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Name, Shame, and Then Build Consensus? Bringing Conflict Resolution Skills to Human Rights

Stephan Sonnenberg*
James L. Cavallaro**

I. INTRODUCTION

Over the past two decades, clinics in both international human rights and dispute resolution have proliferated in the U.S. legal academy. While the combined number of these clinics in top American law schools was in the single digits a quarter century ago, at this writing all but a few of the top twenty-five law schools and more than three-fifths of the top fifty schools now have clinical programs in at least one, if not both of these areas.[1]

Beyond the legal academy, in the past twenty years, human rights and conflict resolution have become two of the leading approaches (if not *the* leading approaches) to situations involving conflict, rights abuse, and mass atrocity around the world.[2] That law schools now

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1. *See, e.g.*, *Allard K. Lowenstein International Human Rights Clinic*, YALE LAW SCHOOL, http://www.law.yale.edu/academics/AllardKLowensteinIHRC.htm; *International Human Rights Clinic*, HARVARD LAW SCHOOL, http://www.law.harvard.edu/academics/clinical/clinics/ihrc.html. This figure is the result of the Authors' research about the clinical offerings of each of the top fifty law schools, according to the *US News & World Report* ranking (full research findings on file with authors). This research was conducted by the authors in April, 2012.

2. David Kennedy, for example, notes that "As a dominant and fashionable vocabulary

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seek to train graduates in these areas is, we argue, a salutary though somewhat delayed development.

Despite the potential applicability of dispute resolution and human rights approaches to similar problems, to date, these two sub-disciplines have developed on parallel tracks that have rarely, if ever, intersected. Within law schools, clinical education in human rights and dispute resolution has developed in separate programs. The two clinical areas have independently responded to some of the deficiencies of traditional litigation-centered law school clinics. Both dispute resolution and human rights work address means of engagement outside the traditional litigation context. As such, they have sought to broaden legal education beyond the classic case study method, complemented by engagement in real-world projects. While on parallel paths, both dispute resolution and human rights clinics have developed similar, unconventional pedagogies.[3]

The division between these fields reflects and amplifies, to a significant degree, the historic tensions between professionals in these fields. Speaking in generalities, these actors have worked separately, frequently believing their approaches to be incompatible. Perhaps the clearest example of the perceived (and often real) tensions between these two fields has been the "peace versus justice" debate. In its simplest, most irreconcilable form, the clash between conflict resolution advocates and rights practitioners posits that situations of conflict can either be managed by accommodating all parties (including rights abusers) or, instead, by advocating justice (that is, investigation, prosecution, and punishment of rights advocates) regardless of the consequences. One manifestation of these competing views was an exchange of articles in *Human Rights Quarterly* in 1996–1997.[4] The first, anonymously-penned piece accused human rights activists of undermining the chances for a

for thinking about emancipation, human rights crowds out other ways of understanding harm and recompense." David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101 (Spring 2002).

3. Many assertions in this article, particularly those having to do with the state of human rights and dispute resolution law clinics in U.S. law schools, are based in large part on the authors' personal knowledge.

4. *See* Anonymous, *Human Rights in Peace Negotiations*, 18 HUM. RTS. Q. 249, 249–51 (1996).

negotiated end to the Bosnian-Herzegovinian conflict, thereby prolonging the conflict, costing months of violence and unnecessary rights abuse.[5] The piece provoked an equally vigorous response by Felice Gaer, arguing that rights advocacy and justice for victims should not be subject to the whims and compromising rhetoric of international diplomacy.[6] A few years later, in 1999, David Rieff raised this tension in the context of the Sierra Leone conflict, questioning whether rights advocates were prolonging the war and slaughter in that country by challenging amnesty.[7] Subsequent events would demonstrate that Rieff's critique was premature.[8]

In recent years, though, dispute resolution experts have incorporated core human rights principles into their work.[9] While this has been done haltingly, there are clear signs that the rhetoric of protecting human rights has penetrated the field of dispute resolution.[10] By contrast, human rights theoreticians still tend to view

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5. *See id.*

6. *See* Felice D. Gaer, *UN-Anonymous Reflections on Human Rights in Peace Negotiations*, 19 HUM. RTS. Q. 1, 8 (1997).

7. *See* David Rieff, *The Precarious Triumph of Human Rights*, N.Y. TIMES MAG., Aug. 8, 1999, at 37.

8. Since the publication of Rieff's article, not only has the conflict in Sierra Leone abated, but some analysts have even suggested that Sierra Leone has witnessed "the invention of human rights 'from below.'" *See* Steven Archibald & Paul Richards, *Converts to Human Rights? Popular Debate about War and Justice in Rural Central Sierra Leone*, 72 AFR.: J. INT'L AFR. INST. 339, 340 (2002).

9. *See, e.g.*, Véronique Dudouet & Beatrix Schmelzle, *Towards Peace with Justice*, *in* HUMAN RIGHTS AND CONFLICT TRANSFORMATION, THE CHALLENGES OF JUST PEACE, 9 BERGHOF HANDBOOK DIALOGUE SERIES 5, 5–14 (Véronique Dudouet & Beatrix Schmelzle eds., 2010).

10. For a selection of academic commentaries on the impact of the Human Rights discourse on the practice of conflict resolution, *see e.g.*, Safia Swimelar, *Approaches to Ethnic Conflict and the Protection of Human Rights in Post-Communist Europe: The Need for Preventive Diplomacy*, 7 NATIONALISM AND ETHNIC POL., 98–126 (2001); B.G. Ramcharan, *Human Rights and Conflict Resolution*, 4 HUM. RTS L. R., 1–18 (2004); Negotiating Justice? Human Rights and Peace Agreements, 2006, International Council on Human Rights Policy, Versoix, Switzerland; Hurst Hannum, *Human Rights in Conflict Resolution: The Role of the Office of the High Commissioner for Human Rights in UN Peacemaking and Peacebuiling*, 28 HUM. RTS. Q. 1–85 (2006); *Human Rights and Conflict Transformation: The Challenges of Just Peace*, Handbook Dialogue Series #9 (Véronique Dudouet & Beatrix Schmelzle eds., 2010); *see also Guidelines for United Nations Representatives on Certain Aspects of Negotiations for Conflict Resolution*, 2006 UNITED NATIONS JURIDICAL Y.B., 496–97, *available at* http://www.un.org/law/UNJuridicalYearbook/index.htm (laying forth the need for UN-sanctioned peace negotiators to consider themselves bound by human rights norms as they mediate international disputes).

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their field as intellectually separate from dispute resolution.[11] Clinical legal education trails behind this multidisciplinary scholarship.

This Article examines the reasons behind the tensions that continue to make integration of these two approaches so difficult. It seeks to interrogate the status quo, with a focus on law school clinics. We believe that many complex human rights problems that would traditionally be addressed separately by human rights and dispute resolution practitioners would benefit from a more integrated approach. As a consequence, the training of practitioners would also benefit from a pedagogy that incorporates elements of both disciplines. By taking a step back from the existing structure of clinics and turning to the goals that they seek to achieve, we argue for a new model that brings together skills and approaches from traditional human rights and conflict resolution approaches to develop a hybridized model of practice.[12] This Article recognizes the inroads that human rights discourse and practice have already made in conflict resolution. It thus focuses primarily on the contributions that conflict resolution can make to human rights approaches. This year, at Stanford Law School, the authors of this Article have begun the process of launching just such a human rights and conflict resolution clinic. This Article seeks to explain the background, objectives, and future prospects for this and similar clinics.

The Article considers three representative case studies. These cases come from the authors' personal experience working in Non-Governmental Organizations (NGOs) or clinics devoted to either human rights or conflict resolution. We chose the examples not only to illustrate typical scenarios in which a hybridized practice of human rights and conflict resolution proved to be either absent or effective, but also to highlight three prominent tensions that we believe *any*

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11. For one scholarly article attempting to highlight the relevance of conflict resolution methods on the practice of human rights, see Eileen Babbitt's contribution *The New Constitutionalism: An Approach to Human Rights from a Conflict Transformation Perspective to Human Rights and Conflict Transformation*, *supra* note 10, at 67.

12. We note here that while we identify integrated approaches to human rights and conflict resolution clinics, including concrete proposals in specific contexts, this Article is intended as an inquiry rather than a solution. In this regard, many of the suggestions are based on our concern that we—as insulated or one-dimensional practitioners—have failed to provide the best possible representation to our clients, communities, and partners. Our proposals are as frequently based on our mistakes as our successes.

human rights project incorporating conflict resolution skills will face: (1) the tension between skepticism vs. optimism; (2) the tension between signaling strength vs. inviting collaboration; and (3) the tension between maintaining relationships vs. demanding critical self-analysis. Our analysis of the three case studies provides a description of how we managed these tensions in our projects and proposes several benefits *from the perspective of a human rights practitioner* on an integrated approach. The Article concludes by outlining the structure and pedagogy of our clinic, the type of projects we select, and the ways we hope to document our success (and shortcomings) as the years progress.

II. THE HUMAN RIGHTS APPROACH

The classic human rights approach is characterized by actions: (1) to document abuses convincingly; (2) to work to prevent further abuse; and subsequently (3) to hold accountable those responsible for abuses.[13] Once rights abuses have been established, traditional rights advocacy focuses on efforts designed to investigate, prosecute, and punish wrongdoers and seek compensation for victims. Rights advocates routinely engage justice mechanisms—domestic investigations, prosecutions, international oversight bodies, and quasi-judicial and judicial structures-in order to seek accountability for past abuses. Because these institutions alone often fail to vindicate the rights of the oppressed, rights practitioners and rule of law consultants also frequently seek to intervene on a systemic level to improve the capacity of those judicial remedies to operate more effectively. Still, at the end of the twentieth century, one of the major focus areas of the human rights movement remained advocacy for the *creation and strengthening of* such judicial remedies, both at the domestic and increasingly at the international levels.

