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Law Not War: A Reflection on the Life and Work of Benjamin B. Ferencz, 1920-2023

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**Law Not War:
A Reflection on the Life and Work of Benjamin B. Ferencz, 1920-2023**

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Solidarity in this essay is differentiated from collectivism, conformity, group think, herd mentality and mob action. It is defined as a mindful and empathetic choice to work in unity with others to alleviate human suffering and uphold human dignity by advancing systems of greater justice, peace, freedom, and inclusion for all. This form of solidarity is explored through the prism of one person's life – that of Benjamin Ferencz – and how he used his experience, talents, and skills to develop and promote the international legal framework needed to address and prevent crimes against humanity. It traces his life from birth into a Jewish Hungarian family and early experience as a poor immigrant in New York City, to his study and research on war crimes at Harvard law School and his first law case as a Chief Prosecutor at the Nuremberg trials of Nazi war criminals. It discusses his subsequent work on reparations for victims of Nazi persecution, and his role in drafting, negotiating, and promoting ratification of the Rome Statute, the International Criminal Court. Also included are personal reflections on his life and personality, and discussion, excerpts, and a list of some of the publications by and about him.

Keywords: Ben Ferencz, Crimes Against Humanity, International Criminal Court, International Law, Nuremberg, Reparations, Solidarity, War Crimes

What Solidarity Is and Is Not

Solidarity in this article is defined as unity in feeling and action to alleviate human suffering and uphold human dignity. It differs from the false and flawed unity some resort to in collectivism, group think, herd mentality, mindless conformity, and mob action.

Collectivism equates unity with sameness and diminishes the value of the individual and individual choices and differences. Individuals are made to conform through social, political or economic pressure. Those who deviate suffer marginalization, ostracization, and sometimes physical violence or death. In its most extreme forms collectivism seeks to crush and eradicate all that is “other,” whether other races, creeds, nationalities, ethnicities, gender, or social status. Nazism was one such extreme. Even though Nazism professed to be against collectivism in the form of communism, in many ways it embodied it, requiring all to submit to one ideology of racial and national superiority and a cult worship of the great father with salutes of “Heil Hitler.” All criticism and failure to conform, all opposition, was punished and crushed. Such forced and false unity led ultimately to the “final solution” of genocide. Less extreme, but nevertheless oppressive forms of a flawed or false sense of unity include group think, herd mentality and mindless conformity where, whether from insecurity and a need to belong or fear of being ostracized by one's group, one silences one's own voice and power and blindly follows dominant or popular ones. “My nation right or wrong” comes to mind. Mob action is another false and failed form of solidarity. Unquestioning followers of Donald Trump who attacked the U.S. Capitol when he called on them to do so may have felt a rush of unity and shared belief that they were going to “make their country

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great again” by destroying its institutions, but in fact surrendered their own voice and power in blind obedience to the lies of a false idol.

True solidarity is not manipulated or unquestioning. It is not mindless conformity or blind obedience. It is the outcome of questioning minds and open hearts. It is to see the humanity of others and to value them as oneself. It is to value one’s own worth and dignity while also consciously identifying with the shared humanity of others who may differ in culture, creed, race, gender, history and ideas. It sees attacks on, or the needless suffering of, any one group of people, as a blow to one’s own humanity and to all humanity. True solidarity is a feeling and also a choice, a movement of the will to stand with and for the other. It is also action. It does not surrender to the given situation or view oneself as powerless to affect change. It values one’s own gifts and voice and power to make a difference and to use one’s power and voice to address and alleviate the causes of suffering and to develop the understandings, norms and structures that will improve the human condition. It does not reduce humanity to the lowest common denominator, or seek to impose power over the other, but rather to elevate the dignity of all through win-win solutions and structures that reflect and support the dignity of every human being.

Acts of solidarity can be undertaken both locally or globally, at the level of a neighborhood, civic community, nation, or at the level of the global community. In an increasingly interdependent world, many issues causing human suffering, from climate change, health pandemics, food and water shortages, refugee flows to terrorism, drug trafficking, human rights, and wars, are transboundary in nature, and beyond the scope of local or national governments to remedy alone. Global remedies and structures of governance that can protect and prevent harm and suffering must be developed through solidarity and freely chosen cooperation of diverse peoples and governments everywhere around the planet. Solidarity then is a global necessity for the global common good. This meaning and scope of solidarity is explored here through the prism of one man’s life – that of Benjamin Ferencz, who dedicated most of his 103 years to establishing norms and legal structures that would prevent war, alleviate and prevent human suffering and elevate human dignity. These reflections on Ben’s life and work come from many years of friendship and collaboration with him when he served on the Board of Global Education Associates, which Jerry Mische and I had co-founded. They also come from my work as an editor and educator who became familiar with his thinking when I reviewed many of his works for journals, and also used them in my college courses as a professor of Peace Studies and World Law.

