

## Reconciliation and the logic of thieves

*The bicycle story at the heart of this article comes out of South Africa, a country that has wrestled with reconciliation problems of its own since apartheid and white minority rule ended in 1994. Anglican minister Mxolisi Mpambani told the story during a panel discussion at the University of Capetown – a discussion partly sponsored by South Africa's Truth and Reconciliation Commission, or TRC. South Africa's TRC is the model for similar projects around the world, including Canada's ongoing TRC on residential schools.*

Imagine that you have a bicycle. You love that bicycle – the basket on the front, the horn that honks when you squeeze it, the streamers on the handlebars. You ride it everywhere, and keep the chain oiled, the tires pumped up and the brakes adjusted. It's never once let you down.

Then one day, you meet a stranger while you're out riding. The stranger seems friendly enough. You were raised to be polite, so you chat with him, but soon you notice the stranger admiring your bike out of the corner of his eye. *That's some bicycle*, he finally says. *What I wouldn't give for a ride on that. Do you mind if I take it out for a spin?*

You're protective of your bike – you don't let just anybody ride it – but it seems rude to say no, so you nod and the stranger hops on and pedals away. You wait and wait, but he never comes back. As the minutes creep by, you start to realize that you've been ripped off.

You're angry, but you don't give up. You post wanted signs, and you ask everyone you know to keep an eye out for the thief. After a long search, you finally track him down, but when you confront him, he punches you in the eye and says that such an awesome bike is wasted on you anyway. *Finders keepers, nyah nyah nyah.*

But the thief is wrong: life just isn't the same without your bike. You also notice that he isn't taking care of it the way you did: the paint is chipping, the tires are bald and the chain you oiled is starting to rust. You start to worry that if you don't get it back soon, it'll be wrecked. So you keep hounding him despite the sneering and black eyes.

At first he just shrugs you off, but over time, your determination wears him down. He starts to feel guilty for stealing your bike and beating you up, and having to repeat the process every day

just makes him feel worse. One morning, you're surprised to see him standing on your doorstep. *What do you want, you say. And where's my bicycle?*

He looks uncomfortable, as if he's not sure what to say. *I've done some things I'm not proud of,* he finally blurts out. *I think it's time to get over this bad blood, so I'm here to make peace.*

*About damn time,* you say. *Now about my bike –*

*Yeah,* he interrupts, *and we have lots of stuff in common, so I see no reason why we can't be friends. I mean, it's like you were saying: we both like bicycles.*

You cut in. *But that's part of the problem. I like my bicycle, and since you stole it, you apparently like my bicycle too. So far, that's not exactly fertile ground for a friendship.*

*Yeah,* he says, looking at his shoelaces. *About that. See, I'm willing to work on our mutual problem, but I can't really give you back the bicycle. I need it to get to work and stuff – you know how it is. But I think we can still settle our differences like reasonable people.*

*Well,* you say, *I don't think we have anything to talk about. The bike's mine and I want it back. When that happens, then we can talk about moving on.*

*Aw, quit living in the past,* he says. *That was months ago. I'm trying to make peace here, but you're being unreasonable.*

You slam the door in his face. But the next morning, there he is again, looking determined.

*I've been thinking about what you said yesterday,* he tells you, *and I'm willing to compromise. I realized that I don't really need the basket or the horn or the streamers, so I figured if I gave you those, we can put all this nastiness behind us. So – are we cool?*

*Hold on,* you say. *What good are those without the bike? You can't ask me to forgive you if you won't give it back.*

This time he just looks angry. *I don't hear you coming up with any solutions,* he says. *With you it's always 'the bike,' 'the bike,' 'the bike.'* Well, *I've tried to be reasonable, but if you want to be stubborn, that's your problem. I've made my proposal, and it's the best you're going to get. Take it or leave it.*

In our bike-stealer's mind, his new reliance on the bike gives him a right to keep it. He even thinks it would be *unfair* to make him give it back. In short, he's trying to have it both ways. He wants to settle the fight, but he's not sorry enough to pay full price. So instead of doing the one thing that would actually end the dispute, he sweet-talks, haggles or threatens – whatever it takes to bring down the cost to him.

