

INTRODUCTION: THE BUILDING BLOCKS TO RECOGNITION OF HUMAN RIGHTS AND DEMOCRACY: RECONCILIATION, RULE OF LAW AND DOMESTIC AND INTERNATIONAL PEACE

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The theme of this 2000 Goodwin Seminar issue, "*International Human Rights in the 21st Century: The Role of Development, Reconciliation and Democracy in Securing World Peace*," addresses one of the great ironies of the late twentieth century. While universal recognition of human rights and democracy has made great progress, raging ethnic conflict, war, and a lack of economic development continues to worsen the lives of millions. Traditional concepts of human rights and democracy have also been unable to provide easy answers to the difficult problems of reconciliation haunting countries only recently emerging from decades of terror. The five visiting professors leading the Goodwin Seminar were chosen specifically because of the perspectives they bring in addressing the complexity of creating a democratic society that is respectful of human rights. Those five visiting Goodwin professors are as follows: President Oscar Arias, President Jean-Bertrand Aristide, Dr. Hanan Ashrawi, Dean Claudio Grossman, and Judge Gabrielle Kirk McDonald.

The human rights community has increasingly recognized that human rights cannot be respected in a vacuum. Acceptance of human rights treaties and formal acceptance of human rights norms is meaningless without the rule of law. The rule of law, however, cannot exist unless society itself comes to terms with the deep divisions resulting from preexisting violations of human rights and a lack of democracy. Thus, reconciliation is an essential prerequisite to the establishment of rule of law and respect for human rights. The Truth and Reconciliation Commission in South Africa¹ and the Guatemalan Commission

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1. For more information on the South African Truth and Reconciliation Commission, see <http://www.truth.org.za/>.

for Historical Clarification² are two examples of the victims' need for societal acknowledgment of the suffering inflicted upon them. This acknowledgment is necessary for establishing the legitimacy of a subsequent democratic legal order. It does not even appear that retribution or punishment need accompany the acknowledgment in order for some degree of reconciliation to occur.

Without reconciliation, there cannot be domestic peace, and a country must enjoy some degree of domestic peace in order to enjoy the rule of law. The exigencies of domestic strife too frequently have provided justification for the Pinochets of the world to apply measures against their own people that would violate international law, if applied against captured enemy soldiers. Goodwin visiting professors President Arias³ and Dr. Ashrawi⁴ specifically address the issue of peace and human rights in their discussions of Central America and the Middle East. President Aristide continues to grapple with building a democracy in a society where many of the former agents of oppression are still active.

2. For more information on the Guatemala Commission for Historical Clarification, see <http://hrdata.aaas.org/ceh/report/english/toc.html>.

3. Oscar Arias, former president of Costa Rica and 1987 Nobel Peace laureate, holds international stature as a spokesperson for the Third World. Championing such issues as human development, democracy, and demilitarization, he has traveled the globe spreading a message of peace and applying the lessons garnered from the Central American Peace Process to topics of current global debate. President Arias was born in Heredia, Costa Rica in 1940 and studied Law and Economics at the University of Costa Rica.

In 1974, he received a doctoral degree in Political Science at the University of Essex, England. After serving as Professor of Political Science at the University of Costa Rica, he was appointed Costa Rican Minister of Planning and Economic Policy. In 1986, Oscar Arias was elected President of Costa Rica. In 1987, President Arias drafted a peace plan to end a time of great regional discord in Central America. Widely recognized as the Arias Peace Plan, his initiative culminated in the signing of the Esquipulas II Accords, or the Procedure to Establish a Firm and Lasting Peace in Central America, by all the Central American presidents on August 7, 1987. In that same year he was awarded the Nobel Peace Prize. In 1988, President Arias used the monetary award from the Nobel Peace Prize to establish the Arias Foundation for Peace and Human Progress. From these headquarters, President Arias has continued his pursuit of global peace and human security. President Arias has received honorary doctorates from numerous universities and many honorary prizes, among them the Jackson Ralston Prize, the Prince of Asturias Award, the Martin Luther King, Jr. Peace Award, the Albert Schweitzer Humanitarian Award, the Liberty Medal of Philadelphia, and the Americas Award.

