

Implications for Peace-building: Human Rights, the Rule of Law, and Democracy.

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Author's Note: This paper was written for Professor Dr. Kristina Roepstorff's class INT-131: Peace-building: Concepts and Strategies at the Willy Brandt School of Public Policy at the University of Erfurt, in Erfurt, Germany. Any communication about the paper can be sent to the author at michelle_kimberly.howa@stud.uni-erfurt.de.

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Introduction

The concepts of democracy, human rights, and the rule of law are intricately related and overlapping in theory and application. However, in practice, in post-conflict nations these concepts are often conceptualized and pursued separately, with those involved operating with the assumption that the establishment of one these ideals will automatically reinforce and help the establishment of the others, whether or not that is the reality for each particular situation. Further complicating the endeavor, the definitions of these terms and their relation to each other have been contested academically and in practice. These conflicts have added confusion and complexity to already difficult peacebuilding efforts in regions experiencing war, genocide, civil unrest, and more.

Despite the difficulties, for many situations, the intervention of extra-state actors can be the best or only solution. Since the inception of the United Nations in 1945 and the creation of the first peacekeeping mission in 1948, over 50 such missions have been deployed (United Nations 2010). Though the United Nations is the most common actor, there are many such external actors, for example other states or international nongovernmental organizations. Because of the varied actors, the contested definitions of “human rights,” “rule of law,” and “democracy” become tangible problems as these actors, with their different interpretations and different goals, attempt to improve the situation by creating stable institutions and governments which respect human rights in states in conflict.

Human Rights

Human rights have been universal and internationally recognized since 1945 through the Charter of the United Nations and again in 1948 with the adoption of the Universal Declaration of Human Rights (United Nations 2008, p. 239). The rights enumerated by these conventions include civil and political rights, and also economic, social, and cultural rights (United Nations 2008, p. 241).

The concept of human rights is integral to any peacebuilding mission. Theoretically, the ultimate reason for intervening in any other state is concern for humanity, concern for human life and human rights. Though idealistic, and assuredly not the sole reason for many

interventions, this statement is supported by the Charter of the United Nations, which begins, “We the people of the United Nations determined to save succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind [*sic*], and reaffirm faith in fundamental human rights, in the dignity and worth of the human person” (United Nations 1945). The international community further elaborated on these goals and ideals with the adoption of The Universal Declaration of Human Rights in 1948. The second paragraph of the Preamble states quite clearly, “Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind [*sic*], and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people” (Universal Declaration 1948).

Human Rights and Democracy

Part of many peacebuilding missions is the creation or reestablishment of a new government. Invariably, “government” in these situations can be synonymous with “democracy.” Democracy as a form of government “enjoys unprecedented, near-universal legitimacy” in the world today (Wiarda 2005, p. 173). Though the word “democracy” does not appear anywhere in the UN Charter, nor is a democratic form of government in any way a prerequisite to membership, the UN nonetheless has a decided predilection towards and commitment to democratic forms of government, particularly when it comes to post-conflict societies (Rich 2004, p. 5; United Nations 2008, p. 16). However, while there is evidence to connect human rights protections with democratic societies, when it comes to transitional societies, often it is the case that democratic elections can in fact be divisive and lead to more conflict and more human rights abuses (Chetail 2009, p. 21; Gowlland-Debbas and Pergantis 2009, p. 328; Zakaria 2005, p. 158). In fact, data collected by Jack Snyder and Edward Mansfield indicates “that over the last 200 years democratizing states went to war significantly more often than either stable autocracies or liberal democracies” (in Zakaria 2005, p. 159).

Liberal- v. Illiberal-democracies

The almost-universal support that democracy receives worldwide as the only legitimate form of government can in part be attributed to theories based in Kantian ideas of “perpetual

peace” (Rich, 2004, pp. 5-6). This theory, while it has many supporters, and though it is still very much an influence on global policies regarding peacebuilding and transitional societies, has been heavily criticized and questioned. One of the most powerful arguments against this theory of a democratic peace comes from Fareed Zakaria. Zakaria makes a convincing distinction between “democracy” and “constitutional liberalism.” The word “constitutional” in this context indicates not necessarily the presence or use of a constitution, but the tradition of the rule of law (Zakaria 2005, p. 151). Zakaria's main argument is that liberal values (i.e. human rights), such as “rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and property” are not inherent in a democratic society by strict definition, though they are often assumed to be, especially in the western school of thought (Zakaria 2005, p. 149). Zakaria points out that a democracy without the liberal ideals aforementioned is still a democracy, but not necessarily one that a people or the international community may want. A people may fairly elect, even re-elect, a government that ignores basic human rights and constitutional limits, or a racist, fascist government with unchecked power (Zakaria 2005, p. 149-150). Conversely, a non-democratic government can be constitutionally liberal, with a fair and functioning impartial legal system emphasizing human liberty and protecting human rights. Indeed, the latter is almost assuredly superior in terms of human rights and security and other western values commonly associated with democracy, for, “The 'Western model' is best symbolized not by the mass plebiscite but the impartial judge” (Zakaria 2005, p. 152). This will be discussed more later within the framework of rule of law.

