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Introduction: Conflict Resolution and Social Justice

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INTRODUCTION: CONFLICT RESOLUTION AND SOCIAL JUSTICE

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A daunting obstacle to clarity in formulating ideas about conflict resolution and social justice is the fact that each of these terms has multiple meanings. There is widespread recognition that "social justice" is a multivalent phrase. Commentators since Aristotle have written of distributive, restitutive, retributive, procedural, and relational justice, and each of these types has been further subdivided to reflect differences in social philosophy and in common usage. Less well recognized is the ambiguity of "conflict resolution," a term that refers to a melange of theories and practices that, although interrelated, do not constitute a cleanly demarcated and coherently defined whole. To name a few large subdivisions in this evolving field, we are accustomed to speak of alternative dispute resolution, principled negotiation, relational transformation, public dispute resolution, analytical conflict resolution, and individual or communal reconciliation processes.

The task undertaken by the contributors to this special edition of *The Journal of Peace and Conflict Studies* is to show how various areas of conflict resolution thinking and practice relate to particular concepts of social justice. For most conflict specialists this is far more than an "academic" exercise. Many have been drawn into the field out of the conviction that coercive ways of resolving disputes and dealing with conflicts -- in particular, the use of military force, the coercion of minorities by majorities, and the resort to formal judicial processes -- produce neither pleasing short-term settlements nor effective long-term resolution of conflicts.

A longing for justice animates much of the work in the field, even though certain factors militate against discussing such matters openly. Which factors? To begin with, the profession of conflict resolution is relatively new. Its academic theorists do not wish to be considered "woolly-minded" by their colleagues in the social sciences and law, nor do many practitioners care to be labeled "utopian," overly politicized, or -- heaven forbid! -- overly spiritualized by their clients and colleagues in government and the private sector.

Furthermore, since conceptions of social justice are, to some extent, culturally and politically conditioned, some conflict specialists argue that they are relevant only to the extent that they influence the thinking and behavior of conflicting *parties*, as opposed to "third party" mediators or facilitators. Others argue that, given the "blooming, buzzing confusion" that characterizes much contemporary thinking about social justice, focusing attention on such a controverted topic has the potential to magnify disagreements within the field and to make it less coherent as a discipline.

As the essays in this journal show, this last fear is both warranted and unwarranted. There are strong differences of opinion, reflecting variations in political philosophy as well as diverse professional perspectives, reflected herein. But there are also common concerns that, approached with the honesty, good will, and delicacy of expression that characterize many of these

contributions, promise to generate greater intellectual coherence in the future. This is a first step, but, we think, an important one, on the way to a much-needed continuing discussion.

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The essays included here suggest that certain types of conflict resolution praxis can, indeed, be linked to specific conceptions of social justice. As a rough framework for understanding these correlations (a framework which some of our contributors might well reject), we offer the following observations, focusing the discussion on four models of conflict resolution: alternative dispute resolution, public dispute resolution, analytical conflict resolution, and communal reconciliation processes. We understand that this designation of models is both incomplete and overly schematized. But it may help to bring our subject into better focus.

Alternative dispute resolution (ADR) refers to a body of thought and practice that aims at assisting conflicting parties to reach mutually satisfactory agreements without invoking coercive legal or political procedures. Its forms are multifarious, including mediation and other forms of facilitated negotiation, arbitration, mock trials, and numerous hybrid procedures (Goldberg, Sander, & Rogers, 1992). The disputes at issue are generally conceived of as conflicts of individual, corporate, or communal interest; the parties are generally taken to share common legal, ethical, and social norms; and the processes utilized are designed to facilitate the negotiation of differences by the parties within the context of these shared norms.

The visions of social justice linked to ADR praxis are largely procedural. That is, ADR specialists tend to believe that formally uncoerced agreements negotiated by the parties themselves (often with the aid of an impartial "third party" facilitator) are more likely to prove mutually satisfactory than agreements imposed by officials applying legislative or precedental rules. This suggests an implicit ethic of procedural justice that values:

- The impartiality of the facilitator and the decentralization of decision-making, to the extent possible, to the level of the parties,
- A focus on the unique equities involved in each dispute rather than on rules of law common to similar disputes, and
- The minimization, again to the extent possible, of legal coercion (although not necessarily of the exercise of social or economic power) by the conflicting parties.

What defines the "extent possible" in this largely procedural conceptualization is an existing distribution of values (wealth, power, prestige, etc.) that is generally taken as given or as changeable, if at all, only by processes *other* than conflict resolution. This flows from the initial premise that the parties in conflict share common social norms. On the other hand, the vision of social justice linked to ADR is not entirely procedural. To the extent that it promotes the values of compensating injuries and restoring each disputant to its rightful position, it aims at achieving restitutive justice, or what Auerbach (1983) has called "justice without law." And to the extent that it aims at vindicating the particular interests of the disputing parties rather than applying rules of general applicability to their case, it seeks "equity": a form of restitution based on factors unique to each dispute rather than on a law common to all similar cases.

