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*THE ETHICS OF ADVICE:  
CONFLICT MANAGEMENT  
VS. HUMAN RIGHTS  
IN ENDING CIVIL WARS*

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### ***Abstract***

The theory of transitional justice, usually either war crimes tribunals and/or truth commissions, rests on the assumption that after internal conflict societies must learn and accept the truth of what sort of violence has occurred in order to build a functioning, united society and that any solution which omits such policies should be rejected. There is no empirical support for this assumption. Moreover, acting on it often implies that civil war should be continued. Conflict resolution theory asserts that all major players, including those who have committed atrocities, must be involved in the settlement if it is to be stable. This is not likely to happen unless some people are promised amnesty. Despite its drawbacks, this seems a more appropriate strategy, especially when dealing with someone else's country and war.

People interested in conflict management (conventionally misnamed conflict resolution) and human rights have traditionally regarded themselves as allies in a not always friendly world. They share a common concern for improving the welfare of people (it seems plausible that human rights suffer in war and that conflict management is easier when human rights are respected) and a common intellectual-policy adversary (the realist, nationalist view that both are at best distractions and at worst impediments to achieving the national interest). Indeed their memberships overlap a good deal.

But increasingly there is intellectual and ethical tension between these two strands of thought. Ironically it has developed because of their success. In both intellectual and policy terms, conflict management and human rights have become more important in recent years. We can argue about whether this is a long-term change or simply the result of the ending of the Cold War, but the evidence seems clear that wars are increasingly ending in negotiated settlements rather than military victories (Fortna 2007). Academics find the study of conflict management and human rights both more attractive and more professionally rewarding. Non-governmental organizations are formed or strengthened to advocate and take action on these ideas in international affairs. Governments increasingly find themselves forced to engage the issues and more willing to at least listen to ideas from the outside. What was once an academic exercise has increasingly become an enterprise which has real impact on people's lives. As a result, ethical issues have become more important.

In the process of translating theory into action, some problems have arisen, particularly in the debate over how to respond to civil wars around the world. These days third party groups of all sorts are deeply involved in attempts to end such violence. Much of this activity has centered on the attempt to end civil wars with negotiated settlements rather than military victories. Both outside involvement and negotiated settlements of civil wars are relatively new. When the Colombian civil war ended in 1957, for

example, there was practically no outside involvement in the settlement process (Hartlyn 1993, 48); today all sorts of actors, from individuals to NGOs to states to international organizations, would have attempted to participate.

These actors overwhelmingly focus on stopping the killing as soon as possible. In part as a result of their activities, civil wars are increasingly likely to end in negotiated settlements, although military victories remain a real possibility. Almost by definition, negotiated settlements involve some sort of power sharing arrangements among the participants.

However, conflict management and human rights increasingly suggest different prescriptions for such arrangements. The argument centers around issues such as (1) should human rights violators be allowed to participate in the negotiations and resulting settlement, (2) should agreements to end the war which do not materially strengthen human rights be opposed by outsiders if the locals approve them, and (3) should agreements to end the war which do not provide for some form of "transitional justice" (war crimes trials, truth commissions, etc.) be acceptable to outsiders if locals support them? To show my cards early, I am on the conflict management side in these issues; I see human rights as a means to the goal of ending war, not a goal in themselves or at least less important as a goal than ending war.

...the functional dependence of human rights protection on the absence of war means it is unreasonable to demand, as many from the international human rights movement voice, that when human rights and political expediency require different courses of action, human rights considerations should be automatically accorded precedence. (Putnam 2002, 240)

The human rights perspective holds that civil war settlements without human rights provisions are flawed because such settlements will not last and will simply result in delaying rather than ending the violence. Thus combatants should be strongly pressured to include them in the settlement. The extreme position is that agreements without such provisions should be rejected, even at the cost of continued civil war.

The conflict management perspective holds that the goal is to end the violence as quickly and with as few casualties as possible, with “justice” if possible, without it if necessary. This means negotiations with people and organizations with blood on their hands, not because we approve of them but because they often have the power to continue the war. It may be appropriate to accede to their demands (which will certainly include amnesty and may well include future restrictions on human rights) if this is the only way to end the fighting, with the hope that, after the violence ends, progress on these other issues may be made. (Perhaps the best summary of this argument is Baker 2001.)

The human rights perspective assumes that a set of empirical claims are correct: that negotiations that leave out human rights violators, civil war settlements that do not increase human rights (in practice often meaning creating more democratic governments), and settlements that do not hold past violators of human rights to account are more likely to fail than settlements that do these things. However, there is very little evidence that these things are true.