Democracy and Human Security/Human Rights

Democratization in post-conflict situations has an added dimension of complexity not usually present in other types of democratization. Reconciliation and the reality of politicians or people in necessary roles having been complicit in, or perpetrators of, human rights violations creates a real threat to reintegrating a government and governmental institutions which are stable and *also* have the trust of the population: “There is a paradox here: consultation and accountability and local representation are central to democracy, yet in post-conflict situations democracy must be balanced against peace and stability” (Rich and Newman 2004, p. 12). As has been discussed earlier in this paper, elections in post-conflict

situations can actually cause more violence and violations of human rights by polarizing a community that does not have sufficient stability to weather them. “Hence, while we may *wish* for democracy to be successful everywhere, we also need to be realistic in deciding where and when the policy can be successful (Wiarda 2005, p. 172).

Human Rights and Rule of Law

The idea of the rule of law has been tied to the ideals of human rights since at least 1948. The third paragraph of The Universal Declaration of Human Right accomplished this by stating, “Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law” (1948).

Beyond the reasons and goals of interventions lies the harsh reality of war, oppression, murder, corruption, lack of trust, deep-seated prejudices, and the seemingly unending list of horrific barriers to any achievable peace and protection of human rights. While the primary indication of a cessation of hostilities is the restoration of human rights, particularly “The prohibition of arbitrary deprivation of life, torture, inhuman or degrading treatment, and arbitrary detention...”; it is also true that “The effectiveness of human rights is...closely dependent on the operational and structural measures adopted after the cessation of the hostilities” (Chetail 2009, p. 21). This contradiction introduces one of the basic barriers to peacebuilding missions. In order to establish the rule of law, to create or reinforce judicial systems in which citizens trust, the protection of basic human rights is necessary. However, enforcing human rights without a functioning judicial system is impossible without outside assistance.

“The rule of law is inextricably linked to the principle of 'no power without accountability'” (Gowlland-Debbas and Pergantis 2009, p. 321). Accountability in this framework generally refers to separation of powers, transparency, and basic, enforceable laws to limit the powers of government and protect the basic rights of the citizens (Gowlland-Debbas and Pergantis 2009, p. 321; Zakaria 2005, p. 152). In transitional societies, the nexus of human rights and rule of law becomes particularly difficult to navigate on at least two fronts: One, implementing rule of law in a manner that both creates trust for the local population, which in part means holding accountable perpetrators of war crimes and human rights

abuses. And two, ensuring ownership in the system for the local population, which may be especially difficult if the community in question has beliefs that conflict with international human rights standards. (Gowlland-Debbas and Pergantis 2009, p. 328)

I would argue that the issue of accountability also comes into play on a personal level for communities who have illiberal democracies or democracies before they are ready as a society: A democratically elected government is one of the collective society's choosing. Hence, if it fails, or if it oppresses the society, a society cannot help but feel accountable for that failure in a way that it may not under a totalitarian or authoritative but not democratically-elected regime. Therefore, rushing democratization for weakened, fragile, or transitional societies can do further damage to an already bruised or broken collective psyche; as well as damage the possibility for a successful democracy in the future by creating a “democratic” experience in a society that is disempowering rather than empowering.

Conclusion

International interventions in conflict situations have become ever-increasingly complex and involved. So many different actors with different situational and theoretical understandings are participating in these peacebuilding missions, with limited success. By making assumptions about what qualities of human rights, democracy, and the rule of law are inherent; and by failing to act in cohesion, these actors are failing the local regional communities they are attempting to assist as well as the international community at large. In particular, the focus on quick results in terms of elections and democracy is detrimental to achieving true stability and the valuation and protection of human life and human rights.

The needs of the people in post-conflict transitional societies must be paramount. Creating stable governments, accountable and transparent institutions which respect human life and human rights are the only acceptable results of the peacebuilding missions the international community undertakes. In order to achieve this, the actors involved in these missions must work together, and together with the local community. Rushing the projects, rushing reconciliation, and above all, rushing democratic elections in order to have something to “show” for the time and resources devoted will only prove detrimental if not drastically damaging in the long term. A timeline for these projects is important, in that human rights and rule of law projects must be established and achieve a stable level of success before

endangering the communities further by democratizing, keeping in mind that “free and fair elections presuppose the prior safeguarding—in fact as in law-of other related freedoms” (Chetail 2009, p. 20).

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