

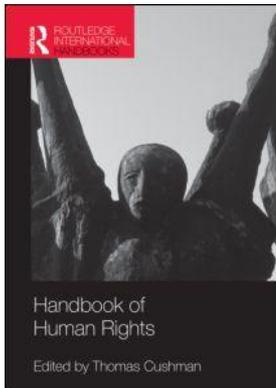
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Thomas Cushman

### **The tension between peace and justice in the age of peace-building**

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Henry F. Carey

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## Part V

# Critical perspectives on human rights organizations, institutions, and practices

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## The tension between peace and justice in the age of peace-building

Henry F. Carey

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A long-established formula holds that there cannot be peace without justice, and no justice without peace. Kenneth Boulding argued that a stable peace is one where the idea of war hardly enters into consciousness, having considered their conceptions of justice (Boulding 1978). In most of the world, where neither peace nor justice is stable, the relationship itself is the subject of politics. The choice of pursuing peace or justice, however really meant by its articulator, will occur in post-conflict situations. Opposition and government leaders, such as former Haitian President Jean Bertrand Aristide, make it a mantra of: “No peace—no justice. No justice—no peace.” He may have meant revenge, in addition to prosecutions and a decent chance for the downtrodden. Judge Richard Goldstone (1995) insisted, “The only way that there can be reconciliation in Rwanda is if there is justice.” He may have meant prosecutions, but also a customary legal system of *gacaca* that is legitimate in Rwandan terms. One of the most renowned legal genocide scholars, M. Cherif Bassiouni, has insisted that peace depends upon justice, particularly in the duty to prosecute genocide in any challenge of transitional justice (Bassiouni 2002).

Of course, it is also possible that insisting on justice is perceived as a threat that might also lead to violent reactions. Pauline Baker (1996) has concluded that those interested in justice fit a different paradigm from those who favor peace, who pragmatically accept that those responsible for violent human rights violations would never agree to stop a conflict if threatened afterwards with prosecution. This is what Huntington called the “torturer’s problem” (Huntington 1992). Justice can be suggested in a variety of ways, from prosecution, which is viewed by some as impractical in some developing countries without institutions or funds. Paul van Zyl appears to have amended an earlier critical position taken against universal prosecutions, at least on a mass basis, which he made in light of his own experience as Executive Director of the South African Truth and Reconciliation Commission. More recently, he commented that prosecution of high-ranking defendants is preferable, in light of the experience extraditing Charles Taylor for trial (Van Zyl 2009). Mark Drumbl (2007) convincingly argues that prosecution is inappropriate given customary law alternatives in traditional societies (including “holistic” approaches).

One alternative formula to reconciling peace and justice is that of Abraham Lincoln, at least in his Second Inaugural Address, where he declared, “With Malice toward none and Charity toward all, we will bind our nation’s wounds.” His was an effort to reconcile the Confederacy to

the Union, in what was only a month before his assassination. He implicitly offered amnesty and reintegration, so long as the Southerners also accepted liberty and equality for all. Lincoln's formulation emphasized and reintroduced into American discourse the philosophy of the preamble to the US Declaration of Independence, as the text was read – as opposed to how it was intended – to join the commitment to union in the Constitution's Preamble. Lincoln's approach balanced union with liberty and forgiveness with justice. Instead of prosecutions for the Southern secession or for war crimes by combatants of both sides, Lincoln insisted on freedom for slaves. He substituted an absolute priority for the constitution in suspending the rule of law, insisting that the country return to its founding principles, which also include the protection of liberty through legal and political means. The way to the rule of law is hardly a neat formula and one whose complexity is founded as much on foundational principles as on strict adherence to procedure. It is a dilemma as well, because attempting to promote the rule of law as part of any peace-building project is not going to be easy to formulate or define, let alone realize. One may not remember that the Versailles Treaty called for prosecutions, but none were seriously undertaken, and the rest, as they say, was history.