These are empirical questions, and we have the usual problems of applied social science in international affairs: unclear concepts, poor information, few cases, and confounding factors of various sorts making systematic comparison difficult. Unfortunately events will not wait until we resolve these problems. But there is mounting evidence that the assumptions are incorrect.

(1) Can settlements be successful if human rights violators are excluded from the negotiations? Human rights advocates oppose the inclusion of such individuals and groups because if they are included in the negotiations, they will almost certainly get favorable consideration in the settlement. This assumption seems both empirically correct and normatively undesirable.

But one of the basic rules of conflict management is to include as many powerful players as possible in the settlement, even if some of them are human rights violators (Cohen 2000, 13-14). It may be easier and more pleasant to exclude such actors, but the result is likely to be a short-lived settlement since those who are not involved in the settlement usually have no reason to support it. Excluding powerful

people from negotiations because you don't like them is akin to the drunk who loses his keys in the dark but looks for them under the lamppost because the light is better there. Thus Richard Holbrooke felt it necessary to negotiate with Milosevic at Rambouillet and Dayton, not because he approved of his policies, but because without his agreement there could be no peace settlement. Holbrooke believed that the alternative was not peace with him or peace without him; it was peace with him or continued war. Similar controversy raged over the inclusion of RENAMO in the Mozambique negotiations (Cohen 2000, 182) and the Khmer Rouge in Cambodia. Jimmy Carter's reputation as a human rights advocate would seem secure, but he was criticized for giving overly generous terms to the former military dictator in return for a peaceful power transition (Baker 2001, 757). Of course the assumption here is that such involvement is necessary for peace to occur; in many cases (such as Foday Sankoh's involvement in the Sierra Leone settlement), this is controversial and may well not be true (Baker 2001, 758-759; Crocker 2002).

Moreover, such efforts do not always lead to a settlement, as in the U.S. negotiations with Sudan which were derailed by the Gulf War (Cohen 2000, 67-75) or with Milosevic over Kosovo (Baker 2001, 758). We also know that a substantial number of civil war settlements wars fail; Hartzell, Hoddie, and Rothchild (2001, 195) say 37%; Walter (2002, 15) says almost half. However, without a settlement, the war will presumably continue until one side wins. Delaying a settlement almost certainly means more casualties.

(2) Are civil war settlements that include provisions that increase human rights more stable than those that do not? As far as I know, there is no quantitative study on this topic. We can break it down into several different issues: are these issues likely to be included in settlements, does such inclusion make it more likely that human rights issues will be observed during the transition period from war to the formation of a new government, does such inclusion make it more likely that they will be included in the subsequent constitutions, does this in turn make it more likely that they will be observed in the subsequent state, and

does this make renewed civil war less likely. This is a fairly complex causal chain, and some tentative evidence suggests that these relationships are not simple and straightforward.

Hilary Putnam surveys recent civil war settlements and concludes that few of them include explicit human rights provisions. However, she notes that if international organizations are involved in implementing the agreements, they almost always bring human rights concerns to the area, regardless of the terms of the agreement. She cites Namibia, Mozambique, and Lebanon as settlements without a human rights component but where in practice human rights have improved substantially.

When she looks at constitutions as opposed to settlements, every new constitution in her sample included significant human rights provisions, regardless of whether they had been included in the settlement. However, these provisions were not always observed afterward by the successor government (Putnam 2002, 246-248). Thus their inclusion in the settlement seems to have no connection with whether they will be implemented, even assuming that implementation would make renewed civil war less likely.

A specific case concerns the decision of the Bosnian government to reject the agreement negotiated on September 21, 1993. An anonymous author argues that it was clear that the West was not prepared to intervene militarily to alter the situation on the ground, that this agreement was the best that could be obtained, that it was rejected in part because of the advice of critics who felt it violated human rights and rewarded aggression (which it clearly did), and that the final outcome at Dayton a year and a half later was actually somewhat less favorable to the Bosnians.

What had the critics done between 1993 and 1995: Had they prolonged the war and multiplied the deaths? Are their victories to be found in the graveyards of Bosnia? What lessons should the human rights community learn from this sorry tale?...Thousands of people are dead who should have been alive—because moralists were in quest of the perfect peace (Anonymous 1996, 253 and 257)

Two passionate responses to this article (Boyle 1996 and Gaer 1996) argue that Western governments bear the primary responsibility because of their unwillingness to intervene. This is undoubtedly true. However, they both evade the question of what should outsiders do in such a situation, whether it is

appropriate to reject an unjust peace if no other peace is available. Should outsiders oppose such a settlement only if they expect a better one to result later (as did not happen in Bosnia), and if so how should such predictions be made?