Looking beyond the legal system, the signature advocacy methodology of the human rights movement has been to "mobilize shame," that is, to embarrass abusers and thus stop violations, while

13. *See, e.g.*, David Rieff, *The Precarious Triumph of Human Rights*, N.Y. TIMES MAGAZINE, Aug. 8, 1999, *available at* http://www.nytimes.com/1999/08/08/magazine/the-precarious-triumph-of-human-rights.html?pagewanted=all&src=pm.

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forcing investigations and prosecutions of those responsible. Compensation for victims is, to some extent, an afterthought. As Kenneth Roth wrote in describing the methodology of Human Rights Watch, the essence of human rights work is the "shaming methodology—the[] ability to investigate misconduct and expose it to public opprobrium."[14] He continues, stating that "the core of our methodology is our ability to investigate, expose and shame. We are at our most effective when we can hold governmental (or, in some cases, nongovernmental) conduct up to a disapproving public."[15]

Looking further at the practice of many prominent human rights organizations, the "disapproving public" mentioned by Kenneth Roth also deserves to be more carefully defined, since it is usually the public and politicians of wealthy and influential countries in North America or Europe that find themselves to be the targets of human rights awareness-raising campaigns about rights abuse in other countries. As Tom Farer observed:

> From its inception, the international human rights movement has operated on the assumption that the most important means for improving the behavior of delinquent regimes is international public opinion. Although human rights activists often refer merely to the "shaming effect" of exposure, as if a government shown to be torturing and murdering its opponents may experience a kind of moral epiphany or at least be embarrassed into less malignant behavior, their lobbying efforts imply and their private conversations often confirm belief in a more complex chain of causation. While hoping to trigger pressure from morally sensitive and influential sectors within the target state, in most instances the real targets of shaming campaigns are citizens of liberal democratic countries.[16]

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14. Kenneth Roth, *Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization*, 26 HUM. RTS. Q. 63, 63 (2004).

15. *Id*. at 67.

16. Tom Farer, *The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox*, 19 HUM. RTS. Q. 510, 517 (1997). This being the case, it is easy to see how the public in these countries has come—improperly, might we add—to perceive human

Of course, human rights approaches may be far more varied than this Manichean description. Indeed, Kenneth Roth has come under attack for the implicit conclusion of his argument that the methodology employed by Human Rights Watch ought to be the main methodology of rights advocates more generally.[17] Human rights practitioners may seek to influence and develop public policies, work to promote greater understanding and acceptance of difference, and so on. This may involve action before domestic or international bodies in each phase of an advocacy effort: identifying and documenting the rights violations, ending the abuse, and seeking to bring about prosecution and punishment. The fact-finding to document rights abuse is often done by local NGOs, sometimes acting in partnership with international NGOs.[18] Activists may seek to pull power levers at the local, national, or international level. Similarly, criminal prosecutions or civil trials seeking to hold rights abusers to account may take place at the local, national, or international level. In situations where formal prosecutions are either unlikely or difficult, alternative forms of punishment may involve lustration (where officials of a perpetrating regime are removed from office), de-licensing, social ostracism, or measures of establishing the truth about the past and recognizing victims—such as truth commissions, indemnification schemes, and the creation of memory

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rights as a discourse to describe all the terrible things happening "out there"—far removed from domestic shores—in the wild and barbarous lands of the unknown abroad.

17. *See, e.g.*, Letter from William F. Schulz, former Executive Director of Amnesty International, to Kenneth Roth, Executive Director, Human Rights Watch (Apr. 15, 2002) (on file with authors); Alicia Ely Yamin, *The Future in the Mirror: Incorporating Strategies for the Defense and Promotion of Economic, Social and Cultural Rights into the Mainstream Human Rights Agenda*, 27 HUM. RTS. Q. 1200, 1223–25 (2005).

18. Human Rights Watch, for example, explains on its website how it "partner[s] with local human rights groups, making detailed recommendations to governments, rebel groups, international institutions, corporations, policymakers, and the press to adopt reforms." *Frequently Asked Questions*, HUMAN RIGHTS WATCH, http://www.hrw.org/node/75138 (last visited Apr. 23, 2012). The Danish Institute for Human Rights makes its reliance on local partnerships even more explicit. "The partners are equal, but have different roles in the partnership. . . . The local partner contributes with knowledge of the national context, including of human rights in the national context. . . . In return, the Institute provides international expertise on human rights, organisational and strategic skills and access to donors and international networks. The Institute may also offer training and capacity building." DANISH INSTITUTE FOR HUMAN RIGHTS, http://www.humanrights.dk/ (last visited Apr. 30, 2012).

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sites.[19] However, throughout all of these various activities the unifying objective of human rights advocates is the intent to identify, document, halt, and punish abuses.

Essential to this succinct description of traditional human rights advocacy is that in all elements described above, the human rights advocate represents the interests of the victim or society in justice. The rights advocate is involved in an adversarial context, if not an adversarial process, in which she must advance the human rights cause, or more specifically help secure the individual rights of the victim (or potential victim) of abuse. Any success by the rights advocates implies a retreat by the forces responsible for rights abuse: thus a classic zero-sum view of the world.

III. THE CONFLICT RESOLUTION APPROACH

The above description of the human rights approach contrasts with an equally oversimplified conflict resolution approach,[20] in which the practitioner jettisons an advocacy agenda in favor of a more facilitative role.[21] Many conflict resolution practitioners are in fact *called* neutrals—so important is the notion that they not appear biased towards any party to a conflict.[22] Their neutrality, however,

19. For a full assessment of the transitional justice measures employed across a range of nations in the Americas and Eastern Europe, see AFTER OPPRESSION: TRANSITIONAL JUSTICE IN LATIN AMERICA AND EASTERN EUROPE (Vesselin Popovski & Monica Serrano eds., 2012).

20. To keep our terminology inclusive and accessible to lay people, students, and professionals from other disciplines, we have chosen the term "conflict resolution" to encompass what other scholars might term "conflict management", "conflict transformation," or even "peace-building." To help us justify this definitional sleight of hand, allow us to make reference to Professor Schneider's article in this volume. *See* Andrea Kupfer Schneider, *Teaching a New Negotiation Skills Paradigm*, 39 WASH. U. J.L. & POL'Y 13 (2012).

21. It is important to note that here we are describing the role of the "neutral" or process manager. In describing the "conflict resolution approach," we might also have focused on the role of an advocate engaged in such a non-adversarial dispute resolution process (a lawyer representing parties in a mediation, for example), in which the advocate would also have to modulate her advocacy strategy to account for the more collaborative process. We believe, however, that the true pedagogical power of exposing our students to both the human rights and the conflict resolution approaches lies in having them stretch their thinking precisely *beyond* the bounds of typical advocacy roles. Similarly, we see many advocacy projects where, either by design or happenstance, human rights advocates find themselves engaging in process management, either internally within a coalition or even between disparate stakeholder groups in a community, and thus it is those process facilitation skills that will prove relevant.

22. For a fascinating early debate on this issue, see the exchange between MIT Professor

does not reflect an ignorance of the very real moral and ethical issues at play in many disputes. Instead, it reflects a principled commitment to a process whereby the protagonists themselves must develop shared normative agreements about how to manage their conflict more constructively. A facilitative conflict resolution practitioner typically insists that the issues to be resolved in any dispute are defined by the parties themselves, and that the informed consent of the parties is sufficient to justify any compromises that may be necessary to reach agreement—even if these compromises are inconsistent with competing norms (such as human rights, for example).[23] Thus, even if a peace agreement requires a temporary suspension of human rights norms, this could be justified if the involved parties agree that the benefits of peace make the tradeoff worthwhile. For example, a conflict resolution practitioner trained in facilitative mediation should not object, as a matter of principle, to an amnesty for perpetrators of mass violence, or a decision to allow those who benefited unjustly from a past era of enforced racial inequality keep the spoils of that past policy, as long as the parties who agreed were fully empowered and informed about their decision.

Lawrence Susskind proposing a mediation model in environmental disputes, whereby mediators should be held accountable for the substantive outcomes they help facilitate and responsible for ensuring that those outcomes are fair. *See* Lawrence Susskind, *Environmental Mediation and the Accountability Problem*, 6 VT. L. REV. 1 (1981). This model of a non-neutral mediator is critiqued by Professor Joseph Stulberg of CUNY, who claims that neutrality and impartiality are the essence of mediation, and thus not to be tinkered with. *See* Joseph B. Stulberg, *The Theory and Practice of Mediation: A Reply to Professor Susskind*, 6 VT. L. REV. 85 (1981).

23. For a more detailed discussion of this issue, see Ellen Waldman, *Identifying the Role of Social Norms in Mediation: A Multiple Model Approach*, 48 HASTINGS L.J. 703 (1996–1997), in which Waldman presents a three-tiered typology of mediation practice divided with respect to how the mediator positions him or herself vis-à-vis social norms. According to that typology, the most commonly taught form of mediation, which she terms the "norm-generating" style of mediation, requires that the mediator leave it to the parties to jointly agree on the norms that will guide the mediation. *Id.* at 707–08. This style is contrasted with the "norm-educating" style of mediation (in which the mediator makes available to the parties relevant norms that might guide the mediation), *see id.* at 727, 738–42, and the "norm-advocating" style of mediation, in which the mediator insists that the mediated outcome be consistent with important social norms, *see id.* at 742–53. Waldman's analysis of the "norm-educating" and "norm-advocating" styles of mediation are instructive for many of clinical projects; however, they rely on the mediator having some standing, usually in the form of parties being either forced or pressured into a mediated solution—a condition that is not always the case in situations of actual or potential human rights abuse.