Public dispute resolution (PDR) is that branch of conflict resolution which seeks to supplement formal legislative, administrative, and judicial processes in forming and implementing public policies. Its forms are as varied as those used in ADR, perhaps more so, since they are frequently improvised. They include regulatory negotiation and enforcement, multi-agency and private/public task forces, community boards and other community problem-solving agencies, negotiated investment strategies, and other forms of consensus-building practice.

PDR has developed as a response to administrative and political stalemates caused by overuse of power-political and legal instrumentalities in complex, multi-party disputes. Like ADR, it assumes the existence (even if currently repressed) of conflicting interests and common legal, political, and ethical norms. But, unlike ADR, it does not view conventional administrative or legal techniques as an acceptable last resort in resolving difficult disputes. Rather, PDR seeks to reform and reconstruct more formal decision-making processes.

The ethic of social justice correlated with PDR is also primarily procedural, but its hallmarks are inclusiveness - the inclusion of all affected parties ("stakeholders") in the decision-making process – "voice," meaning that all parties have the opportunities to be heard and to engage in meaningful policy negotiations, and transparency: a more generalized version of "open covenants openly arrived at." Some specialists insist that, properly conceived, PDR practice implicates one aspect, at least, of distributive justice: the empowerment of weaker parties. Empowerment has several possible meanings:

- At a minimum, it means that parties whose voices may not be heard or heeded in conventional policymaking forums are to be given the opportunity to be heard. The mediator or facilitator also undertakes to ensure that parties will not be disadvantaged because they lack well developed negotiation skills.
- More broadly, empowerment may mean not only that "weaker" parties (as defined in power-political terms) are listened to, but also that their views are reflected and their interests protected by the policies arrived at as a result of these processes. This implies at least a temporary accommodation of weaker parties' interests by stronger parties.
- More broadly still, it may mean the redistribution of decision-making power in a way that, over the long run, leads to an equalization of power relations between competing groups. The PDR specialists who take this view (a number that included our late colleague, Jim Laue) advocate equality in the qualified sense proposed by John Rawls in his philosophy of justice (Rawls, 1971). That is, they define a just society as one in which changes in individuals' and groups' "original positions" *tend* over time toward social equality, even if they may never reach that goal.

Analytical conflict resolution (ACR) confronts questions of distributive justice somewhat more directly. In this domain, conflict analysts and facilitators assist parties engaged in protracted, violent or potentially violent social conflicts to identify the underlying causes of these struggles and to agree on methods of eliminating or ameliorating them. Facilitated analysis is necessary, since these conflicts have ordinarily proven "non-negotiable" in the normal sense of negotiation as power-based bargaining. The practical procedures most commonly associated with analytical praxis are the problem-solving (or "interactive") workshop, facilitated intergroup or communal

dialogues, and a number of other procedures often grouped under the heading of "second-track diplomacy" (see Fisher, 1996; Mitchell and Banks, 1998).

Some specialists (e.g., Burton and Dukes, 1990; Burton, ed., 1990) conceive of these processes as efforts to identify the basic human needs of the parties that, if unsatisfied, generate serious social conflicts, and to conceptualize the system-changes that may be required to satsify them. Others have adopted different theoretical frameworks to guide their search for sources and remedies. But virtually all assume that "deep-rooted" conflicts require extended analyses to identify their causes, and significant political and social changes to uproot them. Since facilitated analysis often traces the sources of conflict to some serious institutional or constitutional dysfunction, the solutions evaluated by the parties frequently involve proposed changes in the psychological, political, or socioeconomic system that embraces (or imprisons) them.

The terrain, then, is distributive justice. Even so, no particular vision of the "Good Society" compels the practitioners of analytical conflict resolution. Some emphasize the importance of satisfying identity needs by maximizing group autonomy and self-determination, while others focus on proposed changes that might help to eliminate or ameliorate other perceived sources of social conflict: socioeconomic inequality, physical insecurity, psychological alienation, cultural incoherence, etc. Perhaps because of this diversity of views, ACR specialists frequently invoke a pragmatic, procedurally-defined notion of justice to suggest that, properly facilitated, the conflicting parties alone can identify the relevant sources of the conflict. *Only* the parties, it is held, can identify their own unsatisfied needs and do the "costing" necessary to determine which proposed solutions are in their mutual interest and are most feasible.

This deference to the parties' judgment is reminiscent of public dispute resolution praxis. A crucial difference, some specialists suggest, is that here the parties are operating in an analytical rather than a bargaining mode. Even so, this suggests a faith not entirely dissimilar to that animating ADR and PDR that the right process will, in the end, produce the right (or just) outcome.