In practice, supporting human rights often translates into encouraging democracy in postwar governments, which is clearly a goal of many in the “international community.” Two problems with this overly simple formulation should be noted. Democracy may not be synonymous with human rights:

...in the short run—where most governments actually live—democracy and human rights often conflict, and popular sovereignty for a majority is often achieved at the cost of ethnic cleansing for a minority. (Ignatieff 2001, 25; cf. Baker 2001, 754)

The extreme case is probably Rwanda, where a minority Tutsi government keeps control with the support of much of the “international community” because of fear that democratic elections would bring Hutus back into power, restarting the 1994 genocide. As Baker (2001, 754) notes, “(h)istory abounds with examples of the oppressed becoming the oppressors.”

The argument also assumes that the institutions specified in the settlement will be permanent. However, this is often not true. Sometimes the institutions collapse because of inadequate support. In other cases it is useful to change them in the longer run as the tensions of the war decline and efficiency becomes more important than representation and veto powers (the shift from the Articles of Confederation to the Constitution in the United States is instructive).

Leaving these issues aside, what happens when democratic institutions are in fact installed in post-civil war governments? Despite the general enthusiasm for this strategy, a controversy remains. On the one hand we have a new but impressive statistical analysis arguing that democratic post-settlement governments do reduce the likelihood of renewed civil war substantially (Dubey 2002a, 20-21; Dubey 2002b). On the other hand, we have a substantial literature on democracy and violence, showing very persuasively that violence is least likely in strong democracies and strong autocracies and most likely precisely in those countries moving from one form to another, regardless of direction (Mansfield and

Snyder, 1995a and 1995b; Lake and Rothchild 1998, 345; Hegre et. al. 2001; Gurr 2000, 81-87). Ted Gurr contends that state failure is 3.4 times more common among what he calls partial democracies than autocracies and a full 11 times more common in Africa (Gurr *et. al.* 1999, 12-14). Of course, these studies are not quite to the point, since we are interested in democratic governments after civil wars, where the environment is considerably more demanding than after less violent democratic transition, presumably making its success substantially less likely still. For what it's worth, my own incomplete study (2001) finds it difficult to uncover the links assumed between post-conflict democracy and less likelihood of renewed civil war. Nonetheless the Dubey findings, which address the issue most directly, suggest that this part of the human rights argument has substantial weight.

In any case, of course, we can still make the argument that encouraging democracy may produce violence in the short run but that in the long run, if stable democracy can be attained, the violence will subside. Unfortunately the long run may be very long indeed for countries engaged in civil war, many of whom seemed unlikely to attain stable democracy even without internal violence. This does not strike me as an attractive prescription. If we are advocating policy because of it, we at least should make it clear to the locals whose lives will be directly affected by it and who will presumably have to make the ultimate choice.

...often a state that abuses human rights remains a better option for its citizens and for the rest of us than an anarchy or collapse into long-term civil war. (Appiah 2001, 101)

(3) Are settlements that provide for "transitional justice" more stable than those that do not? To put it simply, there is absolutely no evidence that this is true, since we have basically no historic examples to draw on. (More detailed and sophisticated critiques of the arguments for "truth telling" are in Mendeloff 2004 and Pupavac 2002.) Such provisions have not been included in negotiated settlements to civil wars (which have themselves been fairly scarce) until the past few years. Interestingly we have somewhat more

evidence of a related topic, the utility of apology, in interstate relations (Barkan 2000; Feldman 1984; Wolffsohn 1993; Lavy 1996; Lind 2003a and 2003b; Berger 2003)

The arguments in favor of war crimes tribunals and truth commissions are psychological, that the victims (and perhaps the perpetrators) will be more able to accept the past and work together in the future if guilt is acknowledged and compensation of some sort is offered. The theory is not implausible, but it is drawn from ideas that have been applied with somewhat mixed success to individuals in Western cultures. (At least in my family, at holidays some subjects are "forgotten" for the sake of harmony.) And Western psychology usually would not simply ask people in grief to tell their story once in public and then go away, which is what truth commissions usually do; it would recommend a more gradual process, followed by support of various types.

There has been no study to date of the psychological impact of truth commissions on survivors, but the evidence that is available is enough to raise some serious questions....The assumption that knowing the facts about what happened will always contribute to healing is too simplistic, and is sometimes just not true (Hayner 2001, 135 and 142; cf. Minow 1998, 70-74 ; Mendeloff 2004; Pupavac 2002).