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This agnosticism about the outcome of a conflict can be contrasted with the very strongly held views that a typical conflict resolution practitioner would have about *procedural* justice (i.e., what makes a dispute resolution fair from the perspective of the parties involved). One strand of dispute resolution practice—commonly referred to as dispute systems design—is built around the idea that properly designed conflict resolution processes should allow parties in a dispute to think "outside the box" as they generate sustainable solutions to their disputes.[24] In addition, dispute systems design is premised on the notion that a well-designed conflict resolution process allows parties to resolve their differences without compromising their ongoing relationship.[25] Conflict resolution experts thus see themselves as process experts who do their utmost to improve communication between conflicting parties as they search for solutions to their mutual problems.[26] Unlike the typical human rights advocate, a conflict resolution practitioner will dwell on the past only insofar as it must be discussed in order to turn the parties towards a more forward-looking, problem-solving stance. Accountability is treated as a joint problem for both the "perpetrators" and the "victims" to discuss and resolve. In fact, in some restorative processes, terms such as "perpetrator" and "victim" are often avoided entirely in order to minimize the divisiveness incumbent in the use of such terminology.[27]

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24. *See* WILLIAM URY, JEANNE BRETT & STEPHAN GOLDBERG, GETTING DISPUTES RESOLVED: DESIGN SYSTEMS TO CUT THE COSTS OF CONFLICT. (PON Books, 1993); CATHY COSTANTINO & CHRISTINA SICKLES-MERCHANT, DESIGNING CONFLICT MANAGEMENT SYSTEMS (Jossey-Bass, 1996); Khalil Z. Shariff, *Designing Institutions to Manage Conflict: Principles of the Problem Solving Organization*, 8 HARV. NEGOT. L. REV. 133, 133–57 (2003).

25. *See supra* note 24.

26. *See* Eileen Babbit, *supra* note 10.

27. The debate over the use of terms such as "victim" or "perpetrator" goes beyond the scope of this Article, but has strong echoes in the literature on restorative justice processes, in which victims and offenders are asked specifically to confront one another, and more specifically one another's narratives, by way of developing empathy for each other. *See, e.g.*, Janine P. Geske & India McCanse, *Neighborhoods Healed Through Restorative Justice*, 15 DISP. RESOL. MAG., Fall 2008, at 16. Human Rights activists, of course, need to define "perpetrators" in order for their traditional toolbox to find success, since it would be impossible to name and shame someone whom you have not first defined as a rights violator. At the same time, of course, it is difficult if not impossible to avoid engaging with perpetrators—or at least their erstwhile supporters—in a post-conflict situation. For this reason alone, human rights

Of course, just as was the case for the brief description of human rights practice above, this description fails to recognize the breadth of conflict resolution practice. Good conflict resolution practitioners go to great lengths to allow parties to "empower" themselves to equalize the power dynamics at the table,[28] and most practitioners will shy away from endorsing or facilitating patently unjust or immoral outcomes to a negotiation. That said, conflict resolution focuses not so much on outcome as on process,[29] coupled with the fundamental belief that all individuals—even those who in the past may have violated others' human rights—are capable of handling future conflicts peacefully and constructively.

IV. HUMAN RIGHTS CLINICS

At this writing, nineteen of the top twenty-five law schools (as ranked by *U.S. News & World Report*) boast human rights clinics; and one of the six schools without a clinic was developing a human rights center and clinic at this writing.[30] By and large, these clinics focus on documentation, report writing, domestic litigation (generally

practitioners have a lot to learn from the experiences and scholarship of the restorative justice movement.

28. For an instructive description of the micro-skills a mediator can use to achieve such strategic empowerment in pursuit of a fair outcome, see Sara Cobb, *Empowerment and Mediation: A Narrative Perspective*, 9 NEGOTIATION J. 245, 247–49 (1993).

29. Eileen F. Babbitt, *The New Constitutionalism: An Approach to Human Rights from a Conflict Transformation Perspective*, *in* HUMAN RIGHTS AND CONFLICT TRANSFORMATION: THE CHALLENGES OF JUST PEACE, 9 BERGHOF HANDBOOK DIALOGUE SERIES 67, 68 (Véronique Dudouet & Beatrix Schmelzle eds., 2010), *available at* http://www.berghof-handbook.net/documents/publications/dialogue9_humanrights_complete.pdf.

30. *See generally Best Law Schools*, US NEWS EDUCATION, http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings (last visited May 1, 2012) (The nineteen law schools ranked among the top twenty-five U.S. law schools by *US News and World Report* in 2013 with human rights clinics are: Yale, Stanford, Harvard, Columbia, NYU, University of California-Berkeley, University of Pennsylvania, University of Virginia, Northwestern, Cornell, University of California–Los Angeles, University of Texas-Austin, University of Southern California (Gould), University of Minnesota–Twin Cities, George Washington University, University of Washington-Seattle, and Emory University. Two law schools (University of Michigan–Ann Arbor and Georgetown) had clinics focusing on areas that fall under the broad umbrella of human rights (human trafficking and women's human rights, respectively), but exclude other human rights issues. At the time of publication, Duke was in the process of developing a HR clinic); *see also* Kathleen Kelly Janus & Dee Smythe, *Navigating Culture in the Field: Cultural Competency Training Lessons from the international Human Rights Clinic*, 56 N.Y.L. SCH. L. REV. 445, 483–85 (2011–12).

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invoking the Alien Tort Statute[31] and/or the Torture Victim Protection Act,[32] amicus curiae submissions), and engagement with international oversight and quasi-judicial and judicial bodies.[33] Some of these clinics have resources that allow them to travel abroad, thus facilitating their work with partners in regions and countries in which abuses occur or are threatened.[34] Those law schools engage students in fact-finding (interviewing victims, witnesses and other stakeholders, visiting sites of abuse, etc.), as well as networking and other work done during on-site visits.[35] Other clinics focus on work that can be done from the home institution (legal research, drafting of memoranda, preparing amicus briefs).[36] All human rights clinics engage students in desktop research, whether legal or factual or both.[37] Most, if not all, involve students in developing strategies to advance the interests of their clients.[38] Almost without exception, the point of departure (and the point of conclusion) for projects in human rights clinics are the concerns of a particular set of stakeholders, usually victims or potential victims of human rights abuse.

Clinics generally include a seminar that involves skills development and, frequently, analysis of the methods and practices of the human rights movement. These seminars involve readings and discussion, as well as clinical rounds or other means of considering projects and issues that arise in the course of these projects. Review of the available syllabi of these clinics does not demonstrate a focus on conflict resolution either in selected readings or topics.[39]

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31. 28 U.S.C. § 1350 (2009).

32. Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1992) (current version at 28 U.S.C. § 1350 (2009)).

33. *See supra* note 3.

34. *Id.*

35. *Id.*

36. Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT'L LAW 505, 532 (2003).

37. *Id.*

38. *Id.*

39. *See supra* note 3.

V. CONFLICT RESOLUTION CLINICS

At the time of this writing, fourteen of the top twenty-five U.S. law schools (as ranked by *U.S. News & World Report*) have dedicated conflict resolution clinics of some sort.[40] The majority are traditional mediation clinics, in which students learn the basic skills of third party neutral process management.[41] These clinics often place students in small claims courtrooms where they help parties resolve their disputes amicably and sustainably.[42] These kinds of experiences are usually supplemented by in-class simulations or, in some cases, advanced mediation opportunities in which students work with parties to a dispute over the course of several weeks or months to resolve more complex disputes. Other clinics ask students to apply dispute resolution strategies in areas of the law that lend themselves to less adversarial modes of engagement. Examples of this model include clinics focusing on landlord-tenant disputes or community development, in which students are encouraged to explore alternative dispute resolution methodologies in addition to traditional court-centric approaches.[43] Still other clinics take a more systemic approach to dispute resolution, focusing on organizational designs intended to help people use interest-based or less costly means of resolving their disputes.[44]

The skills seminars accompanying conflict resolution clinics usually feature a mix of interactive simulations that allow students to

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40. The fourteen law schools ranked among the top twenty-five US law schools by *U.S. News and World Report* in 2013 with dedicated conflict resolution clinics are: Stanford, Harvard, Columbia, NYU, University of Pennsylvania, University of Virginia, University of Michigan–Ann Arbor, Northwestern, University of California–Los Angeles, University of Minnesota–Twin Cities, George Washington University, University of Washington–Seattle, University of Notre Dame, and the University of Washington–St Louis.

41. *See supra* note 3.

42. *See supra* note 3.

43. *See, e.g.*, *The Landlord-Tenant Clinic*, YALE LAW SCHOOL, http://www.law.yale.edu/academics/1215.htm (last visited May 1, 2012), or the *Civil Rights, Community Justice and Mediation Clinic*, WASHINGTON UNIVERSITY LAW SCHOOL, http://law.wustl.edu/clinicaled/ (last visited May 1, 2012).

