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Law as a sword, law as a shield

By Lowell Ewert

Law as a sword—the challenge of law

It is difficult for a peace activist to be a passionate defender of law. Although we rely on law to shield citizens from abusive governments, law has often been a great source of violence, injustice, and oppression. It fails by either not curbing injustice, or worse, by justifying or encouraging violations of human rights. For example,

- the genocide committed by Nazi Germany was mostly lawful under German law, and according to most *written* international law in effect at the time.
- apartheid in South Africa was established by law.
- Saddam Hussein claimed at his trial in Baghdad in 2006 that his order mandating the execution of 148 persons in response to the attempted assassination on his life was lawful.
- the Israeli military justified their heavy use of cluster bombs during the 2006 war by stating that “[a]ll the weapons and munitions used by the IDF [Israeli Defense Forces] are legal under international law and their use conforms with international standards” (Shadid 2006, A01).¹
- the 2003 US invasion and occupation of Iraq was lawful according to American interpretation of law.

Law as a shield—the case for law

Although law has often been used as a sword to harm and oppress, the positive hope in law lies in considering its other attributes and accomplishments.

1. Despite all the obstacles that impede law, it is a good foundation for human rights. The Universal Declaration of Human Rights² begins by stating clearly and unapologetically in its Preamble that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” To advance this vision, the United Nations was created to “save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind.”³ While law has often failed, the foundational principles have been articulated. A starting point has been identified.

2. *It is impossible to have peace without law.* The alternative to law is the chaos we have seen in Baghdad. We need law that functions as an operating system to manage non-violent interactions and interrelations between differing individuals, groups, and nations. While some may argue that we can have peace through informal community, this proposition does not create a means by which different or competing individuals, groups, or nations can peacefully coexist. We need good law for peace.

3. *Law is important even when violated or ignored.* Just as we don't say that the law prohibiting murder is irrelevant because some people continue to murder, so too we should not denigrate law just because it is abused. Law reinforces a standard even when ignored and can inspire and motivate individuals to try to change society even when deliberately violated by the powerful.

4. *Just because someone claims an act is lawful does not mean that it is.* Law does not logically or inexorably evolve in a positive direction. Its evolution is far more complex and chaotic. It is an ongoing experiment that is tried and tested, amended when problems arise, and discarded when not redeemable. At trial, Saddam Hussein and the court that convicted him reached opposite conclusions about the lawfulness of his actions. President Bush reached a different conclusion to that drawn by many other world leaders about the legality of the Iraq war. We should not be disheartened by these contradictions but rather position law in the big picture and understand how it is evolving and changing.

5. *Peacemakers need to study and better understand law.* Law is a handbook for peace. It should therefore occupy a prominent place in peace research. While law is imperfect, it needs to be studied, examined, promoted, empowered, and challenged to better fulfill its mandate of promoting a more peaceable and just world. Without law violence is inevitable.

6. *We should study not just actual laws and statutes but the policies that support them.* A tree is not only composed of what is visible above ground; half of every tree, the roots, is not seen. A skyscraper without a foundation could not remain standing. Like trees and buildings, laws and other legislation do not simply state what is lawful and what the penalties are for violations, but illustrate the underlying social policy that is being advanced and reflect particular values.

7. *Law sets a minimum, not a maximum, standard.* What law mandates is not all that should be done. Law alone has never, can never, and will never create a perfect society in which all human needs are met and all human conflicts are happily resolved.

8. *Law complements, and does not supplant or override, our moral and religious values.* Law will not create the Kingdom of God on earth but it also does not inhibit mediation, restorative justice, and peacebuilding. Instead, by providing some very rough guidelines, law creates a structure that enables us to interact with each other through transformative mechanisms or negotiation, mediation, and restorative justice.

9. Law can make our analysis of conflict situations more honest. At times, distorted understandings of law have led peace groups to undermine peace and justify killing and destruction. When NATO bombed Serbia, some peace activists issued statements that implied or asserted that the NATO bombing was the cause of the humanitarian crisis that followed. Before NATO began the bombing, these persons argued, there were no refugees. The commencement of bombing, this argument continued, was followed by the murders, rapes, and expulsions of almost a million Kosovar civilians by Serbian forces. However, under international law, there is never a justification for deliberately attacking a civilian population. No actual or alleged violation of international law by NATO can be used to justify these Serbian actions.

A similar argument was made when four members of the Christian Peacemaker Teams (CPT) delegation were kidnapped in Iraq in 2005. A CPT (2005) press release stated, “We are angry because what has happened to our teammates is the result of the actions of the U.S. and U.K. governments due to the illegal attack on Iraq and the continuing occupation and oppression of its people.” However, the kidnapers, and those who directed them, made a moral choice to kidnap. A claim that kidnapping is the result of an illegal war or that rape is the result of illegal bombing uses the same rationale that President Bush used to justify war when he claimed that the illegal September 11 attacks required US action in Iraq and elsewhere. Peace is not served by these arguments.

10. Even horrific human rights abusers are aware of the power of law. In the 1999 Kosovo crisis, those who committed the massacres of civilians tried to hide their work by destroying corpses, moving or hiding graves, and destroying written evidence. These criminals were aware of the power of law and were trying to hide from it.

Top commanders of the Lord’s Resistance Army (LRA) in Uganda, who are responsible for untold human rights abuses, have demanded that their indictments for war crimes be lifted as a precondition to their coming to the negotiating table. “The ICC [International Criminal Court] is the first condition, without that I cannot go home because it might be a trap,” LRA Deputy leader Vincent Otti said (BBC News 2006).

As these examples show, even those who most blatantly flout international human rights law understand what it is and recognize its potential impact.

11. International law offers a comparative basis on which to evaluate claims of right and wrong. We too often get it wrong when we assume that our own national or parochial views are best. Aborigines in the US and Canada were decimated by Eurocentric interests, often because the dominant culture thought it knew best. The Middle East is bearing the brunt of the US belief that it best knows how the Middle East should be structured. International law reflects a broader consensus among nations and thereby acts as a corrective to, or limit on, the nationalistic tendencies of any one nation.

Conclusion

Law can be a sword or a shield. It becomes a sword when people of conscience ignore it and denigrate it. It becomes a shield when we work, in the words of Supreme Court Justice Louis Brandeis, to “make the law respectable.” In this labour we will get our hands dirty because law is seldom free from moral ambiguity. We will also become enmeshed in tremendously difficult and controversial choices. But law remains the best hope of an incredibly diverse and fragmented world for peaceful coexistence.

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Notes

1. An estimated four million cluster bomblets were dropped on 770 sites in South Lebanon, 90 percent of which were dropped during the last three days of the conflict. Bomblets have an estimated 30-40 per cent failure rate. The leftover explosives continue to harm mainly civilians. See http://www.hrw.org/campaigns/israel_lebanon/clusters/index.htm.
2. The Universal Declaration of Human Rights can be found at <http://www.un.org/Overview/rights.html>.
3. The Charter of the United Nations can be found at <http://www.un.org/aboutun/charter/>.

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