At another level, it is not at all clear that such strategies can successfully be applied to entire societies in very different cultures. Forgetting may be more important than remembering in such circumstances. Rudolph Bell (1994) has looked at how people in the same Croatian village who fought one another during World War II have managed to live together, even though they know who did what to whom, when conflict will collapse the village's entire social and economic system. He finds that they cooperate and don't talk about it, and he notes that none of the towns planned celebrations of the fiftieth anniversary of the end of World War II.

It is probably not coincidental that there are very few public memorials to civil wars around the world. (The U.S. is a conspicuous exception; for a comparison of the memories of the American and Nigerian civil wars, see Licklider 1995b.) A Colombian friend of mine says the Colombian civil war was not taught in schools. Mozambique is a particularly striking example.

There has been almost no focus in Mozambique on accountability for past crimes. In a country where some one million civilians were killed, thousands tortured, and some of the most gruesome acts of mutilation and barbarism documented, there have been virtually no calls on the national level for justice, accountability, punishment, or banishment from public office—which is where many of those responsible for orchestrating past crimes now sit, in Parliament or in the armed forces (Hayner 2001, 187).

The strategy in Mozambique was not simply silence; the widespread use of traditional healing ceremonies was apparently instrumental (Hayner 2001, 192-194). But it also involved a rejection of Western notions of “transitional justice.”

It is perfectly plausible that “transitional justice” may increase tensions among groups who have recently been at war with one another. In fact I deliberately put “justice” in quotation marks in this context because, after the deep divisions of civil war, no one version of justice is likely to be accepted by all. The trial of Milosevic in The Hague, for example, may have encouraged reconciliation among the peoples of Former Yugoslavia, but it may also have inscribed old hatreds and grudges deeper into the national memory. Outside observers remain dubious about the impact on reconciliation of the special tribunal for Rwanda in Arusha (Alvarez 1999, 469-470). We simply don't know.

Of course we do have some indirect evidence. If transitional justice is necessary for reconciliation, then presumably no prior civil wars has ever ended since “transitional justice” institutions have not been built into their settlements. In fact this is not true; most civil wars do end and are not resumed (Licklider 1995a, 683-684). That is not to say that the conflicts which “caused” the war have been solved, but people all over the world for hundreds of years have somehow managed to live together without killing one another in large numbers, not a trivial achievement, without the assistance of transitional justice. “There can be no peace without justice” is a plausible slogan; unfortunately there is no evidence that it is true.

On the other hand, transitional justice, punishing people guilty of terrible deeds, is undeniably attractive. The uncertainty about its utility would not be so troubling if it did not sometimes come at a high price for conflict management. No leaders are likely to agree to a civil war settlement which would put them

and their followers at risk, so their first (and probably nonnegotiable) demand for a settlement is likely to be amnesty. Since the definition of a negotiated settlement is one that either side can reject and continue the war, the choice may be to grant their request or continue the war. Hilary Putnam (2002, 240) lists Angola, Guatemala, Namibia, Sierra Leone, and Bosnia as cases where amnesty has been critical in getting settlements; South Africa might be another candidate. (She also notes that amnesty is recognized in international law as an appropriate response to internal war, citing Dinstein and Tabory 1996, 319.) In practice this has been resolved by two strategies: (a) agreeing on truth commissions and similar institutions that will not penalize individuals for their actions, even though this in turn may undercut the already tenuous theory that they will aid in reconciliation, and (b) giving amnesty and then renegeing on the promise when the political system allows it.

The poster child of the first strategy is South Africa's Truth and Reconciliation Commission. It has justly attracted attention and admiration around the world. In a stunning series of public hearings, held all over the country and televised almost nightly for years throughout South Africa, the historical record of human rights violations on both sides under apartheid was written for all to see. Fortunately an extraordinarily sophisticated study is under way to attempt to determine its impact. Presumably the underlying theory of the TRC was that by persuading people of its version of what had actually happened ("truth"), they would become less hostile toward members of other races ("reconciliation"). The study shows quite clearly that whites who have accepted this "truth" are less hostile to blacks than whites who have not done so, confirming the value of the strategy. However, it also shows no relationship whatsoever among blacks; accepting the "truth" of the TRC is quite unrelated to their attitudes toward whites. (Better predictors turn out to be close contact with whites and religion; interestingly age and education are also unrelated (Gibson 2004, 207-208).) Arguably the attitudes of black South Africans are much more important than those of whites since, given the demographic realities, they were likely to wind up dominating the eventual polity; it is particularly striking that the basic concept of "transitional justice" does

not seem to have worked for them. There are many reasons to admire the work of the TRC, in particular for creating a record of the apartheid regime, but aiding reconciliation of blacks toward whites does not seem to be among them. (Page Fortna notes that, among other things, we do not know why the TRC had different impacts on different kinds of people.)