Who Was Ben Ferencz to Those Who Knew Him?

Benjamin Ferencz made us laugh. He made us cry. He made us feel. He made us think. He made us smell and taste evil. He made us see the worst in human beings, but also the best in human beings. He lifted our spirits and inspired us to imagine and work for a better future for our children and grandchildren. He was an eyewitness to Nazi extermination camps and genocide. He saw the smoke rising from bodies burning in crematoria. He was anguished by the inability of the League of Nations to prevent World War II or to stop the mass murder of millions ordered by war criminals and their supporters who worshipped the false gods of racial, religious, and national superiority. Yet he still believed that human beings could develop a world future where peace, human rights, and democratic participation were safeguarded through strengthened world law and institutions.

He was small in body, but a giant in intellect and compassion. His feet were planted firmly in the ground of political realism but his eyes were focused on the not-yet-but-possible future. He envisioned a time when nations would transcend divisions and pool some of their sovereignties in legal systems that could more effectively safeguard their common security. But it was in the middle ground between a world of divided nation states and this vision of world community of diverse peoples protected under one global law, that he dedicated most of his long life. He applied his legal training and skills to building a global legal framework that would bridge the divide and support global solidarity upholding peace and human dignity.

Ben was an eloquent speaker, at ease before an audience of thousands. He mesmerized listeners with his humor, with stories from his lived experience, and with his clear, compelling line of reasoning. He delivered his message without notes, without academic jargon, without any “ums” or “uhs,” and without equivocating. Although he had a sharp legal mind and more experience than most in his audiences, he never spoke down to them. His presentations were not so much brilliant oratory as plain, common-sense sharing. He was equally at ease in one-on-one conversations. His interpersonal conversations never focused on the trivial, never settled for small talk. He engaged people at profound levels about life and death matters and alternative global futures. He was genuinely interested in the ideas of others, while also trusting the truth of his own experience and vision.

Ben believed that, despite setbacks, the overall trajectory of human history was toward peace through world community guided by the rule of world law on one, indivisible planet. He walked the Earth in confidence, but never arrogance, believing that his ideas and work for international law, including his vision and work for an International Criminal Court, would contribute to peace in the human community.

Despite the gravity of his thinking, Ben was always fun to be with. He knew how to lighten the mood when the conversation was too heady, tense or depressing. He had a ready supply of jokes, some naughty, but never bawdy, that he used to transform tension to laughter. He especially delighted in telling jokes that favored his alma mater Harvard at the expense of rivals such as Yale and Princeton. But mostly his humor was self-deprecating. He did not want people to put him on a pedestal; he wanted to be thought of as an ordinary, fun and approachable guy.

But just under the surface of Ben’s humor, the gravitas was ever present, an abiding consciousness of the precariousness of human and planetary existence that demanded an adequate response. In a way, he was born into this sense of gravitas by his family’s circumstances and by early experiences. Subsequent events served to deepen, not dissipate, the sense that life was calling him to seek answers to ultimate questions of life and death, In striving for an adequate response he found meaning and purpose.

Early Experience

Ben was born in Transylvania. in 1920, a time when political control of the region was shifting from Hungary to Romania. As Hungarian Jews, his parents were targets of oppression, so shortly after his birth the family emigrated to the United States and settled in Manhattan in New York City. They lived in a small basement apartment in the Hell’s Kitchen neighborhood, then a high- crime neighborhood of tenements crowded with immigrants. Ben’s father, who had been a shoemaker in

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Hungary, could not find work in his trade in New York, and accepted a janitor's job. The family could barely make ends meet.

Ben studied crime prevention at City College of New York. He chose this path because, having grown up in a high-crime neighborhood, he wanted to make a difference by promoting safer communities. His excellent exam results earned him a scholarship to Harvard University Law School. The scholarship covered tuition, but not board and room. So, on top of his studies, he held down two jobs to cover rent and food. One was cleanup work in a cafeteria, where he could also eat. He covered rent with pay for doing research on war crimes for a professor who was writing a book on the subject.