4. Dr. Ashrawi holds a Ph.D. in medieval literature from the University of Virginia and is the founder of the International Human Rights Council, an organization committed to human rights and democracy in a free and independent Palestine. As a feminist, one of Dr. Ashrawi's major goals is to strengthen the political participation of Palestinian women and to achieve equal rights in a new nation based on the foundations of credibility, freedom, and legitimacy. In 1991, she became the Official Spokesperson for the Palestinian Liberation Organization ("PLO") and in 1993 was appointed General Commissioner of the Palestine Independent Commission for Citizen's Rights. Dr. Ashrawi was an active participant in the creation of the 1993 Oslo Accords. In 1996, she was elected to the Palestinian Legislative Council and named Minister for Higher Education. She is currently a member of the Legislative Council where she has become an outspoken critic of corruption in government and a leader for the creation of a democratic Palestine committed to human rights and peace. Dr. Ashrawi is married to Emil, a photographer with the United Nations headquarters in Jerusalem, and has two daughters, Amal and Zina.

Added to this is the explosive political situation where some of his own supporters have themselves committed human rights violations. Dr. Ashrawi must help her own people reconcile themselves to the existence of Israel, while preserving their dignity in the process. She also finds herself in the painful position of criticizing the very leaders of the struggle for independence when they have themselves violated democratic and human rights norms. In this sense, Dr. Ashrawi has played a dual role as spokesperson for the Palestinian cause, but also as an outspoken critic of the current Palestinian leadership for its failure to exhibit transparency in governance. She voices criticism where the government violates the human rights of the Palestinian people. Her outspokenness is all the more remarkable given her status as a Christian in a largely Islamic political movement and as a woman in a largely male dominated world. Throughout her visit to Nova Southeastern University, Dr. Ashrawi emphasized that peace must be achieved through negotiation among equals and that democracy cannot be achieved, nor human rights fully respected in the region, without peace.

The rule of law also cannot exist unless society itself creates independent civic institutions to monitor observance of human rights and encourage compliance with human rights norms. In this issue, Claudio Grossman, Dean of the Washington College of Law at American University, and a current member and former president of the Inter-American Commission on Human Rights, discusses the challenges of achieving full respect for the right of free speech in societies that have only recently emerged from dictatorship and systematic violations of human rights.⁵ Citing the Argentinean political scientist Guillermo O'Donnell, Dean Grossman refers to these recent democracies as "delegated democracies."⁶ These delegated democracies are the products of relatively free elections but without the civic and other institutions usually

5. Claudio Grossman was appointed Dean of the Washington College of Law, American University in 1995. Recognizing his achievements in the field of human rights, the Washington College of Law appointed him the Raymond Geraldson Scholar of International and Humanitarian Law. In 1989, Dean Grossman litigated several landmark cases decided by the Inter-American Court on Human Rights that resulted in favorable decisions for the plaintiffs. He has served as the General Rapporteur of the Inter-American Bar Association, an organization representing lawyers of the Americas, and is currently a member of the Council of the Inter-American Institute of Human Rights. In 1993, Dean Grossman was elected to the seven member Inter-American Commission on Human Rights ("IACHR") of the Organization of American States. He was elected Special Rapporteur on Women's Rights for the IACHR in 1995 and served as IACHR President in 1997. Representing the IACHR, Dean Grossman has participated in human rights missions to Haiti, Brazil, Guatemala, the Dominican Republic, Mexico, Paraguay, Surinam, Nicaragua, and the Middle East. A native of Chile, Dean Grossman is married to Dr. Irene Klinger, a Chilean economist and Chief of the Office of External Relations of the Pan American Health Organization. They have two daughters, Sandra and Nienke.

6. Claudio Grossman, *Freedom of Expression in the Inter-American System for the Protection of Human Rights*, 7 ILSA J. INT'L & COMP. L. (647, 648) (2001), 25 NOVA L. REV. 411, 412 (2001) (citing Guillermo O'Donnell, *Delegative Democracy*, 5 J. DEMOCRACY 55, 56 (1994)).

present in a more established democracy to check the authoritarian tendencies of even democratically elected leaders. In these cases, the existence of a human rights system of the Organization of American States is especially important to the consolidation of democracy.