44. For example, the Harvard Negotiation and Mediation Clinical Program at Harvard Law School, as well as informal student practicums with conflict resolution professors at Stanford Law School. *See, e.g.*, *Harvard Negotiation and Mediation Clinic*, HARVARD LAW SCHOOL, http://www.law.harvard.edu/academics/clinical/clinics/hnmcp.html (last visited May 1, 2012).

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practice facilitation. These simulations provide students with instant feedback on the experience from colleagues and instructors. Some syllabi expose students to the broad and growing range of so called Alternative Dispute Resolution ("ADR") processes that have emerged over the years (for example, arbitration, mediation, private adjudication, negotiation, and the many hybrid processes that mix these elements).[45] Others focus on particular ADR methods, for example mediation or arbitration. For example, a mediation course might allow students to experiment with a range of mediation styles—from the rigidly process-oriented "facilitative" style to the more directive approaches in which the mediator inserts her substantive opinion into the process. Most syllabi also include micro-skills exercises (such as active listening) that can help facilitators do their work more effectively.[46] Again, a review of the available syllabi reveals a narrow focus on dispute resolution *processes* without much consideration of how a conflict resolution practitioner should position herself vis-à-vis the underlying substantive or normative claims driving the dispute.[47]

VI. THE REAL WORLD

Whether by choice or as the result of increasingly vocal concerns by activists and victims, the practice of conflict resolution has already hybridized significantly in the past two decades, and is now much more consistent with the aims and practice of human rights than when the field was first formed.

Some of this shift was due to a recognition of the positive contributions that the conflict resolution approach can have on the human rights agenda. The argument most frequently heard to this effect is that no social processes can be more violative of human rights than war, and thus, efforts to end or prevent wars contribute directly to human rights protection.[48] While perhaps true empirically,

45. *See, e.g.*, Dispute System Design: Seminar, Harvard Law School, 2010 Syllabus (on file with authors).

46. *Id.*

47. *Id.*; *see also supra* note 6.

48. For a recent example of such an argument, see John Tirman, Op-Ed., *The Forgotten Wages of War*, N.Y. TIMES, Jan. 3, 2012, at A23.

such arguments are little more than a rhetorical repackaging of what conflict resolution practitioners do already, since they do not suggest any changes in *how* ADR practitioners should go about their work. As such, they do not entail a *methodological* shift, but instead only an additional endorsement of the importance of the work.

A more foundational shift has also taken place, however, in how practitioners understand situations of systemic rights abuse. Such situations are increasingly understood as grand societal negotiations over access, resources, and power gone terribly wrong. According to this view, victims or marginalized communities somehow lost their capacity to negotiate for their own socio-economic, civil, political, or cultural well-being.[49] In order to "rebalance" such dysfunctional systems, therefore, these marginalized stakeholders must regain their negotiation effectiveness. It is this capacity building agenda that many conflict resolution theorists have begun to address. This conceptualization, which of course is prone to the critique that it can be used to "blame the victims" for their own misfortune, can also be used to think creatively of ways to "empower" those victims to advocate and lobby more effectively on their own behalf.

At its core, the belief in strategically empowering certain marginalized stakeholders embroiled in conflict for them independently to break the logjam preventing agreement is premised on the same rationale that has for centuries animated diplomats to act as international conflict intermediaries. This realpolitik mindset is perhaps best exemplified by Henry Kissinger's approach to mediation and his influence in facilitating the Camp David accords between Israel and Egypt, with the sole difference that instead of waiting for the parties to empower themselves, Kissinger leveraged the resources and political capital of the United States to force a new settlement.[50] Typically, this kind of power-broker-mediation diplomacy is only possible if the mediator represents the interests of a very powerful

49. *See, e.g.*, Alicia Ely Yamin, *The Future in the Mirror: Incorporating Strategies for the Defense and Promotion of Economic, Social, and Cultural Rights into the Mainstream Human Rights Agenda*, 27 HUM. RTS. Q., 1200 (2005).

50. William Smith, *Effectiveness of the Biased Mediator*, 1 NEGOTIATION J. 363, 369 (1985). In a different context, it has also been articulated by Larry Susskind, when he highlighted the effectiveness of a politician with "political clout" who used that power to mediate an environmental dispute near Denver. Susskind, *supra* note 22, at 42.

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entity—such as the United States in the above example—willing to commit its power in order to persuade other parties to reach agreement.[51] The underlying rationale is the same as that of the empowerment-focused capacity builder, in that both approaches believe that a solution to a conflict may emerge simply by rebalancing the power equilibrium between the parties to a conflict.

The notion of "rights education as empowerment" is perhaps the most profound way in which conflict resolution practitioners and human rights activists can join forces and facilitate both more sustainable *and* more rights-consistent outcomes. Rights-education work done by human rights activists need not be at cross-purposes with the efforts of process facilitators. To the contrary, having an effective rights-education effort as part of a conflict resolution process allows the facilitator to focus more centrally on process management. When victimized stakeholders are properly represented in a conflict resolution process and adequately empowered to voice their concerns effectively, the process facilitator can rely on the parties themselves to make decisions about how to deal with rights abuse as part of any negotiated settlement. In theory at least, the parties themselves will also presumably be able to make their own decisions on when it is in their interest to exit the process entirely if they feel their rights would be better served by another process. The key to this symbiosis between human rights advocates and conflict resolution practitioners in the above scenario is that neither misrepresent the other's role to the parties. In other words, while it is helpful for a human rights practitioner to educate a victimized community about their rights, whether that same rights practitioner should stand in the way of a negotiated outcome that does not live up

51. That said, even much less powerful interveners than diplomats have begun trying strategically to influence the topography of power among stakeholders involved in conflict. Track two diplomatic efforts (peace-building exercises with socially or politically influential members of society on both sides of a conflict), for example, are in practice thinly veiled attempts to strengthen pro-peace political constituencies on both sides of a conflict in advance of formal "track one" negotiations. For a fascinating example of a very low-power facilitator (at least in terms of the kind of power that states typically wield)—an ecclesiastic Italian community of lay persons called the Communità di Sant'Egidio—managed to bring to a close the vicious civil war in Mozambique. At the time (in 1992), that war was one of Africa's most gruesome and vexing internal armed conflicts. *See* Mario Giro, *The Community of Saint Egidio and its Peace-Making Activities*, 33 INT'L SPECTATOR 85 (1998).

to her "purist" vision of human rights is another matter. On the other hand, while it is perhaps role-appropriate for a facilitative mediator to refrain from exerting pressure on the parties to commit to the mediator's preferred negotiated outcome, it would be inappropriate for that same mediator to seek to restrict parties' access to independent counsel and human rights education.

Traditional (i.e., non-neutral) advocates have also learned to promote the benefits to their clients of engaging in non-adversarial dispute resolution processes, *even when* there are strong legal rights that they might claim in a formal adversarial process. This is especially true for situations in which the parties in conflict either will not—or cannot—terminate their relationship to one another, even after the conflict is resolved.[52] In the same way that the lawyer for one party in a collaborative divorce proceeding can help her client achieve a better *negotiated* outcome by informing her of her rights (which she might claim in a court-based proceeding),[53] a human rights activist can give new focus to a community suffering from human rights violations merely by *creating awareness about the existence of those rights*. Professors Robert Mnookin and Lewis

52. Examples include a divorcing couple that—even after the divorce is finalized—will continue having to work together to make decisions about child custody, alimony, and child support logistics, and possibly maneuver any mutual friendships so as to minimize the ongoing hurt of a dissolved relationship. Similarly in situations of violent conflict, most societies do not have the option of permanently segregating conflicting ethnicities from one another in perpetuity following a conflict. This is not to say that it has never been tried before. After WWII, individuals of German ethnicity were forced to go to Germany and leave their traditional homelands across Eastern Europe—in response, of course to the near annihilation of persons of Jewish heritage across the region and especially in Germany, with large numbers of those few survivors of the Holocaust subsequently leaving either to the United States, Israel, or other recipient countries. Similar efforts to "ethnically cleanse" territories of minority ethnicities occurred more recently following the violent dissolution of the former Yugoslavia and especially in Bosnia-Herzegovina, and to some extent also motivate the politics of a two-state solution to the conflict between Israelis and Palestinians in the Middle East. Some might also argue that a conflict-avoidance mentality underlay the racist historical policies separating blacks from whites in the United States under segregation and in South Africa under apartheid. While the contexts and histories of each of these events are wildly divergent, one commonality is that for all of them the relationships between the conflicting parties—even badly damaged ones—continued to exist, and continued to require careful management post-conflict. Thus none of these "successful" separation efforts actually achieved what its architects had hoped—namely to 'solve' a problem (however morally repugnant it was to label ethnic coexistence as a "problem" in the first place).

53. *See* Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950, 985 (1978–1979).

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Kornhauser dubbed this phenomenon "bargaining in the shadow of the law" in 1979.[54] The term has retained its vitality and relevance. For example, Luis Moreno-Ocampo, the first Chief Prosecutor of the International Criminal Court (ICC), uses it today to describe the potential of his *judicial* institution to transform international conflicts merely by virtue of introducing a rights framework into the way local stakeholders think and talk about justice.[55] Indeed, one of the authors of this Article witnessed firsthand the profound change in how communities in northern Uganda resolved their disputes once the ICC began its investigation into the serious crimes allegedly perpetrated by the Lord's Resistance Army in Northern Uganda, and how the language of human rights and dignity re-emerged as an important discourse even in situations that did not involve war crimes or crimes against humanity.[56]

The second way in which the practice of human rights has influenced conflict resolution is by "politicizing" the practice of conflict resolution.[57] In fact, as Michelle Parlevliet points out, conflict dynamics are often inextricably linked to patterns of ongoing human rights abuse.[58] It is often impossible to tell whether a specific instance of human rights abuse (for example, an act of torture at Abu Ghraib) is a contributing factor to future conflict or the product of ongoing and unresolved conflict (or both).[59] On the one hand, the acts of torture perpetrated by American forces were the *symptoms* of a larger conflict, perhaps the ongoing stress of war on both the U.S. forces and the people of Iraq. At the same time, however, the images of torture at Abu Ghraib enraged millions of viewers both in Iraq and

54. *Id.* at 968.