When he graduated from Harvard in 1943, the world was engulfed in World War II. Ben enlisted in the U.S. Army and served in an anti-aircraft artillery battalion that fought in several major battles in Europe. He earned five battle stars.

Later he would confess that he did not like being in the army and had no taste for war. But he identified with soldiers and felt a sense of solidarity with them. He would later be a frequent speaker at military academies, advocating for international law as a way to end war and prevent the needless slaughter that took the lives of so many of them.

In 1945, as the war still raged, reports of Nazi atrocities surfaced and Ben was transferred to a newly created War Crimes Branch and assigned to gather evidence and apprehend war criminals. This experience set the direction for the rest of his life. His investigations of concentration camps, including Buchenwald, Dachau, and Mauthausen, left an indelible impression. More than 40 years later, in his 1988 book *Planethood*, he wrote:

Even today, when I close my eyes, I witness . . . the crematoria aglow with the fire of burning flesh, the mounds of emaciated corpses stacked like cordwood waiting to be burned . . . I had peered into Hell.

Chief Prosecutor at Nuremberg

After the war ended, Ben planned to practice law in the U.S., but, in 1947, he was asked to return to Europe and serve on the legal team prosecuting Nazi war crimes in Nuremberg. Before departing, he married his sweetheart, Gertrude. The trip to Germany served as their honeymoon. In Nuremberg Ben was assigned to be Chief Prosecutor for the United States in the *Einsatzgruppen Case*. He was only 27 years old and this would be his first case and his first time in a courtroom. It would be the biggest murder trial in history, with the eyes of the world watching. Twenty-four defendants, all commanders of the *Einsatzgruppen* (mobile killing units under Hitler's *Schutzstaffel* or SS-- the Nazi party's paramilitary forces) -- were charged with murdering more than a million people in Eastern Europe, including Polish nationals, Jews, priests, intelligentsia, gypsies, opposition leaders, and more.

In his eloquent opening statement for the prosecution Ben declared that the trial's purpose was not about vengeance. Rather it was a plea for the court to affirm the human right to live in peace. It was, he said, a "plea for humanity through law." He wanted to establish international legal precedent against genocide (<https://benferencz.org/video/ben-ferencz-nuremberg-einsatzgruppen-case-9-opening/>).

He succeeded. All of the defendants Ben had indicted and prosecuted were convicted and the judgment at Nuremberg established precedent in international law that would be cited in future cases.

But Ben felt more had to be done. Later, he reflected:

Nuremberg taught me that creating a world of tolerance and compassion would be a long and arduous task. And I also learned that if we did not devote ourselves to developing effective world law, the same cruel mentality that made the Holocaust possible might one day destroy the entire human race (benferencz.org/biography/).

Restitution and Reparations for Victims of Nazism

After the Nuremberg trials Ben remained in Germany to help establish reparation and rehabilitation programs for the victims of Nazi persecution and to take part in negotiations leading to the 1952 Reparations Agreement between Israel and West Germany, and the 1953 German Restitution Law. By the time he completed this work in 1956, he and Gertrude had four children, When they returned to the U.S, and for the next four decades, until 1992, Ben continued legal work for restitution and reparations for victims of Nazi persecution. At the same time, for the next 13 years, he practiced law as a partner in a private law firm.

International Criminal Court

But then, as the war in Vietnam raged in the 1960s, and with the horrors of WWII still haunting him, Ben decided to leave private practice and devote more time to the work he had begun in Nuremberg related to crimes against humanity. He dedicated the next phase of his life to deterring future crimes against humanity by strengthening international law and the United Nations, and especially by establishing an International Criminal Court ICC).

To this end he wrote books and gave speeches to educate the public and policy makers. He taught courses at Pace University to train upcoming law students. And he drafted legal agreements, negotiated, and advocated for an ICC in international fora and deliberative legal bodies.

Ben's first three books - *Defining International Aggression* (1975), *An International Criminal Court* (1980), and *Enforcing International Law* (1983) are a trilogy of academic excellence outlining progress and shortfalls in the development of international law for protecting peace and human rights, the need and outline for an International Criminal Court, and ways to deal with issues of compliance.

