

“JUSTICE AND PEACE EMBRACE EACH OTHER” Human Rights and Conflict Situations

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Summary

The article explores tensions between justice and peace, human rights and security, between past and future goals, between the claims of justice and peace, and between the claims of justice and truth. It uses the particular example of Northern Ireland.

But do Justice and Peace embrace each other (in the words of Psalm 85,10)? Are there not tensions between justice and peace – at least in some situations? Dealing with terrorism and situations of internal conflict in states can bring acute dilemmas. For instance, do human rights have to be curtailed? Is there a trade-off between human rights and security? If so, what is acceptable? What is not acceptable? And we know that violence begets violence and destroys the restraints on violence – and increases the desire to root the ‘enemy’ out.

Let us take the case of Northern Ireland during the Troubles¹ to illustrate the various strategies that can be adopted, and their potential consequences.

The War Strategy

It was often argued that if only the security forces in Northern Ireland could have been freed from the restraints under which they were operating and permitted to wage all-out war on the IRA, the conflict could have been brought to a rapid and satisfactory conclusion. Some support for this view might have been taken from the fact that the IRA clearly perceived itself to be fighting a war against the British Army. It was a guerrilla war with some limitation of legitimate targets. It was a war nonetheless, in which soldiers, policemen, prison officers and civilians were shot without warning, and in which bombs and incendiaries were used against all kinds of property, both governmental and private.

It was not always made clear what the adoption of a war model by the security forces would have entailed. At the simplest level it would almost certainly have involved a general policy of shooting suspected terrorists on sight, and the indefinite detention of all captured suspects as prisoners of war. Experience in the Irish Republic in the 1920s and

¹ The Troubles is the most recent period of community conflict in Northern Ireland, commencing in and around 1969.

in Malaya in the 1950s suggests that it might also have involved reprisals against communities from which gunmen or bombers emerged or in which they were sheltered. There was also the possibility of hot pursuit raids into the Republic or even the destruction of suspected terrorist training camps or hideouts. Human rights would not have been high up on the agenda and suspects would have been treated harshly.

It is extremely doubtful whether the adoption of policies of this kind would have been successful in eliminating the IRA. They would equally likely have caused an escalation in the fighting. The cost in civilian casualties would certainly have been very high. The political consequences for the British Government in the eyes of the rest of the world would have been very grave.

The Detention Strategy

A policy of arresting and detaining suspected terrorists without trial was pursued between 1971 and 1975 in Northern Ireland– this policy was somewhat short of the full-scale war model.

The implementation of the policy of putting suspected terrorists behind bars during that period involved the regular and systematic 'screening' of the population in all areas in which there was thought to be a substantial IRA presence. The process of arresting and questioning large numbers of people, sometimes on a street-by-street basis, inevitably increased the antagonism between the security forces and innocent members of the nationalist community in which the policy was applied. There is little doubt that it contributed substantially to the flow of recruits to the IRA.

The Criminal Prosecution Strategy

Under a pure criminal prosecution model all suspects, whether they were charged with terrorist or ordinary crimes, are dealt with in ordinary criminal courts and have a right to jury trial in serious cases. In practice, the system of criminal prosecution was substantially modified in Northern Ireland from 1973 by changes in the common law rules on arrest for questioning, and on the admissibility of confessions, and by the suspension of jury trial. But the criminal prosecution model which was maintained from 1975 remained essentially different from the war or detention models in that a suspect could be kept in custody only if he or she was charged with a specific criminal offence and the prosecution was able to prove his or her guilt beyond reasonable doubt. This strategy had to have some concern for people's human rights.

There are some important consequences of adopting a pure or modified criminal prosecution model. The most important is that some people who are 'known' by the security forces to have committed or organised acts of terrorism will not be put behind bars because there is insufficient evidence to bring them before a court or because a court will not convict them. Relying on criminal prosecution thus makes dealing with suspected terrorists rather like dealing with suspected burglars or pickpockets. No one assumes that all of these will be arrested and imprisoned, or that burglary or pick pocketing will be completely stamped out. The community accepts this as part of the price to be paid for its commitment to the principle that it is better to allow a guilty suspect to go free than to convict an innocent person.