55. Luis Moreno-Ocampo, Prosecutor of the Int'l Criminal Court, Keynote Address at the Council on Foreign Relations 9–10 (Feb. 4, 2010), http://www.cfr.org/international-law/prepared-remarks-luis-moreno-ocampo-prosecutor-icc/p21375.

56. *See* TIM ALLEN, TRIAL JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE LORD'S RESISTANCE ARMY (2006).

57. See the Dudouet and Schmelzle–Berghoff edited volume, in which Parlevliet has her article. *Infra* note 58.

58. Michelle Parlevliet, *Rethinking Conflict Transformation from a Human Rights Perspective*, *in* HUMAN RIGHTS AND CONFLICT TRANSFORMATION: THE CHALLENGES OF JUST PEACE, 9 BERGHOF HANDBOOK DIALOGUE SERIES 15, 18–21 (Véronique Dudouet & Beatrix Schmelzle eds., 2010), *available at* http://www.berghof-handbook.net/documents/publications/dialogue9_humanrights_complete.pdf.

59. *Id.*

around the globe, and sowed the seeds of hatred, enmity, and misunderstanding for years to come. Parlevliet argues that human rights activists tend to focus more on human rights abuses that are the *symptoms* of conflict, whereas conflict resolution practitioners (or conflict transformation practitioners, in Parlevliet's terms), focus more on the causes of conflict.[60] According to Parlevliet, therefore, a hybridized practice of conflict resolution would devote energy to stopping those rights violations that occur as symptoms of conflict (for example, through ceasefires, peacekeeping, human rights monitoring, etc.) while also proactively trying to secure a *positive peace* that will prevent the underlying conflict from resuming in the first place (for example, by encouraging institution building, equitable and sustainable development, etc.).[61] This latter activity is built around a profoundly political agenda, in that it seeks to redress the inequality and prejudice that often motivate conflict.

The final way in which the practice of conflict resolution has changed as a result of (or perhaps always has been shaped in light of) human rights considerations has been in the gradual emergence of mediation or process facilitation ethics. The debate over self-regulating the practice of mediation—especially in contexts in which significant social harm can come from mediated solutions that disregard the interests of key (often disempowered) stakeholder groups—stems at least from the early 1980s, if not before.[62] One recent example are the guidelines—initially confidential but later made public by a document—that the Office of the United Nations Secretary-General distributed to all of its special rapporteurs engaged in facilitating non-violent agreements to end international conflicts.[63]

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60. *Id.* at 24–25.

61. *Id.* at 24.

62. Compare Susskind, *supra* note 22, with Stulberg, *supra* note 22, in which Professors Susskind and Stulberg debated whether mediators in environmental mediations should be held to account for the fairness (or lack thereof) of the outcomes they broker. For a more contemporary example of an attempt to define professional standards in the context of mediating armed conflict, see Hugo Slim, *Towards Some Ethical Guidelines for Good Practice in Third Party Mediation in Armed Conflict*, OSLO FORUM (2006), http://www.osloforum.org/sites/default/files/TowardssomeEthicalGuidelinesforGoodPracticein3rdPartyMediationinArmedConflict.pdf.

63. U.N. Secretary-General, *Guidelines for United Nations Representatives on Certain Aspects of Negotiations for Conflict Resolution*, unpublished internal memorandum (1999), *reprinted in* 2006 U.N. Jurid. Y.B. 496-97, U.N. Sales No. E.09.V.1.

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In this document, UN-affiliated mediators are instructed that "disputes should be settled in conformity with the principles of justice and international law,"[64] and that, if the circumstances so require, the mediator "may need to acquaint the parties to a conflict with the existence of a body of international law and practice regarding these issues."[65] If even such educative measures fail—for example, if negotiating parties continue to insist on granting amnesty to former combatants or government officials alleged to have committed war crimes or crimes against humanity—the mediator must make the negotiators aware of the fact that the UN may not endorse such an agreement, and would likely actively withdraw its assistance and condemn the agreement publicly.[66] Similarly, UN Security Council Resolution 1325 asserts that women should be included in peace negotiations. This Resolution has led to a series of recommendations to process facilitators on how to amend their standard operating procedures accordingly in order to be more gender inclusive.[67] Such efforts increasingly place an important professional limitation on mediators' ability to proclaim absolute neutrality with regard to the substance of conflicts implicating human rights.

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64. *Id.* at 496.

65. *Id.* at 497. Note how closely this language hews to Professor Waldman's description of a "norm educating" mediation practice, *supra* note 23, in which the mediator is mandated to make the parties aware of relevant social norms that the parties themselves might otherwise be tempted to ignore.

66. *See* U.N. Secretary-General, *supra* note 61, at 497. Note how at this point, the mediator is instructed to push even further the limits of neutrality, and assume Professor Waldman's "norm advocating" mediation style, *supra* note 23.

67. S.C. Res. 1325, ¶ 1, U.N. Doc. S/RES/1325 (Oct. 31, 2000); *see also* the report by the Institute on Quiet Diplomacy providing guidance to mediators on how to proceed in light of UNSC Res. 1325; for example, it states that "the third party actor often has sufficient influence to establish parameters for dialogue, and an interest in ensuring that all key groups (and groups within groups) are represented," and that there is a suggestion that "the UN Secretary General, or heads of other leading inter-governmental organizations such as the African Union, include gender issues in the mandate of their appointed envoys, special representatives and mediators." KRISTEN DEREMER & CRAIG COLLINS, INITIATIVE ON QUIET DIPLOMACY, SCR 1325 AND WOMEN'S PARTICIPATION: OPERATIONAL GUIDELINES FOR CONFLICT RESOLUTION AND PEACE PROCESSES 25, (2010), *available at* http://www.iqdiplomacy.org/.

VII. RETHINKING THE HUMAN RIGHTS COMMUNITY'S TRADITIONAL RESISTANCE TO THE CONFLICT RESOLUTION MODUS OPERANDI

Human rights practitioners, by contrast, have been more resistant to adapting their tactics in light of the conflict resolution approach. The reasons are varied. Central to rights activists' disinclination to embrace dispute resolution principles is the idea that human rights are absolute and thus must be respected and applied at all times by all parties. The resistance to conflict resolution in the clinical field may also be related to the fact that most human rights clinics are housed in law schools, which ordinarily focus on the study of legal doctrine in absolute rather than on relative terms—as rules that must be applied, rather than as norms that constitute just one element among many in complex social systems.

There are several reasons to rethink the human rights movement's traditional resistance to principles and methods of conflict resolution. First, the discourse of human rights has grown enormously over the past quarter century. From economic, social, and cultural rights, to corporate social responsibility, to developing nations' right to development, to environmental protection, a broad range of social issues and actors now fall under the broad mantle of human rights. Some of these more recent expansions of the human rights corpus are still considered by many—including most lawyers—to be aspirational in nature,[68] and thus less appropriate for "naming and shaming" strategies.[69]

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68. Article 2(1) of the International Covenant on Economic, Social and Cultural Rights states that each "State Party to the present Covenant undertakes to take steps . . . *to the maximum of its available resources*, with a view to *achieving progressively the full realization* of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures," and thereby sets forth the principle of the progressive realization of economic, social and cultural rights. G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 49 (Dec. 16, 1966) (emphasis added). This language can be contrasted with the corresponding language in Article 2(1) of the International Covenant on Civil and Political Rights, which states that in the context of civil and political rights, States must "undertake[] to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant." *Id.* at 53.

69. *See* Kenneth Roth, *Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization*, 26 HUM. RTS. Q. 63 (2004).

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Despite what skeptics often contend,[70] in many cases these rights *are* attainable; corporations *do* on occasion commit to voluntary codes of corporate social responsibility and nations *do* agree to binding curbs on their greenhouse emissions.[71] But only rarely are these victories won by lawyers acting alone in traditional legal fora.[72] Much more frequently, they are the result of affected communities' mobilization efforts and strategic engagement with other stakeholders in society to secure their rights. In other words, victories with regard to social, economic and cultural right may often only be possible only if activists weave together legal and conflict resolution strategies in their approach.[73]

Moreover, they should be seen as *interest-based* or *problem-solving* negotiation efforts, and thus very different from the adversarial model for securing rights. If rights activists wish to push for compliance with the entire corpus of human rights, then they should expand their methodological repertoire to include more collaborative methods—ones that will force human rights practitioners to engage with the same individuals or constituencies with whom they might otherwise have simply written off as "perpetrators."[74]

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70. Aryeh Neier is often cited as a leading human rights advocate of the position that only civil and political rights are human rights. In his memoir, he defends his view that "[a]uthoritarian power is probably a prerequisite for giving meaning to economic and social rights," since in his view there are no other ways to force those with resources and power to relinquish those assets as a matter of *right*. ARYEH NEIER, TAKING LIBERTIES: FOUR DECADES IN THE STRUGGLE FOR RIGHTS xxix–xxxii (2003).