Progress remains not only necessary, but also possible, and the great struggles must continue: or so we believe on faith, given the lack of alternatives. This includes our faith in Churchill's dictum that democracy is the worst system, except for all the others that have been tried. Yet, humans and human institutions being fallible, and war inevitable, the struggle for peace and/or justice requires that elites and masses alike overcome fear to practice what they preach, or perhaps think that they have a hope or a theory. Acting is easier said than done. When some of the greatest writers of a generation, Günter Grass and Milan Kundera, informed for the Nazis and the Communists, however innocently, acting out of obligation, fear, and desperation, how much more challenging is it for risk-averse, ordinary people and elites with interests to courageously take chances for peace and justice? Before she joined the George W. Bush administration as National Security Advisor, Condoleezza Rice advocated reading or listening to the views of those with whom you disagree. One can indeed learn from the research and commentary of those of different views. Negotiated peace may not be possible unless the other sides' views are taken seriously. Otherwise, one will be prone to groupthink or stuck in a Kuhnian paradigm, where everyone thinks and talks alike, as everyone goes along in order to get along. Most elites, masses, and non-governmental organizations (NGOs) are as likely to “stick to their own kind” ideologically and technically as government leaders and interest groups.

Resistance to perceived and actual tyranny can be violent and non-violent. Whenever it is violent, the targeted state asserts that the violence is illegal and illegitimate. Philosophers might argue, based on Locke or Marx, that the violent resistance is justified, assuming it is aptly targeted against the illegitimate state and proportionate. However, endorsing resistance to tyranny, even if implied by advocating peace *cum* justice, may not be possible non-violently against warlike regimes and without extraordinary elite and mass courage and vision.

Demands for justice can create conflict that in theory should not be violent, but in practice results in instability. Huntington pointed to the lack of institutions as the culprit (Huntington 1968). Revolutionary theorists blame the structures of injustice. Rational choice theorists look for costs and benefits. Relative deprivation theorists point to rising expectations. Demands for peace, by the same token, range from those who organize pacifist social movements to those who seek conflict situations that are ripe for peaceful negotiation. In spite of instability from the fault lines of civilizations, weak and failing states, natural resource scarcities, zones of ideological, ethnic, and religious extremism, the desire for peace and justice is a permanent feature of contemporary politics. Peace and justice have always been large concerns of the great religions, yet consensus among these religions seems impossible to achieve. Indeed, the very

effort to understand peace and justice seems to be a cause of conflict that in theory should be non-violent, but might, in the case of Huntington's well-circulated "clash of civilizations," prove to be a self-fulfilling prophecy (Huntington 1993).

Pursuing peace and justice may involve dealing with inconsistent logics. These include such things as democratization and nation building and peace through amnesty and accountability. Does the revelation of secret atrocities in Yugoslavia, Northern Ireland, South Africa, and Spain, for example, correlate with reconciliation and peace? Part of the answer would depend on how peace is defined. One would assume so since all have had a limited negative peace. Are the NGO reports, truth commissions, forensic investigations, and judicial investigations the cause? Or have they helped make positive peace less likely? Spain's successful transition from the intense hatred of the civil war did precede the more recent investigations into past Franco era atrocities, such as at the women's prison. Judge Baltazar Garzon, a worldwide human rights hero for his extradition request and indictment of Pinochet, was unable to continue investigations into Franco's crimes against humanity because of another platitude, "Time heals all wounds," which many in Spain did not want reopened in 2008–2009.

### Alternative conceptions of peace

Peace is a relatively modern invention of societies. It is based on the structures, laws, and institutions that manage inevitable *conflict*, and these usually must be developed into a comprehensive "positive peace" over many years (Howard 2001). The greater complexity and relative success of multilateral, peacekeeping missions, along with NGO mediation in Zimbabwe, Nicaragua, Zambia, and South Africa, for example, have given new impetus to political and scholarly efforts to institutionalize peace-building. However, the science of forging a positive peace is not always so clear.

Many opposing ideologues, at least in the era of Obama in the USA, claim the mantle of the president's "favorite" theologian, Christian realist and ex-pacifist Reinhold Niebhuur. Realists and neo-conservatives admire him because he supported US entry into World War II, was a staunch anti-communist, and ultimately embraced the need for US military power. American liberals admire his opposition to the Vietnam War and his warning against the hubris and risks of asserting US power. He initially argued, in the vein of Roman idealists, that efforts to seek peace and justice go together, though he warned that the protagonists should be charitable and forgiving (Niebhuur 1932). Perhaps charity and forgiveness are contraindicated if justice is defined as prosecuting war criminals. However, torturers and murderers, who are potential peace-makers, have also been prosecuted, leading to more durable peace in some cases. Niebhuur (2008) also argued that the USA, in adapting the Machiavellian view of a set of separate public ethics opposed to private ethics, must emerge as corrupt in making it necessary to use power and force against evil in international affairs. Even the democratic socialist, Michael Walzer, in accepting a version of Weber's "Problem of the Dirty Hands," concedes that exceptional situations might require exceptions to either prosecuting or punishing official criminality, where the lives of many can be saved, or at least would be morally justified, even if punishment might be issued (Walzer 2004).