He also wrote books aimed at winning popular support for international law, including *A Common Sense Guide to World Peace* (1985), and, with Ken Keyes, Jr., *Planethood: The Key to Your Future* (1988). The latter book had a print run of 450,000 copies. (A partial list of books and videos by and about Ben is included at the end of this article. For a more complete list see the web site, benferencz.org. Although some of the books and articles are no longer in print, many can be accessed and downloaded free from this website.)

Ben's writing and speaking made a formidable contribution to winning support for establishing the International Criminal Court. But never content with just talk, Ben also advocated with policy

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makers, and joined legal teams drafting and negotiating the terms of agreement for the Statutes of the ICC.

In their book *The Prosecutor and the Judge* (2009), Heikelina Verriijn Stuart and Marlise Simons, describe Ben in action in the drafting and negotiating process for the ICC:

The very first time I saw Ben Ferencz in action was in Rome in 1998. Within the span of five weeks the treaty for the International Criminal Court had to be hammered out. There was a strong sense of momentum, of now-or-never. Debates raged day and night, in the great conference rooms, in the back chambers and in the corridors. In the middle of it all Ferencz could be found, tirelessly working on unwilling or uninformed delegations. I saw government representatives, NGO members and journalists bestow their respect on this former Nuremberg prosecutor. And Ferencz, who is not the most patient of men, showed an immense patience in his explanations of the complicated legal and political subjects at stake. The ICC founding treaty came to pass. The crime of aggression made it to the final text only at the very last stage of the negotiations. But the crucial issue of the court's jurisdiction over this crime was postponed. It may have been a blow for its champion, but Ben Ferencz saw it as another step forward and he continued to explain, to lobby and to travel the world. It was hard to catch him in one place. With the review conference of the ICC looming in 2010, he moved from meeting to lecture to conference, from New York to Saint Petersburg to Salzburg, always on the same mission, delivering his mantra: stop the war. And, most immediately, he urges his audience: make it possible for the ICC to prosecute crimes of aggression.

The authors also lauded Ben's persistence and tenacity in the face of obstacles:

. . . when we expressed our concerns about legal and human shortcomings in the burgeoning ICC, Ferencz plainly told us that we had our noses too close to the ground. We should take our distance. What may seem stagnation at the time can be seen as part of an important development with hindsight (Stuart and Simons, 2009).

After the ICC was established, Ben continued to work on its behalf, educating the media and public and participating in Preparatory Commission sessions for the ICC, monitoring and making available his expertise. He left no stone unturned in his effort to see the rule of law replace the rule by force.

When the ICC finally gathered sufficient ratifications by states and entered into force in 2002, it was a great disappointment for Ben and many other U.S. citizens that the U.S. signed, but did not ratify, the ICC Statutes. Instead, the U.S. entered into some bilateral treaties that excluded US citizens from being brought before the ICC. Ben advocated against this American exceptionalism and urged the U.S. to join the ICC without reservation. He held that the rule of international law must be applied equally to everyone. He believed that war-making is a "supreme international crime against humanity" and must be deterred by punishing offenders regardless of their country. With this principal in mind, he took a controversial position in the U.S. that in the matter of the war with Iraq, U.S. President George Bush, as well as Saddam Hussein, should be tried before the ICC.

Awards and Recognition

Ben was the recipient of many awards and honors for his work for the ICC, for strengthening international law related to crimes against humanity, and for reparations to victims of such crimes. A footpath next to the Peace Palace in the Hague has been named in his honor. His life was featured in a documentary, *Prosecuting Evil*, directed by Barry Avrich and shown on Netflix. He was interviewed in the Michael Moore documentary *Fahrenheit 11/9* and in the Ken Burns PBS documentary on the U.S. and the Holocaust. Sculptor Yaacov Heller created a bust of Ben in honor of his work for protection against genocide. In Liechtenstein he was awarded the Pahl Peace Prize, in the U.S., the Congressional Gold Medal, and in the state of Florida the Governor's Medal of Freedom. These are only a few of the many honors and the recognition Ben received in widespread appreciation for his work.

I was privileged to know Ben and to work closely with him in Global Education Associates. Ben contributed significantly to GEA's work for global peace and security and international law. He was also a dear family friend, attending weddings of two of our daughters and a frequent visitor in our home. Over the years, after he moved to Florida, we continued to stay in communication. When I last chatted with him a year before his death at the age of 103, he was still going strong, swimming regularly to keep his body strong, still cracking jokes and still speaking and writing to promote solidarity and more effective international legal systems for the protection of peace and human rights. In a divided world growing more interdependent, he strode like a giant with his message of "law not war."