71. *See, e.g.*, Kyoto protocol (and Copenhagen follow-up conference) as well as the Electronics Industry Citizenship Coalition (EICC), http://www.eicc.info/ or Fair Labor Association (FLA), http://www.fairlabor.org/.

72. *See, e.g.*, Yamin, *supra* note 17, at 1220 (discussing the struggle of a rural community to achieve its right to have access to emergency obstetric care).

73. In her article, Yamin describes successful strategies to secure economic, social, and cultural rights in Latin America, focusing in particular on efforts by NGOs to make real the concept of popular "participation" in decision-making processes, as well as strategic partnerships between human rights NGOs and social movements. *Id.* at 1235–42.

74. What we present here as an innovative suggestion for clinic design is, in practice, already being done routinely by many rights activists around the world, especially those seeking pragmatic solutions to rights abuse in their own communities. This pragmatism has not yet, however, made its way prominently into much of the high-profile advocacy of international human rights organizations—with some notable exceptions—and thus the need to work with perpetrators and their support groups in the search for solutions to human rights problems often gets overlooked in descriptions of successful human rights advocacy strategies.

Parallel to the growth of the rights discourse that embraces new types of aspirational rights, the effectiveness of traditional legal remedies to secure first generation civil and political rights is also shrinking, as has the potential "shaming" power of naming a rights violation. Over the last quarter of the twentieth century—either willingly or begrudgingly—most states committed themselves publicly to the human rights cause, opening the door for human rights activists to "scor[e] points"[75] by comparing the lofty commitments of politicians with the actual facts on the ground.[76]

This situation changed for much of the world in the post-September 11 environment, as the national security discourse tends today to overshadow human rights concerns when the two conflict. Witness, for example, the emergence in the United States of a debate over the ethics of torture in the context of efforts to constrain terrorism, and the re-legitimization by scholars[77] and politicians[78] of the view that it is acceptable to torture in defense of national security. Prior to September 11, the overwhelming majority of rights activists would have believed that the question of whether it is ever appropriate to torture would be a definitive and resounding "no."

As noted above, the clinic we are building at Stanford Law School seeks to change assumptions about the process of achieving rights. To start, we explore the implications of this changed perspective on the process of rights achievement in the context of three case studies.

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75. NEIER, *supra* note 70, at 188.

76. *See, e.g.*, *id.* (discussing attacks on Reagan administration's support of dictators after its declaration of promoting democracy internationally).

77. *See* Alan M. Dershowitz, *Want to Torture? Get a Warrant*, S.F. CHRON., Jan. 22, 2002, at A19.

78. *See, e.g.*, the nationally publicized Republican primary debate in Spartanburg, S.C., on November 12, 2011, in which Herman Cain and Michele Bachmann, both one-time front-runners for the Republican nomination for the Presidency of the United States, stated publicly that they would reinstate the use of waterboarding to obtain information from suspects in the war on terror. *CBS News/NJ Debate Transcript, Part 1*, CBS NEWS, Nov. 13, 2011 (Nov. 13, 2011, 2:14 AM), http://www.cbsnews.com/8301-505103_162-57323734/cbs-news-nj-debate-transcript-part-1/.

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VIII. THREE CASE STUDIES: HUMAN RIGHTS PRACTITIONERS IN NEED OF CONFLICT RESOLUTION SKILLS

As explored above, the traditional adversarial model of mobilizing shame is, at least on its face, in tension with dispute resolution and consensus building approaches. If the ideal means of halting abuses is to embarrass publicly those responsible for abuse, then rights activists should focus on documentation and shame mobilization. In this case, they have no need to develop negotiation and dispute resolution skills. And, in practice, this has largely been the case for human rights advocates. Their training has been and continues to be primarily in documentation and advocacy. Not surprisingly, senior professionals in many leading human rights organizations are frequently lawyers, areas studies experts, and journalists.[79] Among these three groups, those trained in law school (the majority in major international human rights NGOs) are most likely to have focused on adversarial, rather than consensual, approaches to resolving conflict.[80]

Yet, in practice, even groups whose approach is adversarial frequently find themselves in situations in which they are forced to resolve disputes through participatory, consensus-building processes. Unfortunately, when asked to do so, advocates must rely on something other than their law school training. Consider the following examples:

A. Case Study #1: Traditional Human Rights Advocacy Efforts are Successful and Your Counterpart Has a Change of Heart

A national human rights organization in Brazil works with a local rights group in the northeastern part of the country on a matter involving inadequate police investigation into a series of gruesome murders. The killings, of which more than two dozen have been documented in one poor section of São Luís, Maranhão, target young

79. *See supra* note 3.

80. *See* William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (San Francisco: Jossey-Bass, 2007).

boys. Their bodies are found mutilated, with similar marks of sexual abuse. State authorities fail to take necessary measures to investigate the killings in compliance with Brazilian and international norms. Federal authorities seek to intervene to assist in the investigations, but the local governor (and candidate for national office) acts to block the federal engagement. The national and local rights groups file a petition with the Inter-American Commission on behalf of three of the victims. After years of litigation, a new government is elected in Maranhão state. Seeking to make a clean break with prior administrations, they offer to negotiate a friendly settlement with the victims' representatives to be brokered by the Inter-American Commission on Human Rights. As part of the settlement, they offer to pay indemnification to the families of all the victims, thirty-one in all. During the negotiations, tension arises over the method used to adjust the monthly compensation to be offered each family.[81]

B. Case Study #2: Traditional Human Rights Advocacy Efforts are Either Unsuccessful or Less Successful and Collaborative Negotiation Represents the Best (or Only) Way Forward

A human rights clinic assumes the representation of a traditional community whose lands are threatened by a major development project. The rights clinic is engaged in supporting litigation in the country, which has stalled. In meetings with leaders and residents in the community, the clinic discovers that some traditional landowners are interested in engaging the company to obtain compensation for their lands. The clinic offers to assist these residents in structuring and implementing a dispute resolution process with the company.

C. Case Study #3: Your Own Constituency is Itself Partially Contributing to a Human Rights Problem

A major multinational corporation engaged in the extraction of raw materials in sub-Saharan Africa ("Corporation") wishes to avoid a potential legal and public relations disaster that befell its competitor

81. *See* Emasculated Children of Maranhão v. Brazil, Cases 12.426 and 12.427, Inter-Am. Comm'n H.R., Report No. 43/06, OEA/Ser.L./V/II.127, doc. 4 (2006).

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company after human rights lawyers accused it of complicity in serious human rights violations related to its operations in the region. In response, the Corporation decides to engage in vigorous and proactive community development in the region in which it operates.

Soon after the launch of the program, however, the Corporation realizes that the local governance capacity of the communities is weak at best, and that key stakeholder groups such as women, minorities, and children are usually excluded from discussions on how to allocate the Corporation's development funds. In response, the Corporation invites outside consultants—some of them traditional human rights advocacy groups engaged in corporate social responsibility efforts—to help encourage its community negotiation counterparts to become more responsive to the needs of the *entire* communities they represent. By doing so, the Corporation hopes that any development funds it spends will have a greater chance of reaching their intended recipients.

All these matters are ones in which one of the authors of this Article was either directly involved in representation of the victims or a stakeholder through either an NGO or law school clinic. In the first two examples, the practitioners initially adopted a traditional human-rights approach, and only later transitioned to incorporate conflict resolution strategies. These projects were run under the auspices of nongovernmental organizations and involved James Cavallaro. Example three began as a conflict resolution project, but eventually hybridized in the opposite direction to address problematic attitudes about human rights within one or more of the stakeholder groups. Stephan Sonnenberg supervised the final project through the Negotiation and Mediation Clinical Program at Harvard Law School. All three instances, however, strike us as recurring situations in which human rights advocates might fruitfully adopt a hybridized human rights and conflict resolution methodology in order to achieve their purposes. In our discussion of how such an approach functioned in each example, we highlight one prominent tension that we needed to address as a result of our hybridized practice. These tensions are crosscutting, and thus not associated exclusively with the type of scenario depicted in each case study. Following each case study, we provide a brief analysis of the potential benefits to our community

partners and to us as human rights practitioners of hybridizing our practice.

IX. A HYBRIDIZED APPROACH AS ILLUSTRATED THROUGH OUR CASE STUDIES

A. Case Study #1: Traditional Human Rights Advocacy Efforts are Successful and Your Counterpart Has a Change of Heart

The first case study represents the dream of perhaps most human rights activists: after years of litigation and hard-fought advocacy, efforts finally pay off in the form of popular pressure for change, and/or an electoral defeat of the rights-offending regime, and a (new) government determined to clean house and effect positive change.[82] History shows that such opportunities come along only rarely, but that when they do, the long-term success of any reform efforts depends on the new government's ability to build robust social and political consensus around its new policy orientation.[83] This would suggest, of course, that during such moments the human rights community should also respond by assuming a more supportive stance vis-à-vis the government's reform efforts, perhaps even partnering with the government to assist in translating its good intentions into reality.[84]

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82. Since in this example it was the government of Maranhão that changed its approach towards issues of human rights abuse, we will continue to rely on a "government-as-perpetrator" model throughout this example. This should not be taken to suggest, however, that the same dynamic is not also possible in the case of private targets of human rights campaigns, such as individuals or corporations responsible for rights violations.

83. *Cf.* Fiona Macaulay, *Justice Sector and Human Rights Reform Under the Cardoso Government*, 34 LATIN AM. PERSP., no. 5, 2007 at 26, 26 (describing the way in which Brazilian President Fernando Henrique's halfhearted efforts to improve Brazil's human rights efforts foundered due to "local moral conservatives and producer groups acting as policy blockers rather than entrepreneurs").