Both the left and the right often adopt self-serving, "ends-justifying the means" rationalizations of overreaching policies that fail to achieve the stated ends and resorting to means that are unethical and illegal, that resort to exceptionalism to conventional public ethics for official actions. Machiavelli might have justified such exceptions, but only if they achieve the bona fide public interest. However, ineffective, unethical, or illegal actions are often undertaken on behalf of both liberal and conservative forms of idealism, leading to myths, denials, and delusions to

justify unsustainable policies. No matter how harmful, cultural exceptionalism in the USA is called “American Exceptionalism” and excuses or ignores inconsistencies with international law and liberal ethics, or even enlightened self-interest. However, versions of peace and justice are immensely complex and contested and the goals and means remain clouded or unexamined in public debates.

Debates within the discipline of peace studies among those generally embracing the concept of the *positive peace* reflect the view that peace without justice, which includes an economic dimension, in addition to human rights and prosecutions, is not a sufficient condition for sustainable or stable peace. Johan Galtung argued that all these conditions are required. Even if peace were defined as a negative peace in the absence of war, it requires that both direct violence and structural violence be absent. The latter is “reproduced in the agricultural, industrial, commercial and administrative sectors of society.” Among these structures are Galtung’s neo-Marxist view that the “way that surplus is extracted from the lower levels and transferred upwards, making the higher levels richer at the expense of the lower levels, producing the famous ‘gaps’ in development (and) often highly differential morbidity and mortality rates between rich and poor nations” (quoted in Claude and Weston 2006, p. 282). Kenneth Boulding, by contrast, argued that justice and development were separate analytic categories. He argued that peace reflected economic factors, which could respond to selfish motives, but also needed to be tempered through altruistic ones. In the three main systems that he analyzed – exchange, threat, and integrative systems – the latter was based on love and courage and needed to overshadow the self-interest and fear that characterize the first two systems. Boulding’s attention to economic realities also led some to view his work as coldly rational while he sought to avoid *naïveté* (Boulding 1963). Galtung, as well as Boulding’s pacifist wife, Elise Boulding, appear to have felt this disagreement profoundly, arguing that peace and justice cannot be segregated.

As *normative* advice, pacifism poses a dilemma because there are no options in the face of violent repressors except resistance and martyrdom. Pacifism only works when the repressing state is unwilling or unable to repress because the reputational costs or the perceptions of legitimacy no longer allow it. It is indeed true that pacifism would be the ideal solution if all key actors could be convinced to cooperate and stop competing for power. Unfortunately, the more likely route to the dilemmas of international or domestic anarchy would be a form of world government achieved not through integration but through conquest and domination by one state. Pacifism is an explanation, but not an answer to the dilemmas of peace-building – at least not until a bottom-up process can change minds and create a culture of peace, if not a culture of justice and human rights as well.

## The emergence of peace-building

The contemporary theory of peace-building, by contrast, holds out the theory of positive peace, where pursuing peace requires justice, whether defined institutionally as due process prosecutions of criminals or human rights protection as the overall pattern of state–society relations. The notion that human rights were necessary for the maintenance of international peace was a fundamental principle behind the founding of the United Nations. The connection of peace to justice, based on human rights, is also at the heart of theory of peace-building over the long run. This foundation is rooted as much in civil and political rights as in economic, social, and cultural rights. Peace-building fundamentally presumes and attempts the positive peace: the attempt to build systems, both international and domestic, to protect human rights. It assumes that peace comes through justice, largely defined as minimum protection of civil liberties and political democratic rights, if not basic economic, social, and cultural rights. The peace-building project attempts to assert especially negative rights immediately, since all a state has to do is to halt