Exemplar of Solidarity

Ben Ferencz and his work exemplify solidarity in many ways. His empathy for, and unity with those suffering from war and systems of injustice was extraordinary. It extended across time to those living in the past, present and future. It identified with the millions of victims who had suffered and died in concentration camps. It identified with the survivors and their relatives who were haunted with memories of lost loved ones and homes. And it extended to embrace future generations by working to secure a future free of war and gross violations of their humanity and rights. His sense of solidarity was not just a feeling of unity, it was also an informed choice and commitment to use his talents and life to make a difference. And it was strategic action. He chose meaningful actions, including war reparations, strategically aimed to alleviate the suffering of those who had lost so much. And he chose to work to strengthen the United Nations and international law and to establish an International Criminal Court as strategies to assure greater protection and security for future generations. His was not a one-time choice or action, but a lifetime of choices and actions, big and small, that would offer hope and also practical approaches and global structures to assure greater peace and security for all.

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**Partial List of Books, Websites, Videos
by and about Benjamin B. Ferencz**

Books By Benjamin B. Ferencz

1975. *Defining International Aggression: The Search for World Peace*. Dobbs Ferry, New York. Oceana Publications. ISBN: 037900271X
1980. *An International Criminal Court: A Step Toward World Peace — A Documentary History and Analysis*. Dobbs Ferry, New York: Oceana Publications. ISBN: 0379203898.
1983. *Enforcing International Law—A Way to World Peace: A Documentary History and Analysis*. Dobbs Ferry, New York: Oceana Publications. ISBN: 0379121476. Download full text: <https://benferencz.org/site/assets/files/1528/enforcing-international-law-volume-1.pdf>.
1985. *A Common Sense Guide to World Peace*. Dobbs Ferry, New York. Oceana Publications. ISBN: 0379207974. Download full text: <https://benferencz.org/site/assets/files/1527/a-common-sense-guide-to-world-peace.pdf>
1988. With Ken Keyes, Jr. *Planethood: The Key to Your Future*. Vision Books. ISBN: 0915972212.
1991. *World Security for the 21st Century: A Colloquium Between American and Soviet Legal Experts*. Dobbs Ferry, New York: Oceana Publishing.
1995. *New Legal Foundations for Global Survival: Security through the Security Council*. Dobbs Ferry, New York: Oceana Publications. ISBN: 0379212072. Download full text: <https://benferencz.org/site/assets/files/1524/new-legal-foundations-for-global-survival.pdf>.
2002. With Telford Taylor. *Less than Slaves: Jewish Forced Labor and the Quest for Compensation*. Indiana University Press in association with the United States Holocaust Museum. ISBN: 0253341051.
2020. *Parting Words: 10 Lessons for a Remarkable Life*. Little Brown Book group Limited. ISBN: 0751579912

About Benjamin Ferencz

Book

2009. Heikelina Verriijn Stuart and Marlise Simons. *The Prosecutor and the judge: Benjamin Ferencz and Antonio Cassese, interviews and writings*. Amsterdam University Press. ISBN: 9789085550235. Download full text: <https://benferencz.org/site/assets/files/1522/the-prosecutor-and-the-judge.pdf>.

Website

Official Ben Ferencz Website with books, articles, videos, podcasts, photos,
<https://benferencz.org/>

Videos

- 1947, September. Selected clips from the opening statements by Ben Ferencz, Chief Prosecutor of the Einsatzgruppen Case #9 held in Nuremberg, Germany.
<https://benferencz.org/video/ben-ferencz-nuremberg-einsatzgruppen-case-9-opening/>
- 2018, August. Avarich, Barry. *Prosecuting Evil: The Extraordinary World of Ben Ferencz*.
<https://benferencz.org/video/prosecuting-evil-the-extraordinary-world-of-ben-ferencz-trailer/>

*Dr. Patricia Mische is co-founder and former president of Global Education Associates. She also is the author or co-author of several books, *Star Wars and the State of our Souls*; *Toward a Human World Order: Beyond the National Security Straitjacket*; *Toward a Global Civilization: The Contribution of Religions*; and numerous other works on peace and global education.*