Finally, although our list of conflict resolution models could be greatly lengthened, we can consider *reconciliation processes*, or, more broadly, ideas and procedures that aim at transforming individual and intergroup relationships by helping the conflicting parties to experience needed psychological and spiritual changes. Specialists in this field include psychotherapeutically-oriented theorists and practitioners, persons committed to religious worldviews and activities, experts in trauma and "victimology," and those with a particular interest in intragroup and intergroup reconciliation, particularly where the parties have been historical enemies (see, e.g., Montville,1990; Volkan, 1996). The processes include, among others, psycho-political workshops, facilitated dialogues reflecting religious approaches to atonement and forgiveness, "truth commissions," encounter groups, and communal rituals.

The social justice correlates of this praxis are procedural, restitutive, and distributive. Procedurally, some reconciliation specialists believe that processes that are intensely personal and that carry a high (controlled) emotional or spiritual charge can open the door to peacemaking transformations. One aim of these processes is restitution, but in the psycho-spiritual sense of making amends, of forgiving one's enemy and oneself, and of recapturing one's own sense of

wholeness and relatedness to other human psyches. A less individualized, although somewhat vague idea of distributive justice is also common among reconciliation practitiners. In this vision (akin to Martin Luther King's "beloved community"), the Good Society is characterized by cultural diversity, nonviolent politics, empathetic relationships, and greater social equality.

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The reference to Martin Luther King leads us to recall the man to whom we dedicate this volume, our late colleague and friend, James H. Laue, who worked with Dr. King and other leaders of the civil rights movement during the late 1960s. Jim Laue earned his spurs as a conflict resolver working for the Community Relations Service of the U.S. Department of Justice -- a mediating role that he envisioned as inseparable from the pursuit of social justice. He was with King when the embattled leader was assassinated in Memphis, and was the first person to try to revive him. Like Dr. King, Jim worked for the achievement of a more peaceful, loving, and egalitarian society, an outcome that he considered the likely result of empowering socially disadvantaged groups to advance their interests through nonviolent politics and principled negotiation.

As president of The Conflict Clinic, Inc. in St. Louis, chair of the campaign for a U.S. Peace Academy, and Lynch Professor of Conflict Resolution at George Mason University in Fairfax, Virginia, Jim Laue worked ceaselessly to advance this vision. While dedicated to helping resolve racial and ethnic conflicts, his passion for the mediation process led him to apply the methods of "third party" intervention to a wide range of public disputes, ranging from environmental and religious battles to labor disputes in a symphony orchestra. Jim&#65533;s practical achievements, as well as his seminal critique of mediator neutrality (see Laue and Cormick, 1978), made a lasting impact on the emergent profession.

As earlier noted, the ethic of social justice that animated Jim Laue has been embraced, in particular, by a number of theorists and practitioners in public dispute resolution. But one argument, in particular, characterizes many other sectors of the field as well: the argument from means to ends. With few exceptions, conflict resolvers of various types tend to combine strong, well-defined *process* commitments with optimistic but vague visions of the Better Society that these processes are alleged to nurture or produce. The general tendency has been to assume that "Good means make good ends," a position (or faith) that is, perhaps, not as meaningful as it might be if the envisaged outcomes were better defined and the relations between means and ends subjected to more intense and revealing scrutiny.

The editors of this special edition therefore challenged the contributors to confront this problem directly, first, by attempting to articulate their visions of the Good Society as far as they thought it possible and useful to do so, and, second, by subjecting the connection between processes and outcomes to more intensive analysis. The results of these efforts, it seems to us, are well worth their costs in energy and hard work, even if they do not succeed entirely in bridging the gap between what Arthur Koestler called the "Yogi" and "Commissar" approaches to social justice (Koestler, 1967).

Koestler's famous essay describes two characteristic and opposite types of social activism. The Yogi values means, devalues ends, and sees vast changes in society occurring as the result of spiritual growth manifested by individuals. The Commissar ranks ends over means and considers the transformation of socioeconomic and political systems the key to personal transformation. Although Koestler's own inclination, after his disenchantment with Stalinism, was toward the Yogi pole, he put the comparison in the form of a dilemma. Yogis tend to be spiritually developed but socially ineffective, Commissars just the reverse. The problem is how to synthesize these apparently incompatible models of social activism.

This is the underlying question that animates many of the essays in this journal. How, if at all, does conflict resolution bridge the gap between the Yogi and the Commissar? Jim Laue would have found these diverse answers stimulating and significant. In the hope that readers will want to participate further in the discussion, we dedicate this volume, in loving memory, to him.

The six articles in this issue represent the theoretical and practical side of the Laue legacy. The first two essays by Kriesberg, and Avruch & Black illuminate intellectual frameworks which both define and confound easy discussions of social justice and conflict resolution. Next, Rubenstein and Dukes tell real stories about efforts to integrate the two. Finally, the contribution by Margaret Hermann describe specific efforts to create new kinds of practice which acknowledge and address the difficulties raised by other authors.

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