repression, while building positive rights is a process that occurs over time. The human rights revolution was fundamentally built by NGOs, which began to emerge strongly in the 1970s. Relatively small groups with relatively small amounts of financial resources could document abuses and contradict government denial of human rights abuses. The problem is that in many cases, NGO monitoring of human rights does not lead to peace over the short run. Sometimes, though the evidence is somewhat ambiguous, peace can be fostered, such as in the notorious phrase of former Senator Daniel Patrick Moynihan, by “benign neglect” (Clymer 2003). In the case of the East Asian newly industrialized countries (NICs) and most recently in China, there is a correlation between repression, economic growth, and long-term improvement of human rights. Of course, there are many other examples of repression of human rights correlated with economic stagnation or decline and further deterioration of human rights. By the same token, Andrew Moravcsik (2005) and others have argued that regime liberalization, which is intended to reduce human rights violations by opening space for civil society and the market, is paradoxically likely to increase the number of human rights violations. This increase results either because reform is inherently destabilizing to an established order or because more liberal regimes in transition commit more violations to repress opposition. Whether or not these empirical relationships hold in peace-building situations, in the interests of simplicity and justice, peace-building rightly focuses on human rights improvement, even where states regard the NGO efforts as dangerous or subversive.

The UN developed Secretary General Boutros-Ghali’s 1993 *Agenda for Peace*, a plan for reconciling peace and justice, as well as working to reduce the frequency and severity of war. Based on earlier concepts of peacekeeping, peace-making, and preventive diplomacy, the *Agenda for Peace* argued for policies, structures, and programs of *post-conflict peace-building* (with the hyphen initially spelled in both words), as “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict.” Peace-building is efforts among two or more states, the then Secretary General declared, that are mutually beneficial, designed to prevent the recurrence of crises, through sustained cooperation to address economic, social, cultural, and humanitarian problems (Boutros-Ghali 1993, Section II, para.21 and para.VI, paras. 55–59). It is noteworthy that the Secretary General envisioned peace-making and peacekeeping to address primarily political projects, such as election monitoring, government institutional reform, and human rights protection. While this sequencing made theoretical sense, it became clear that political problems could not possibly be resolved during peace-making and peacekeeping stages any more than economic, social, cultural, and humanitarian problems could be delayed until the end of peace-making and peacekeeping.

## Defining peace-building

What type of peace is a part of peace-building? Peace studies assume that peace is a paradigm that has been achieved in the past and therefore is achievable in the future, and have developed the notion of a positive peace. A negative peace is simply the absence of war and violence and may include things like non-armed conflict and instabilities; a positive peace is the notion that to have sustainable peace you need sustainable democratization, economic development, rule of law, and a process of accountability for national memory, which would include some sort of truth and reconciliation commission or other institutions to address the past. Positive peace as a goal implies coincidental multitasking among the aforementioned processes. The positive peace approach in practice means you need to try and accomplish as many of these things as necessary at once because it is difficult to secure agreement on the sequence of these processes and with a number of NGOs involved to prioritize or decide on a sequence of events.

When one thinks of the peace-building rhetoric, the aphorisms all ring true. “One must never stop trying.” “Everyone has a peace-building task.” “We had thought that the debate over tradeoffs between peace and justice was finally over since it has been used by the culprits to blackmail perpetrators.” “The threats of prosecution bring peace-makers to the table rather than chase them away.” Such statements are empirically testable. It is possible to argue that one does not lose by trying to engage an enemy in a post-accord peace-building effort (Barnes 2005, pp. 7–27). After all, there are precedents for negotiating with the devil or enemy, despite the political heat that Barack Obama received in the summer of 2007 for asserting such. Yet, the USA has negotiated with Arafat, Kaddafi, the Soviets, and even Saddam; because there was a mutual interest in moving out of trouble to make a peace, on which peace could be built. It is difficult to know when such efforts are born of necessity with the possibility that both partners will want to dance with each other, and when such overtures amount to fantasy, and a dangerous fantasy at that. Yet, even when dealing with diamond- or oil-smuggling bandits who are leading rogue regimes, it may be possible to make peace. The wealth that they obtain through artificially inflated prices is caused by shortages born of war and cartels enforced at gunpoint. It is sometimes abetted by embargoes with the perverse incentives of making the rogue leaders even wealthier. Yet, such rogue leaders might, for example, want to take their money and run, rather than eventually face armed intervention to overthrow and punish them.