All policies have their consequences and costs. The criminal prosecution strategy enforced restraint on the security forces. The problem of obtaining evidence was very difficult, if not impossible in many cases. Emphasis was put on undercover work, the use of informers and sophisticated intelligence gathering. With the understandable pressure to get 'results', to lessen or eliminate terrorism, there were strong temptations for the security forces to seek ways round the restraints. The suspicions of confessions being forced out of people in the late 1970s, the use of super grasses against terrorist suspects in the Courts in the mid-1980s, the events of 1982 involving the shooting of suspected members of the Provisional IRA by the Royal Ulster Constabulary in an alleged 'shoot to

kill' policy investigated by John Stalker and Colin Sampson, events and enquiries since (e.g. the Stevens Inquiry and inquiries by the Police Ombudsman), particularly around alleged collusion with loyalist paramilitaries in murder, all highlight the dilemma of how to cope with sophisticated and deeply entrenched terrorism in ways which do not corrupt the state, the security forces and society itself: we risk becoming lost in a miasma of lies, deception and moral murk. Limits and restraints must be observed, including respect for human rights, otherwise the State becomes, in the words of St Augustine, 'organised brigandage' and sections of the security forces become indistinguishable in the end from the paramilitaries (as happened in some South American countries in the mid-1970s). But states in conflict situations are particularly prone to fail in their respect for human rights. Hence the need for local, national and supranational watch guards.

Post-War Situations

A political settlement is about ending reciprocal community violence and the cycle of revenge through creating a justice system and institutions that have the consent of its citizens.

There are a whole series of potential goals for societies responding to collective violence:²

- Overcome communal and official denial and silence about the past and gain public acknowledgement;
- Seek to memorialise the past and educate about it;
- Obtain the facts in an account as full as possible in order to meet the victims' need to know, to build a record for history, and to ensure minimal accountability and visibility of perpetrators;
- End and prevent violence; transform human activity from violence – violent responses to violence – into words and institutional practices of equal respect and dignity;
- Forge the basis for a domestic democratic order that respects and enforces human rights;
- Support the legitimacy and stability of a political accommodation or a new regime;
- Promote reconciliation across social divisions; reconstruct the moral and social systems devastated by violence;
- Promote psychological healing for individuals, groups, victims, bystanders, and offenders;
- Restore dignity to victims;
- Punish, exclude, shame, and diminish offenders for their offences;
- Express and seek to achieve the aspiration that 'never again' shall such collective violence occur;
- Build an international order to try to prevent and also to respond to aggression, torture and atrocities.

What is important to note is that there are tensions between many of these goals. Further, some are focused on the past, some on the present and some on the future. Elements of the past, present and future (and the goals appropriate to each) are likely to intermingle in complicated ways in particular situations. And there may again be tensions in post-conflict situations between the claims of peace and justice, and between the claims of peace and truth. The tension between the moral demands of justice and the political requirements of peace have been very clear in Northern Ireland with the early release of politically-motivated prisoners and in South Africa with the granting of amnesty to those that had been involved in murder and torture, provided only that they were politically motivated and that they made public confession of them. There are

² See Martha Minow, "Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence", Beacon, 1998, p88.

tensions between wishing to let go (and even forget the past) which peace may require and the longing for acknowledgement of wrong, the demand for accountability and the validation of painful loss and experience that justice and truth may require. The balance that emerges between all of these claims in a particular situation is the result of political negotiation. A renewed respect for human rights is an important part of the mix, but it is only one part. Even more important is a wish for people to live together and to create viable political structures where negotiation can take place. Perhaps then justice and peace can embrace each other.