84. Alicia Ely Yamin writes the following about the human rights community's traditionally adversarial stance vis-à-vis governments:

> [W]hile entirely appropriate at times, [it also] ignores the fact that sometimes it is not so much a question of what the state will not do, but (1) what it does not know how to do, or (2) what it cannot do because it is simply not the actor with the power to effect change.

Yamin, *supra* note 17, at 1224. If true, such constraints of technical know-how or capacity are problems the human rights community can feasibly address.

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Such moments, however, are rarely as crisp as the above example suggests. Usually it is quite difficult to tell whether the government's supposed change of heart is genuine. Accordingly, perhaps some skepticism is warranted about any purported one-hundred-eighty-degree shifts by governments. And although government leadership might change, the bureaucracies they control tend to be more stable over time. Thus, the success of any reforms will depend crucially on how popular those reforms are with the bureaucrats asked to implement them (and quite possibly radically change their methods).

Sadly, any miscalculations by an individual human rights advocate about the capacity of those in power to carry out their intended human rights reforms have serious costs. On a personal level, if the human rights advocate overestimates governmental good faith or capacity to change, she may be personally and professionally embarrassed by what in retrospect will appear to have been her naïveté. More importantly, misjudging the sincerity of government agents may prejudice the interests of the parties directly affected. For these reasons, human rights activists will likely be keenly aware of the downside risk of prematurely applauding a new government's change of heart, and tentative before lending any positive support to those in power.

The first tension poses itself with regard to a hybridized model of human rights and conflict resolution advocacy, namely that in some cases the advocate herself must balance her justified (but hopefully not too cynical) skepticism of the reformist claims by those in power with her idealistic (but hopefully not too naïve) desire to support governments determined to promote human rights. In this Article we refer to this tension as that of justified skepticism of power brokers versus the desire to reward good intentions (skepticism versus optimism).

In this case, this tension played out within the team of rights activists themselves during the negotiations. When the issue of adjusting the pensions paid to victims' next of kin arose, disputes over which measure of inflation to use surfaced. Advocates for the families sought the most favorable of the measures—the one that would result in the highest payout to the families. The main representative for the State insisted, however, that another, a less generous measure, be used. In a sidebar conference, he confided to

one of the lawyers in the delegation representing the victims that he had strict, nonnegotiable instructions on this point. The representatives for the victims had to decide—on the spot—if their counterpart was acting in good faith when he insisted that the entire settlement package would collapse if victims' representatives pressed for a different measure. Within the team of attorneys for the victims, comments focused on the fear of being manipulated by the state agents, the lack of trust, and the instinctive opposition to any state argument. Cynicism at first outweighed idealism, but after a heated discussion, the latter prevailed, agreement was reached, and compensation paid using the inflation index proposed by the state representatives.

Addressing this tension relies crucially on the rights advocate's ability to communicate effectively both across the table (with those in power) and behind the table (with her constituency) about the slow process of establishing trust.

1. Managing the Tension with Regard to Those in Power

As we described above, the downside risk of being naïve in such situations is very real for the human rights advocate and her constituency. That said, the risk of skeptically dismissing the efforts of a new reform-oriented government is equally real.

Assuming that a government's commitment to human rights reform is in fact genuine—as was the case in Maranhão—their *political* situation is typically a precarious one. Not only must such governments typically guard against their detractors' efforts—sometimes violent and almost always insidious—to undermine any reforms, they must also deliver on the numerous other policy agendas inherent in governing, such as economic and social stability and national security. Governments that change policies in ways that advance human rights generally expect public recognition of their measures by rights activists. It is therefore very important for the rights advocate to signal her genuine appreciation for the changed governmental policy vis-à-vis human rights. Rights activists must take care to acknowledge the changed nature of the human rights situation and carefully avoid arbitrarily perpetuating an "us versus

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them" approach towards government actors during negotiations to address human rights problems.

Furthermore, the rights advocate can signal a clear eagerness to reciprocate the government's change in heart. She can make it clear that any initial hesitation to collaborate openly is not coming from a principled aversion to such collaboration and support, but rather from a more understandable need for increased initial trust-building. A clear message to that effect also serves to initiate a problem-solving conversation about how to move forward with precisely such a trust-building agenda. Perhaps there are some very high-profile human rights issues that—if resolved in a fair and genuine manner—might clearly signal the government's change in policy. Such was the case in Maranhão, where human rights activists and the government could agree to a friendly settlement in a high-profile case with significant repercussion at the local, national and even international level.

Jointly identifying such opportunities for high-impact measures to signify changes in policy can also redefine the relationship between civil society and government. In Maranhão, channels of communication opened up in a way that did not exist prior to the engagement process around the São Luís killings. This becomes crucially important when—as is almost always the case—even a pro-human rights government must set limits on the resources it can devote to address the human rights abuse of its predecessor government.

2. Managing the Tension with Regard to Your Constituency

All of this gradual trust-building with the new government authorities must be complemented by a parallel communication effort with the rights advocate's constituency, usually the stakeholder groups most visibly affected by past rights abuse. Any rapprochement with the new government needs to be carefully discussed with these stakeholders. Almost all complex negotiations entail compromises, tradeoffs, and creative problem-solving on both sides that lead to some bridging of the gap between the initial demands of the various parties. While this search for common ground may make absolute sense to those at the negotiating table, it might appear suspect to

those stakeholders not participating directly in the negotiations, especially if the process is shrouded in secrecy.

Each setting requires its own means of engaging affected parties in the negotiation process. For example, in a refugee camp setting, one of the authors developed an ongoing outreach strategy built around specially recruited and trained communication point-persons who had previously expressed their interest in taking on a more activist role in giving their community a greater voice. The NGO driving this effort brought together these community activists to brief them in weekly meetings about the ongoing negotiations to roll out a major community dispute management project, news of which they were expected to circulate informally in the community to keep their neighbors and friends fully informed. In another project that one of the authors supervised, the outreach strategy had to keep some 20,000 workers at a factory in southern China apprised of the negotiations.[85] In this situation, the author and his colleagues relied on several large public meetings to which all interested workers were invited. In other situations in which target constituents have widespread Internet access, blogs, email list-serves, and other forms of social networking might be most appropriate.

Finally, in our third case study from sub-Saharan Africa, the conveners created role-play simulations that drew on popular television soap opera scripts to introduce community members to the language and theory of negotiation. Crucial in this regard is that the communication channels established between the human rights advocates and their constituencies allow information to pass in both directions. Communication from affected stakeholders to the human rights advocates may, of course, use the same channels established to report on progress at the negotiation table. But advocates may also proactively solicit such communication. For example, they may initiate focus groups with randomly-selected stakeholders to learn the "interests" of their constituent community, principles of the community that should not be violated, and ways in which they might

85. *See generally* CAROLINE REES, CSR INITIATIVE, HARVARD KENNEDY SCHOOL, PILOTING PRINCIPLES FOR EFFECTIVE COMPANY-STAKEHOLDER GRIEVANCE MECHANISMS: A REPORT OF LESSONS LEARNED at Annex E (May 23, 2011), *available at* http://www.hks.harvard.edu/m-rcbg/CSRI/publications/report_46_GM_pilots.pdf.

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envision putting their past trauma to rest. To understand more fully the limits of their negotiation mandate, representatives might also get a good sense of the types of conditions that—according to their constituency—would make continuing with a collaborative approach inappropriate, and discuss how to handle this situation if and when it were to arise. Finally, any representative should discuss with her constituency how to make crucial decisions along the road, and whom to involve in any such decision.

3. Advantages of Hybridized Approach in This Context

From the Maranhão example we can identify several tentative advantages of the hybridized human rights and conflict resolution approach in situations where the traditional targets of an advocacy effort have a change of heart subsequent to a successful advocacy campaign.

First, the approach rewards "good behavior" by governmental authorities. As described above, much of traditional human rights approach is focused on developing effective "sticks" to deter bad behavior by those in power. But thinking in terms of both sticks *and carrots*, it is important also that human rights activists know when to transition away from the use of sticks and develop effective "carrots" that might positively induce governments to promote human rights.

At the same time, the strategy outlined above allows the human rights activist's constituency to set (and periodically reset) the outer bounds of its comfort zone with regard to a changing environment. This may be difficult for a human rights activist to accept, especially if she is personally tempted to respond either more warmly or more guardedly to the government's entreaties rather than her constituency. That said, by actively facilitating a confidential conversation with her constituents about when and how to let one's guard down in light of a changed government policy, the human rights activist removes her own ego from the calculation of risks associated with a changed strategy. She thereby aligns herself more closely with the constituents who ultimately have to bear the true costs of any miscalculations.

Furthermore, by engaging in conversation with her constituents about what it would take to put their traumatic past to rest, the human rights activist kick-starts a longer-term psychological reorientation

process with her constituency away from an unhealthy (and inherently divisive) fixation on the past and towards a renewed focus on the future. Such a reorientation process is long and inevitably bumpy, and the rights activist should not assume easy enthusiasm for a "new future" among her constituents. However, the engagement process she initiated can open the door for a good faith, reform-oriented government to break pessimistic expectations and gradually alleviate formerly victimized groups' understandable fear of exploitation and further manipulation. Thus ironically, the human rights activist can "deliver" to the government a very tangible long-term "carrot" in the form of an expanded constituency, and thereby directly contribute to the conflict resolution agenda of cementing reforms and beginning to reconcile a splintered society.