In UN parlance, peace-building refers to formal peace missions. The academic definitions tend to be broader, referring not only to formal and informal efforts to sustain peace, but also to efforts by parties to facilitate conditions that indirectly make peace more likely. The first, more narrow definition, places the focus on what the UN, states, and NGOs do to form and consolidate peace agreements over time. The second, broader definition also examines structural conditions in justice and the economy, as well as the interactions of societies that were formally at war. The difficulty with the first definition is its concern with peace as the absence of war. The difficulty with the second definition is that it considers so many factors that are often beyond the control or efforts of the participants. In terms of significance, the direct conditions in the first concept would appear to be more salient, if incomplete. Yet, even here, shortcomings in formal institutions may not depict the whole story.

Democracy, as the essence of the peace-building project, combines what Sartori called “peace-like politics” (Sartori 1987) with the protection of human rights. In other words, democracy combines the rule of law with limited majority rule, checked by anti-majoritarian (i.e., anti-democratic) checks like judicial protection of rights, separation of powers with checks and balances, and bicameralism. Several books have warned against democracy promotion in unready regimes. Fareed Zakaria (2007) has warned that democracy instituted by elections puts the cart before the horse of checks and balances in democratic governance. Instead of democracy leading to freedom, freedom is reduced unless democracy is defined as including the checks and balances being established before regimes are declared as democracies. Even more problematic, argues Amy Chua, is the export of globalized markets based on majority rule, which leads to extreme violence against economically dominant minorities (Chua 2003). Of course, the greatest danger from democratic-capitalism promotion is terrorism, a low-probability, catastrophic event. The more probable scenario from peace-building is likely to continue to be that too much democracy too soon proves to be anti-democratic in practice.

Alternative interpretations of peace and justice in democratic transitions abound. Some scholars such as Huntington argue that the most stable transitions – i.e., those that achieve peace, even if the regime is not peace-like or law-like – are top-down transitions controlled by the military or former elites, where space for opposition, press reporting, and NGO mobilization expand at a reasonable pace over time (Huntington 1992, ch.1). Critics like Stepan note that such

a transition protects the military's interest in surviving as an institution, defeating all guerrilla, terrorist, and radical ideas, preserving its military prerogatives and creating new ones in intelligence agencies, limiting human rights accountability (Stepan 1989). Still others maintain that the evil military dictatorship, which began the wave of authoritarian regime changes in Latin America, was only overcome by an awakening of civil society that effectively conquered the authoritarian state (Stepan 1987), which saw that the costs of repression exceeded the benefits (Dahl 1971). It is clear that the paths to democratization and peace can be many, and it is quite difficult, just thinking of democratization, to think of many generalizable policies fitting the different contexts. The question is whether NGOs can adjust to the particular tasks that vary from societal takeover of a state on the one hand versus a top-down transition led by authoritarian forces in the military, intelligence agencies, and/or business or populist elites on the other.

Democracy alone cannot ensure a sustainable peace. Economic considerations must be addressed simultaneously with the democratization process. Resources must be available, most likely provided by donors through NGOs, to assist in the overall transition period with the provision of goods and services and in order to stimulate the economy (Hamre and Sullivan 2002, pp. 85–96). The provision of food is essential in preventing resurgence of violence. As de Montclos explains, “war and famine are related in two ways: as war provokes famine, famine also incites conflict” (De Montclos 2001, pp. 95–100). Resources are also important in helping aid the transition from combatants to civilian workers, which is crucial for security purposes (Rotberg and Albaugh 1999, p. 87). Economic progress, or lack thereof, can hinder the democratization process greatly. As Ho-Won explains, economic instability is one of the main obstacles to democracy. In particular, peace would not be durable without equitable development that benefits the majority of people in the society combined with income-creating opportunities for the poor. Thus, development activities need to be geared toward mitigating economic hardships and reintegrating the society across ethnic, racial, religious, and other divisions (Ho-Won 2005, p. 124). In order to ensure democratic achievements, economic considerations must be included in the peace-building process. These processes must all be implemented simultaneously in order for a peace agreement to succeed, and in order to prevent governments and rebels from manipulating NGOs.

