelligible and very important to both. In former Yugoslavia, ethnic identities are complex, and have been changing rapidly since the wars of secession. The story of a mother's vexation at the fact that her three sons declared themselves respectively Serb, Croatian and Montenegrin in the census is not very far-fetched. Many people are of mixed descent and have to choose an identity, whether according to their principles or opportunistically. Currently, the trend is for religious and ethnic identities increasingly to overlap: Catholic Serbs, Orthodox Croats and Orthodox Albanians are disappearing categories.

Territories like Montenegro and Kosovo may seem very distinct, but arguably Montenegro is just as close culturally to Kosovo and Northern Albania as it is to Serbia. Montenegrins are viewed as a sort of 'hyper-Serbs', what Serbs would have been without the Ottoman conquest. Evidence gathered by Edith Durham in 1908 points to the fact that some Albanophone and Serbophone clans from Kosovo, Northern Albania and Montenegro claimed common descent (saying they had come from Bosnia around the time of the Ottoman conquest) and intermarried.<sup>3</sup> Modernisation and socialism have not rendered clan structures redundant, and recent ethnographic evidence shows clans (considering themselves variously as Serbian, Croatian, Montenegrin and Albanian) still exist in Herzegovina,<sup>4</sup> Montenegro, Kosovo and Northern Albania.<sup>5</sup> Even Serbs from Belgrade use clan kinship terms (all members of a patrilineage are referred to as brothers) and can tell clan membership and geographical origins by last names. In all these societies there exist a number of different and sometimes contradictory moral registers, and people navigate these as best they can. However, I would argue that the code of honour tends to assert itself as the



Figure 3. Vladikas [bishops] Amfilohije (of Montenegro) and Artemije, at Vidovdan (the anniversary of the battle of Kosovo), June 2008. Photo: Alice Forbess.



Figure 4. A different perspective on foreign intervention: posters from Peje (Pec), reflecting Kosovo Albanian gratitude towards the United States. Photo: Alice Forbess.

appropriate register for dealing with disputes between different patrilineages or larger groups conceptualised as male brotherhoods – including those between Serbs and Albanians.

The blood revenge, a local form of restorative justice, is still common in Kosovo and Montenegro, but rare among Serbs. Regardless of such variations, these patriarchal populations share strongly-held assumptions concerning the importance of honour, which is essential to a patrilineage's ability to defend itself, intermarry and be treated as equal by other groups. They also share assumptions regarding the legitimate way of settling disputes, through highly formalised negotiations involving family heads and tribal elders (local leaders) and a focus on moral vindication, not property restitution. Honour and shame traditions exist across the globe, but their forms vary widely. For instance, unlike Pakistani 'honour' killings, practices in the former Yugoslavia would never target women (it is considered deeply dishonourable) and indeed forbid targeting a man when accompanied by a woman.

The architects of the Memorandum viewed it as a straightforward show of good will from the Pristina authorities and the international community towards the Serbian community, but in fact it meant a loss of face for both Serbs and Albanians. According to the code of honour, proper restoration has to involve moral vindication as a necessary condition, and material restoration only as a secondary and optional possibility. Whilst many Albanians resent being made to pay for the reconstruction of Serbian buildings which they openly tried to obliterate from the landscape – they are made to reverse actions which they still consider perfectly valid (in light of what the Serbs did to them), for the Serbs having their holy places rebuilt by Albanians amounts to being forced to accept a humiliating handout from an enemy who does not wish to offer it. It underlines their lack of control over their own institutions and heritage, their inability to defend and rebuild their own shrines – the opposite of the restoration of honour. It also engenders deep dissensions within the Church, and between local Serbian communities and Belgrade. The Memorandum is built on an assumption that human beings are pragmatic and act according to some form of rational choice theory, but whilst these actors are indeed perfectly rational, they act within their own cultural logics. Furthermore in the case of local leaders, they must be seen to do so if

their actions are to be perceived as legitimate in their societies. By engaging mainly with governments, the initiative undermined local leaders, including *Vladikas* Artemije and Teodosije, who are in the position to do much more to promote reconciliation and are, in clan terms, the appropriate authorities to help settle disputes (religious leaders have a long history of dispute settlement in the region).

By offering material reparation in the first instance, the Memorandum created a situation where material vindication was seen to displace the moral, the restoration of honour. This is because the things involved here, consecrated shrines and human lives, belong to a different sphere of value than money and material goods. To exchange one for the other is to trade downwards, devaluing it. A tradition of 'blood money' does exist, but only as a last resort. Material reparation is viewed as unsatisfactory compensation for loss of life (or desecration of shrines). People can be persuaded to accept it, but only through delicate negotiations. To maintain their dignity, the parties involved must clearly be seen to condescend to this solution as a sign of good will and not through any constraint. Going over their heads to engage with governments and presenting them with a *fait accompli* made this impossible.

Restorative justice initiatives often rely on Western values and ontological assumptions that may seem opaque to others. For instance, the framing of offence and reparation as individual acts makes sense in the Protestant or Catholic West, where the verbalisation of sins is a well-established technology of the self,<sup>6</sup> but in Kosovo the code of honour assigns responsibility for offense or revenge to entire kin groups. As a result, retribution is often impersonal, revenge being a duty rather than a personal choice. Conversely, responsibility for an individual's crimes also reflects on the whole group. In theory, restorative justice seems an ideal solution for the restoration of social

trust and inter-community co-operation, for delivering reparation to the victim and re-integrating the offender into society, for restoring feelings of safety and co-operation. However, they must work within the framework of local normative repertoires and understandings of community, legitimate authority, appropriate forums and procedures for dispute resolution. As it happens, being outsiders, the internationals are rather well placed to play the mediators in Kosovo, but should be wary of alienating both sides and placing local leaders who are willing to co-operate in a tricky situation.

#### Notes

- 1 C. Del Ponte & C. Sudetic, *Madame Prosecutor: Confrontations with Humanity's Worst Criminals and the Culture of Impunity* (New York: Other Press, 2008).
- 2 J. Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press).
- 3 E. Durham, 'High Albania and its Customs in 1908', *Journal of the Royal Anthropological Institute*, 40 (July-December 1910), 453-72.
- 4 M. Bax, *Medjugorje: Religion, Politics and Violence in Rural Bosnia* (Amsterdam: VU Uitgeverij, 1995).
- 5 M. Mustafa & A. Young, 'Feud narratives: contemporary deployments of kanun in Shala Valley, northern Albania', *Anthropological Notebooks*, 14:2 (2008).
- 6 M. Foucault, *Ethics, Subjectivity and Truth* (New York: The New Press, 1997).

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