Social justice must exist in order for the rule of law, domestic peace, democracy, and respect for human rights to thrive. Dr. Ashrawi dealt with this issue in the context of redressing some of the current inequities between the economic privilege enjoyed by the Palestinian political leadership and the economic hardship endured by the great majority of Palestinians. Moreover, until Palestinian citizens of Israel enjoy the full political, social, and economic rights of Jewish citizens of Israel, peace cannot be assured.

It is difficult to ascertain the extent of President Aristide's involvement in the problems in Haiti's transition to democracy, but there can be no question that the enduring lack of social justice in Haitian society after decades of rule by oligarchy and dictatorship has only embittered the body politic, making reconciliation, domestic peace, and full respect for human rights a daunting task.

Finally, the Goodwin visiting professors demonstrate that democracy and human rights can only flourish in an international context in which peace is assured and some form of justice is meted out to those national actors that fail to respect fundamental human rights norms. The pursuit of peace is exemplified by the life work of President Arias, who recognized that the exemplary democratic history of Costa Rica can only be guaranteed in the future if the region itself is free from military conflict and a debilitating arms race. To that end, President Arias authored and promoted the "Arias Peace Plan," a blueprint for ending decades of conflict in Central America. Despite considerable hostility from the United States, the Arias Peace Plan provided the necessary impetus for ending the decades of civil war ravaging Central America. President Arias, coming from a country that has been a beacon of democracy and one that respects human rights, nonetheless articulated the importance of regional peace for the economic, political, and social development of his own country:

In a poor region like ours, we cannot afford to squander opportunities for development by wasting our energy on violence and repression. Having seen the destruction wrought by internal conflicts in Guatemala, El Salvador and Nicaragua, Costa Ricans have come to understand the true importance of maintaining a culture that respects human rights.⁷

7. Dr. Oscar Arias, *What is Needed to Protect International Human Rights in the 21st Century*, 7 *ILSA J. INT'L & COMP. L.* 721, 722 (2001), 25 *NOVA L. REV.* 487, 488 (2001) (internal citations omitted).

Indeed, a primary focus of President Arias' writing, and his work in the last decade, has been the appeal for an abandonment of the arms race in Latin America and elsewhere. In doing so, President Arias has not hesitated to condemn the West's complicity in the arms race among the world's poorest countries:

As debt servicing payments and military spending continue to rob the poor of basic health and education services, developed nations continue to profit from this tragic situation In the 1980s, Western governments and corporations played a significant part in arming Saddam Hussein's despotic regime in Iraq. Earlier in this decade, France provided significant military aid to the genocidal government of Rwanda. Until recently, the Indonesian military used British-made equipment against pro-independence groups in East Timor It is unconscionable that undemocratic states and governments that abuse human rights can easily acquire sophisticated weaponry on the international market, and it is outrageous that leading democracies such as the United States, France and Great Britain fuel bloody conflicts by supplying warring factions with armaments.⁸

The pursuit of a particularly legal form of international justice is exemplified by the work of Judge McDonald, recent past president of the International Criminal Tribunal for the Former Yugoslavia,⁹ and the work of

8. Arias, *supra* note 7, 7 ILSA J. INT'L & COMP. L. at 732, 25 NOVA L. REV. at 498 (internal citations omitted).

9. In 1993, the United Nations General Assembly elected her as a Judge of the Tribunal, and in 1997, she was re-elected to a second four year term. As President of the Tribunal, she presided over a rapid growth in the Tribunal's activities and effectiveness. She has traveled extensively on behalf of the Tribunal promoting its mandate before the United Nations Security Council, the Council of Foreign Relations, the Peace Implementation Council, numerous universities, and the international media. Judge McDonald increased the visibility of the Tribunal within the former Yugoslavia by creating an Outreach Program designed to inform the peoples of the former Yugoslavia about the work of the Tribunal and combat misinformation.

During the course of her Presidency, the number of detainees held by the Tribunal more than tripled, a third trial chamber was added, and two new courtrooms were constructed. Judge McDonald has also presided over the Appeals Chamber, which receives appeals from both the ICTY and the International Criminal Tribunal for Rwanda ("ICTR"). She served as the presiding judge over the ICTY's first successful prosecution (the Tadic' Case, 1995-97). Judge McDonald has also participated in the proceedings leading to the establishment of the permanent International Criminal Court. After graduating first in her class at Howard University Law School in 1966, Judge McDonald was a highly successful lawyer before becoming the first African-American appointed to a federal court in Texas.