## The record in peace-building

The record of a few cases exemplifies the limitations of peace-building. El Salvador is characterized by a situation of *negative peace*, though some functional parliamentary institutions and reformed military institutions were generated. Bosnia is a *negative peace* ensured by the presence of initially NATO and the UN forces, and now EU police as peacekeeping forces. Bosnia has received far more resources, some of which were stolen by armed forces in certain parts of the country. Then there is Haiti, which has had two peace missions, beginning in 1994 and then in 2004. In recent years, since the election of René Prével and the demobilization of many gangs, there has been a negative peace, reliant on the UN Stabilization Mission in Haiti (MINUSTAH). Despite devastating tropical storms and the unprecedented earthquake on January 12, 2010, persistent poverty, poorly trained troops, electoral fraud, and corruption, Haiti is moving forward, even though insecurity and economic problems would likely worsen quickly when and if the UN withdraws. Even if one spends enough money and puts enough troops on the ground, one may not have self-sustaining institutions and NGOs, which are the rudimentary requirements for a positive peace. Clearly, Haiti has a parallel state of NGOs that feed the population but have not led to self-sustaining institutions and economic growth. NGOs from abroad or financed from abroad will achieve certain tasks, but what has been proven

is that outsiders can “stage” or at least affect the activities that normally would be coordinated by a domestic government.

There are many failing or failed states in the world, but few get significant attention and the resources that the theory of a positive peace would require. It is clear that US attention to peace-building, or support for a UN mission to do the same, occurs most often and in largest measure in those states where the USA has concerns and interests. In contemporary terms, those states with terrorist threats, such as Haiti, Afghanistan, Pakistan, and Yemen, are those cited as failed states that require significant support from donor conferences and peace missions. Countries such as Somalia and Sudan also receive attention, but less of a rhetorical or financial commitment. Failed states in Central Asia and most of Africa rarely are singled out for efforts to build a positive peace, and in many cases, even an explicit effort to establish and maintain a negative peace. Furthermore, in those states that do receive UN, US, or Western attention for peace-building, the entire domain of activities managed by the USA, largely on its own terms, include law enforcement, diplomatic, military, and economic efforts, as well as covert actions that become part of orchestrated efforts in positive peace-building.

### **Transitional justice and peace**

Post-conflict or transitional justice present ubiquitous and continuous dilemmas for democratization. Democratization requires the need to reconcile the desire for justice and peace, which are arguably contradictory, and closure and the need to maintain memory of atrocity, which are also contradictory. Some alternatives to prosecution, particularly truth commissions or traditional justice systems, could also offer roles for NGOs to adduce evidence of wrongdoing. However, advocating these options, or even advocating amnesties, pardons, or inaction, may incite opposition from international NGOs asserting that crimes against humanity must be prosecuted as international crimes with universal jurisdiction and without any statute of limitations. The dilemma is whether to disrupt the pursuit of peace by insisting on the prosecution of injustices.

Just because there is a supposed tradeoff between peace and justice or human rights does not always make it so. For example, it had been predicted that the International Criminal Tribunal for the former Yugoslavia (ICTY) and indictments of key leaders would make it impossible to establish peace on the ground in Bosnia. However, only months after that ad hoc tribunal was operating, a peace agreement was negotiated at Dayton in November 1995. Clearly, the power situation on the ground was much more important than the effects of an international tribunal. On that footing, Human Rights Watch has argued vociferously on behalf of the arrest warrant to promote the rule of law, human rights, and justice, and the ultimate indictment and prosecution of the President and other officials in Sudan. When the International Criminal Court (ICC) Prosecutor Luis Moreno O’Campo issued an arrest warrant on July 14, 2008, there were many fears that the dilemma of peace versus justice would arise. The threat is that extremists will take over from both sides. Many also feared that government security forces would threaten those who might celebrate the decision, such as refugees, whether or not the decision was actually carried out. The peace negotiations on Darfur have been led by the United States and the UN Security Council. As a legal matter, these issues are also determined by these foreign actors, as well as those elites on the ground. NGOs are merely advocates for positions.