One of the critiques of the TRC has been that it does not have the power to actually punish evildoers. It is not clear that simply revealing the truth about terrible atrocities and then seeing the perpetrators go free will lead to reconciliation. Gibson's work suggests that it has not, at least among South Africa blacks. We do not know if a different system, in which the malefactors were punished, would have different psychological effects. We do know that we are unlikely to have a more favorable environment than South Africa for a truth commission; if it does not succeed here, the strategy is unlikely to work in less favored locations.

It remains an open question whether through taking testimony and publishing reports, a truth commission can also help to reconcile groups that have been warring or otherwise engaged in deep animosities. (Minow 1998, 79)

The second strategy is to promise amnesty to get peace and then break the promise when possible. This seems a dubious strategy to me. It raises several different issues. (a) I understand the argument that it is morally acceptable to break promises to people who have done evil deeds in order to end those actions. (b) However, within the country this involves violating the terms of a negotiated settlement of a civil war and triggering similar repudiations on all sides and the risk of reigniting the conflict. Still, presumably the people doing it can make reasonable judgments about this, and so far this hasn't happened. (c) However, it's hard to believe that this strategy will not make it more difficult to reach negotiated settlements to other civil wars in the future. Prosecutions by third parties such as the Spanish case against Pinochet raise the same difficulty. If leaders cannot count on amnesty, they have little reason to end the war short of military defeat, which may be very costly, although probably not for the outsiders who recommend the policy. And if war crimes trials are supposed to deter future human rights violations,

it's hard to believe that breaking amnesty promises will not deter the same people from believing in accepting settlements based on such promises.

## CONCLUSION

What should one do if the quest for justice and retribution hampers the search for peace, thereby prolonging a war and increasing the number of deaths, the amount of destruction, and the extent of human suffering? The quest for retribution or for a perfect peace can result in a long war. Is this defensible? (Anonymous 1996, 250)

Morally, the clearest example of this problem is how outsiders should respond if the local combatants reach an agreement which neglects human rights provisions. Until firm empirical evidence to the contrary is mustered, I do not expect major benefits from excluding human rights violators from negotiations or from including democratic or "transitional justice" institutions in the post-war final government. On the other hand, the value of ending large-scale violence seems fairly clear. I would therefore be reluctant to give up reasonable chances for peace in the short term in order to ensure the inclusion of these ideas in a civil war settlement process.

This is not an argument for peace at any price. Local combatants may have any number of reasons for continuing the violence. If I had been living in the North when outside negotiators advocated a negotiated settlement to the American Civil War in 1862 which would have preserved slavery in return for ending secession and avoiding the killing of several hundred thousand Americans, I hope that I would have had the courage to oppose it. (Indeed Union soldiers chose something similar when giving Lincoln a substantial majority in the 1864 election.) But outside conflict managers and human rights advocates claim to have the best interest of the local population as their overriding goal, and I do not believe that we have sufficient evidence to sacrifice lives in the "short term" because more will be preserved in the "long term" if the local combatants are prepared to settle.

At one level this paper is about another failure of social science. The task of social science is to establish generalizations buttressed so solidly with replicable evidence that they will be widely accepted,

even by people who initially disbelieve them. We don't do this very well for a variety of reasons. This is only one of many issues in which the critical questions are empirical and for which we have no unanimous, persuasive answers.

The moral implications of this failure are substantial. As human rights and conflict management have become more prominent in foreign policy, the research in those fields takes on a new importance. We are not just engaged in academic debates now; we are talking about other people's countries and other people's lives. And we do not know, in such a manner as to persuade others, what is true, what will work, even in general, much less in particular situations that may not follow the general patterns we seek to trace.

And yet, we cannot simply stand aside from the debate. Many years ago, when I was presenting a paper on economic sanctions, someone asked about the food blockade by the Allies of Germany after World War I, and I said truthfully that I didn't know anything about it. A senior scholar jumped up in the audience and demanded that I answer the question, saying that I knew a lot and that if I didn't answer people who knew less and were less careful would answer the question instead. We were both right; that is our dilemma.

I have no magic answer to this problem, although I think (or at least hope) that more research would be helpful. But I do think that, when making recommendations about war and peace in other people's countries on the basis of empirical assumptions which are not well substantiated, a lot of humility on our part is appropriate. To put it differently, I have no problem if someone echoes Patrick Henry and says "give me justice or give me death." I am much more dubious of outsiders who say "give them justice or give them death."

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