After serving as a federal district judge in Houston for nine years, Judge McDonald became a partner with a major law firm in Texas. She has also worked for the NAACP and taught at the law schools of St. Mary's University, the University of Texas, and Texas Southern University. She has received numerous awards and honors including the CEELI Leadership Award, the National Bar Association's First Equal Justice

Dean Grossman with the Inter-American Commission.

Judge McDonald presided over the creation of one of the most important international legal institutions since the end of the Second World War: the International Criminal Tribunal for the Former Yugoslavia ("ICTY"). As Judge McDonald notes, the creation of this tribunal came at a critical juncture in history when the international tribunal was finally prepared to respond to the kinds of atrocities that had previously been ignored. The Cold War had ended, permitting the international community to focus on issues of international justice with large agreement among the world's nations as to the substantive validity of human rights norms. Perhaps, as Judge McDonald wryly notes, the creation of the ICTY was possible because the atrocities were committed in Europe. Nevertheless, the creation of the ICTY was shortly followed by the establishment of the International Criminal Tribunal for Rwanda ("ICTR") in November 1994, in response to the atrocities committed in Rwanda. These tribunals have had remarkable successes, and the successes have only increased as peace has slowly returned to the regions affected. The new democratic government of Croatia has turned over a number of indicted war criminals to the ICTY in The Hague and the Yugoslavian government is debating whether Slobodan Milosevic himself should be turned over to the International Tribunal.

Judge McDonald notes in her article that the International Tribunals have not only broken ground in developing new procedures for prosecuting war criminals, they have additionally developed new substantive law. They have defined sexual violence as an international crime in the context of war, a development that has been long overdue. Finally, the courts have also been instrumental in laying the groundwork for the creation of the permanent International Criminal Court:

The Tribunals have demonstrated that international criminal justice is possible. They are positive proof that it is possible to try persons charged with serious violations of international humanitarian law in international courts and that the differences in the civil and common law systems- not to mention the country-by-country differences even within the same type of system- are not insurmountable obstacles.¹⁰

In his article, President Arias recognizes the importance of the permanent International Criminal Court, arguing that "its existence alone would serve to

and Ronald Brown International Law Awards, and the American Society of International Law's Goler Teal Butcher Award for Human Rights. Judge McDonald is the mother of a son attending law school and a daughter working in the film industry. See Gabrielle Kirk McDonald, *The International Criminal Tribunals: Crime & Punishment in the International Arena*, 7 ILSA J. INT'L & COMP. L. 699 (2001), 25 NOVA L. REV. 465 (2001).

10. McDonald, *supra* note 9, 7 ILSA J. INT'L & COMP. L. 718, 25 NOVA L. REV. at 484.

deter would-be violators of human rights who might otherwise be able to act with impunity.”¹¹ To this end, the court would “help conflict-torn nations on the road to reconciliation and recovery.”¹²

One of the most remarkable aspects of Judge McDonald’s work at the Tribunals was her groundbreaking launch of the Tribunal’s “Outreach Program,” which was an effort to make the processes and personalities of the Tribunals’ work known to the larger world community. Judge McDonald recognized that the process of creating, institutionalizing, legitimizing and enforcing international law requires much more than the will of international lawyers, academics’ and politicians. The law must be accessible and clear to the international community at large and must be accepted by the people of that community as legitimate. As Judge McDonald observes, this is particularly important for the peoples of the conflict from which the international criminal defendants originate. Realizing the goal of broad-based legitimization is an enormous, difficult, but necessary task.

All five speakers have demonstrated through their life work that democracy and respect for human rights require much more than a ritualistic acceptance of elections or the ratification of treaties. Without the building blocks for democracy and human rights such as rule of law, reconciliation, social justice and domestic peace, the goal of a peaceful, democratic, rights-based society will remain elusive.

11. Arias, *supra* note 7, 7 ILSA J. INT’L & COMP. L. 727, 25 NOVA L. REV. at 493.

12. *Id.*