

# A just peace agreement, or just a peace agreement: Reflections on the work of H.W. van der Merwe

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H.W. van der Merwe can be considered one of the founding fathers of the conflict resolution field in South Africa. His role will always be that of the 'unsung hero'. True to his Quaker religious background, he did not publicise his efforts to build reconciliation across the apartheid divide in South Africa, and the quiet dialogue he fostered between Afrikaners in South Africa and the then exiled African National Congress (ANC). I first met him in 1990 in Washington, D.C., where I was immediately moved by this quiet but passionate man. I then had the opportunity to work with him in 1991 and to learn about and debate his many well-developed ideas surrounding peace and justice.

The relationship between peace and justice, both in the pursuit of peace agreements and more broadly in terms of fundamental questions about society, has long been a subject of rigorous academic and practical debate, one in which Professor Van der Merwe made landmark contributions. This debate is founded upon two specific dimensions: the interpretation of the relationship between peace and justice, and the interpretation of a mediator's mandate in pursuing specific goals of peace and justice.

Van der Merwe crucially argues that the relationship between peace and justice, both viewed as societal ideals, is complementary and contrasting

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(Van der Merwe 1989). On the one hand, he asserts that it is impossible to have peace without justice or justice without peace. He highlights that root causes of violent conflict are often derived from societal injustices, and thus peace agreements must explicitly deal with both issues. On the other hand, he notes that the strategies employed to strive for peace may contrast with those employed to attain justice. He recognises that securing peace may conflict with the principles of justice, and similarly, that the pursuit of justice may be impossible through peaceful means.

How this balance between peace and justice is executed within a peace agreement crucially depends upon the mediators and their interpretation of the mandate afforded to them as peacemakers. Two distinct schools of thought emerge when assessing the responsibilities of the mediator towards pursuing peace and justice within an agreement. One argument, as explored by renowned South African mediator Charles Nupen, highlights that a mediator is exclusively a resource to negotiating parties, and should not act as an 'independent moral arbiter' (Nupen 1992:7). Nupen argues that a mediator's responsibilities are not to evaluate the quality of the agreement towards achieving peace and justice, so long as the signatories understand its terms and implications.

H.W. van der Merwe's counter-argument asserts that a mediator must strive for a balance as he or she seeks to achieve both peace and justice within an agreement. In achieving this balance, an important but implicit distinction is made between the mediator as an impartial actor and the mediator as a neutral actor. With respect to mediation, impartiality relates to the ways in which a mediator treats each disputant, while neutrality alludes to the mediator's personal beliefs and values. Van der Merwe rightly asserts the importance of an impartial mediator, recognising that maintaining constructive relationships and credibility with all parties is necessary. However, he then emphasises the need for a balance between impartiality and one's own personal values towards the pursuit of both peace and justice. He argues that there is no prescriptive formula or right answer towards achieving this balance, but that striving for both peace and justice is a necessary challenge to undertake.

Peace agreements crafted in the 21<sup>st</sup> century must not only address the immediate consequences and root causes of violent conflicts, but should also seek to redress

the fundamental issues of justice within the context of a rapidly transforming global environment. Van der Merwe's definition of a just society, 'one whose members are assured of the opportunity to realise their human potential' (Van der Merwe 1989:1), resonates with today's prevailing notion of a society where all individuals are able to achieve their freedom from fear, freedom from want, and freedom to live in dignity.

Achieving such just societies requires that peace agreements expand beyond solely addressing issues of peace and instead strive to redress many of the political, socio-cultural, and economic inequalities which lie at the heart of many of today's conflicts. These inequalities, rooted in the historical and structural development of many societies, are entrenched and amplified by the era of globalisation and driven by transformative changes in the world's demographic composition and technological capabilities, as well as the globalisation of information and the market economy.

These forces have jointly created an undeniably interconnected environment where actions and influences can quickly reverberate across the world. The globalised forces do not only interlink all societies, but they also reinforce the structural inequalities that inhibit the achievement of peace and justice. This environment disproportionately benefits a small minority of individuals with access to socio-economic and political resources at the centre of many societies. Those unable to secure these vital resources are consequently marginalised on the peripheries of societies, fostering the conditions for a society that can achieve neither peace nor justice.

Peace agreements constitute important moments for disputing parties to begin reimagining the ways in which their societies are structured. With regard to such moments Van der Merwe argued that the parties must strive for both peace and justice. Agreements that work to enshrine peace but fail to address questions of justice will likely maintain the structural status quo of inequalities and injustice. Similarly, those agreements that seek the pursuit of justice above all else can destabilise the fragile peace that emerges immediately after violence if the perpetrators of violence are pursued in the interests of justice.

However, it is also important to recognise that the theoretical and practical debate between and the balancing of peace and justice extend beyond peace agreements

and into the international justice system. The International Criminal Court (ICC), created in 2002, has been designated as one of the principal mechanisms for addressing challenges of international peace and justice. Eleven years after its creation, however, the ICC continues to face obstacles that are rooted in its attempts to both achieve and balance the competing realities of peace and justice. In specific instances, the ICC can inadvertently complicate peace efforts during its pursuit of justice, so that parties in violent conflicts who face ICC indictments will often refrain from pursuing a negotiated political settlement for fear that the end of the conflict will lead to their extradition to the ICC and subsequent prosecution. Parties indicted by the ICC who successfully negotiate a political settlement are also unlikely to respect the court's indictment, as they perceive the negotiated settlement to be a comprehensive solution to the conflict. Conversely, when peace efforts fail to incorporate local or national mechanisms of justice, and the ICC is not invited to fulfil its mandate as a complementary justice mechanism, the international community is at risk of condoning impunity for serious crimes.

We are still faced with more questions than answers about how to support the attainment of peace and justice in conflict environments. But this is a challenge worth confronting. The ability to live in freedom from fear, freedom from want, and the freedom to live in dignity remains the driving force of the 21<sup>st</sup> century, and peace and justice are essential to these freedoms. Upon describing the journey of South Africa, H.W. van der Merwe (1989:1) remarks, 'justice and peace cannot be equated with the maintenance of the status quo in South Africa. Therefore the pursuit of justice and peace implies fundamental social change'. This pursuit is a quest without one solution or one obvious path forward. We must all look for answers to these questions, and will naturally be confronted with complex challenges and decisions. However, the global pursuit of peace and justice is a quest that is worthy of our collective undertaking. And thankfully, H.W. van der Merwe shines as one of our guiding lights on this journey.

## **Sources**

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