Perceptions that reform is desirable are sometimes based on inappropriate Western constructs or ideals. While African NGOs have certainly called attention to legal and other human rights abuses, they do not yet have the capability to press for prosecutions in regimes that do not prosecute themselves. Patrimonialism inhibits the autonomous development of such institutions. South Africa is quite different, enjoying NGOs that helped establish and implement its Truth

and Reconciliation Commission. Its civil society is developed enough to examine its past and has begun prosecuting those, such as the architect of biological warfare against civilians, Wouter Basson, who refused to testify about their crimes. Weaker African NGOs, such as in Rwanda (and others of the poorest countries), have had no truth commissions.

The belief that there is “no reconciliation without penitence,” that the “truth will set you free,” that sanctions must be placed on all violent regimes (even if the poor society is victimized and the ruling elites exploit scarcities), or there can be “no peace without justice” (as opposed to those who see a tradeoff between peace and justice) are all conventional platitudes based on the assumption that peace-building cannot proceed without confronting a painful past. It is politically incorrect, but the reality, based on simple empirical evaluation, suggests a more conflicted and complicated picture. Demanding apologies, asserting the truth, and pressing for prosecution can all have unintended consequences, often the opposite of those intended.

The desire for peace can be quixotic, where states, NGOs, and intergovernmental organizations (IGOs) cannot agree on what kind of peace is appropriate. Moreover, the means of effecting, maintaining, and building peace is fraught with conflicting incentives, interests, and definitions. While pursuing one version of peace and justice can be the basis for consensus, the means can reduce the chances for peace, indeed, may require, in the absence of other alternatives, that oxymoron, peace enforcement, by paradoxically “bombing for peace.” If the “nature of the beast” is perceived as a choice between utopias and dystopias, which produce contradictory interpretations of reality and alternative realities, then peace-building is doomed to fail. These competing realities increase the perceived stakes because alternative governing visions and administrations often seek to change everything that the other side advocates and believes.

The choice between justice and peace is a false one. Many societies are simply unable to protect human rights or prosecute violations of human rights. The best solution that has emerged is truth commissions, with all of their imperfections (Hayner 2002). They may not achieve the truth, or when they approach it, they may open, rather than heal, old wounds. Forgiving the unforgivable is often too much for those who live in post-conflict societies. For peace-building to optimize peace and justice, in their multitudinous manifestations, the struggle to build the rule of law, substantively based on human rights, must be allowed to evolve over the life cycle of institution-building. This will require patience, but also an eye toward identifying and eliminating the worst forms of human rights abuse. There will be disagreements, often profound, on what those institutions should look like and how different values can be compromised.

Where a consensus is needed is that human rights NGOs continue improving the objectivity and sophistication of their analysis. While the challenges are broader than can be discussed in this chapter, maintaining quality standards in documenting human rights violations remains the single most important way to reconcile the tensions between peace and justice. Neither value is sacrosanct, but getting the facts right is the best place to start to increase the pressure on a humane order. Aside from the difficulty in maintaining credibility, reliability, and truthfulness, the presentation of findings must be relevant and simple enough to understand. Often, the authors of violations are known or suspected with very high degrees of confidence. The temptation is to make accusations that cannot be proven with documentation. Cases against suspected criminals are often circumstantial, which is necessarily complex and often subjective. It is very difficult to explain why it is often believed that someone with the motive for killing or torturing someone also ordered the acts. The standards of suspicion are rarely acceptable as sufficient to corroborate an assertion of guilt. Beyond specific actions, systematic patterns of gross human rights violations should be documented where possible and presented in systematic fashion. Statistics on victims alone might suffice in deterring or at least identifying repeated patterns of unlawful decisions and actions of one side against another. Comparisons over time and space can be made about victims,

classified by age, gender, ethnicity, region, and timing. Alas, the more complex the interpretation, the more the conclusions can be deliberately or accidentally misinterpreted or be contested as spurious or biased. This will be a muddling-through process toward decent reporting of the incident. In the end, the effort to reconcile peace and justice can be ultimately achieved, but not solved, at least not without some structural changes that lower the stakes involved in the post-conflict pursuit of justice. The best structural solution is to think that enemies are no longer enemies. Pursuing justice is one way to transform the “other.” The dilemma is that it can also lead to the unanticipated consequences which serve neither peace nor justice. Smaller steps where consensus appears possible are most likely to be effective in mitigating conflict.

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