This thieves' logic should seem familiar. From fisheries to land claims, it's the same reasoning behind Canadian policies towards indigenous peoples and their traditional territories: keep them talking, and keep bargaining them down. In real-life negotiations between indigenous peoples and Canadian governments, it always comes down to *take it or leave it*, just as it did in the bicycle story.

However, the story isn't necessarily finished. Our bicycle thief has tabled what he says is his final offer. What do you do now? Take the deal and kiss your bike goodbye forever? Try to talk him out of a few more parts? Pressure him to take better care of the bike? Hold out? How will these choices affect the future? Is there even any point in 'negotiating' with a bully, especially one who low-balls?

### **Flavours of reconciliation**

These aren't easy questions to answer, especially if walking away isn't really an option. But if some kind of negotiation is inevitable, it's important to understand the rules that our bike thief is trying to impose. In Canada, the rules go by the name of Reconciliation.

A word of warning: Reconciliation comes in different flavours. Indigenous people usually understand reconciliation in terms of restoring balance through the righting of historical and ongoing wrongs. Reconciliation here requires a process of healing where indigenous and Settler peoples learn to live together peacefully. The bike's original owner spoke up for this approach, which recognizes the importance of restitution – giving the bicycle back.

But strange as it sounds, our bicycle thief proposes two kinds of reconciliation as well. We might call the first one *reconciliation as certainty*. When our thief talks about starting fresh, he's saying that closure – a *final* resolution – matters more than righting every historical wrong. There's a lot to be said for certainty. Uncertainty about the status of traditional lands makes it hard for

indigenous peoples to plan for their futures. It's risky to act when you don't know where you stand. Certainty means security, which most people would agree is worth having.

But our bike story forces us to ask the question: whose security? The bike thief puts his own security first: he wants the argument to end, and he wants your promise not to sneak into his garage and take the bicycle while he sleeps. Out in the real world, the BC Treaty Process follows a similar logic. In offering a new political relationship to indigenous peoples, BC and Canada are trying to wipe the slate clean and escape any further responsibility (or liability). Here, certainty is about negotiating a future in which the past isn't their problem anymore. But as Taiaiake Alfred writes, this approach to certainty puts finality ahead of justice:

it is the particular definition of 'certainty' that is the problem – as is it does not reflect the essence of trust and mutual respect, but instead it is meant to impose legal constraints and artificial limitations on an evolving relationship, capture an historical moment freezing indigenous peoples' dependency in time, and legally enshrine the present subjugation of indigenous nations.<sup>3</sup>

It's not obvious why bike thieves and government treaty negotiators think *reconciliation as certainty* is even worth trying. What good is a final resolution if it's the wrong one, and why would anyone participate in a process designed to make past losses permanent? Here again, the bicycle story provides a clue. For a guy seeking reconciliation, our thief drives an awfully hard bargain. But is he wasting his breath?

Maybe not. By the time he shows up at your doorstep, you've had some time to adjust to life without wheels. The first few times he rings the doorbell, he might not get anywhere, but after a week, or two, you'll get sick of the never-ending visits. If he can convince you you're never getting your bike back, you might finally take his offer to call it even. This possibility points to another version of reconciliation, what legal scholar Mark Walters calls *reconciliation as resignation*: "a one-sided or asymmetrical process in which one adopts an attitude of acceptance about circumstances that are unlikely to change."<sup>4</sup> According to Walters, you can't force

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<sup>3</sup> Taiaiake Alfred, "Deconstructing the British Columbia Treaty Process," *Balayi: Culture Law and Colonialism* 3 (2001): 37-66; 5 on database copy.

<sup>4</sup> Mark D. Walters, "The Jurisprudence of Reconciliation: Aboriginal Rights in Canada," in *The Politics of Reconciliation in Multicultural Societies*, ed. Will Kymlicka and Bashir Bashir (Oxford University Press, 2008), 167.