B. Case Study #2: Traditional Human Rights Advocacy Efforts are Either Unsuccessful or Less Successful and Collaborative Negotiation Represents the Best (Or Only) Way Forward

The guarded transition from cynicism to idealism can be contrasted with our second case study, in which an interest-based negotiation represents only the "least bad"[86] option in a series of unpalatable or unfeasible advocacy options. This was the case when one of the authors represented a traditional community whose lands were threatened by a major development project. After years of engagement, strategies for securing the interests of the community led to stalemate. The case was pending, but immediate resolution was unlikely. Construction was reaching conclusion, adding to the anxiety of the soon-to-be displaced traditional landowners. Negotiations over the years with individual landowners and some of the communities had produced mixed results at best. Many residents in the communities doubted the good faith of the company and of the government, with ample reason.

86. While from a strictly grammatical standpoint the "least bad" advocacy option is tantamount to calling it the "best" advocacy option, we chose in this Article to use the first term to underscore the thoroughly unsatisfying nature of this strategy and its expected outcomes, despite it being the best way forward for the community given the circumstances.

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Deciding to negotiate with the company in this situation represented the least-bad of all remaining options, but was certainly not an ideal strategy. The clinic worried that the company would negotiate in bad faith (as they had responded to other advocacy efforts in the past), and they suspected strongly that the company would agree to compensate former landowners as a way to "get rid of the problem," not out of a true conviction that the traditional community deserved to be made whole again. The negotiation strategy also had no foreseeable way of satisfying the underlying grievance, nor was it likely to establish a sense of right and wrong about what happened to the community. Thus, engaging with the Corporation to achieve at least some form of modest monetary compensation and resettlement assistance represented a viable option.

Given this context, a second tension presents itself for the human rights practitioner: that of signaling continued competence versus initiating a new collaborative approach (signaling strength versus inviting collaboration).

As with the first case study, in this case too the rights advocate must carefully signal—both across the table and behind the table—the change in role that a shift from an adversarial stance to a more interest-based one entails. A crucial difference, however, is that at the time when circumstances force the human rights activist into a "least bad" negotiation effort, usually neither the activists' constituency nor the counter-party are particularly excited about the strategy. To compound the tensions, the Corporation hesitated in responding to the clinic's invitation to negotiate, especially as the request was coming from the very lawyers who were still pursuing a potentially damaging human rights campaign against the company.

The remainder of this section considers the type of problem and the challenges it presents in the abstract. The recommendations are based at least as much on our errors and shortcomings in these and other matters as on our successes.

To convince stakeholders both behind the table and across the table to participate in a good faith negotiation effort, the human rights activist must retain the respect of all involved stakeholders while also transitioning roles and strategies. Given that respect in an adversarial setting frequently depends on the human rights activist's perceived competence, confidence, and strength, it is these qualities in

particular that the activist must continue to exude while arguing for a more collaborative approach.

1. Managing the Tension with Regard to Those Across the Table

In the case above—as in many other situations on the bumpy road of defending human rights—the turn to negotiation of at least a marginally satisfactory outcome came only after a series of setbacks and defeats in other judicial or political forums that might have promised a more gratifying outcome for the victims. It is nonetheless important, however, not to frame the turn to negotiation as a result of exhaustion or failure.

Instead, a human rights activist can frame it as an invitation to the other side to change tactics with reference to idealistic aspirations. This reframe need not be merely rhetorical window dressing, however. Indeed, in many situations, collaboration and cooperation in the quest for a sustainable negotiated outcome may be more closely aligned with the culture and preferences of the societies with which rights activists are working, not to mention more professionally satisfying to the rights activist herself.[87]

The rights activist should also not immediately abandon all adversarial tactics, even if the decision to shift approaches has already been made.[88] Instead, the activist can propose clear conditions under which an adversarial strategy will be relaxed and ultimately abandoned. These conditions should focus primarily on

87. In this Article we consciously avoid the question whether an interest-based approach would *always* be preferable to the more adversarial strategies we initially used in this case study. According to a "purist" conflict resolution approach, interest-based strategies of dispute resolution are always preferable to rights-or power-based solutions. *See* WILLIAM L. URY, JEANNE M. BRETT & STEPHEN B. GOLDBERG, GETTING DISPUTES RESOLVED 15 (1988) ("To sum up, we argue that, in general, reconciling interests is less costly than determining who is right, which in turn is less costly than determining who is more powerful."). However, there are many countervailing examples indicating that in many situations—in particular those in which rights and principles are at stake—a rights-based approach may indeed be worth the effort. *See, e.g.*, Owen Fiss, *Against Settlement*, 93 YALE L.J. 1073, 1085–90 (1984).

88. This recommendation relies on the assumption that the adversarial strategies still entail some potential future costs for the counterpart, and therefore abandoning them is not yet considered inevitable by all stakeholders. When this is not the case, it makes little sense to hold out the gradual cessation of an adversarial approach as a carrot for a more collaborative attitude by the counterpart.

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company acts that might pave the way toward a more collaborative approach, such as non-binding joint brainstorming sessions, joint fact-finding missions, trust-building measures, or other acts signifying a change in relationship.

Even so, the rights advocate should expect a long and uphill struggle to convince a counterpart to engage in a more collaborative process—especially if the counterpart has a track record of acting in bad faith.

Finally, an across-the-table strategy in a negotiation that begins in difficult circumstances requires making it very easy for the counterpart to accept a negotiated outcome—with very limited creativity or effort on their part. For the rights advocate, this is a thankless task. At the same time, it also represents the best chance of success when the only objective is to secure *something* rather than nothing for a constituent community.

2. Managing the Tension with Regard to Your Constituency

Managing the transition from a strategy built on vindicating justice toward a more utilitarian strategy of securing at least some compensation for a victimized community requires the human rights practitioner to manage expectations carefully with her constituency behind the table.

As in our first example, the rights advocate must maintain a transparent discussion about the expected benefits and drawbacks of a continued adversarial approach versus a more collaborative negotiated approach. Even if the choice appears clear to the rights advocate, the community still needs to have the ultimate say in any such significant decision. Failure to achieve consensus about strategy behind the table can lead to divisions within the coalition—divisions that are easy to exploit by a bad-faith but astute counterpart.

To begin building such a consensus, the rights activist should communicate her view to her constituency that the advocacy effort stands at a crucial juncture, and furthermore insist that the community as a whole needs to make a decision about what to do next. The advocate might even encourage the community to seek outside advice on the matter, and give the community ample time to discuss the situation on its own, without even the perception of

influence by the advocate. In such matters especially, human rights advocates are wise to resist invitations by the community simply to let the human rights "expert" decide. Not only do such invitations devalue the crucial input of local stakeholders, but they also foster a disempowering narrative by which the victims of past rights abuse are again dependent on others to decide their fate. Instead, the rights activist can use such critical moments to begin re-empowering the community, and to re-invest them with agency over their own fates. To encourage such agency, the advocate might help design a consultation process that will solicit the wider community's input, such as a series of focus groups, open fora, or consultations leading up to a final decision.

Given this potential for the crucial trust between a human rights advocate and her constituency to erode in such situations, it is important to discuss ex ante a clear communication protocol, and to set strong expectations of reciprocal transparency between the community and its representatives. Advocates should make it very clear that their representation depends crucially on the continued trust of the community. From the perspective of the negotiator, this means that the time and energy spent clarifying questions or concerns—even small ones—and keeping a strong, common understanding of strategy and objectives is well worth the security of not having to later patch up a damaged relationship. Establishing healthy internal communication habits is especially important in the face of unscrupulous counterparts who might otherwise seek to exploit any communication gaps and to divide a fragmented constituency.

3. Advantages of Hybridized Approach in This Context

In cases in which a shift in strategy is initiated by the victimized stakeholder community and no advocacy methodology offers a panacea, which strategy to pursue seems more like a choice for a "least bad" strategy rather than a "best" one. The hybridized approach serves to bring a community closer together precisely at a time when the potential for mutual finger-pointing and acrimony is greatest. By insisting that the community consider carefully the pros and cons of any potential strategy shift, the rights advocate can force the community to take a step back, reassess the situation, and decide

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collectively on a new strategy. Best yet, by insisting that this conversation take place without undue time pressure and before any decisions have yet been made, the rights activist can ensure that the agency for any changes in strategy stays where it belongs—with the community itself. Finally, building consensus in this way, and being very detailed about the implications of a new strategy, can enhance the cohesion of advocacy efforts.

C. Case Study #3: Your Own Constituency is Itself Partially Contributing to a Human Rights Problem

Our final case study illustrates a very different challenge from the first two. In case study three, a human rights activist confronts the realization that at least part of the blame for ongoing human rights violations sometimes lies within one's own constituent communities. The example is not one in which a human rights advocate consciously agrees to take up the case of a potentially repugnant individual (such as a child abuser, defendant in a genocide trial, or proponent of violent racist ideology) to defend an important human rights *principle* such as free speech or the right to be free from cruel and inhuman treatment.[89] Instead, through this case study, we seek to address ambiguous situations in which the conduct of parties involves shades of gray.

An illustration of this might be the way in which the 1992–1995 Bosnian war is typically depicted today, twenty years later. A dominant narrative among western commentators considers the Bosnian-Serbs as the perpetrators and the Bosnian Muslims as the victims of that conflict (and perhaps the Bosnian-Croatians as confused bystanders). In fact, the reality of the situation was much more complicated, with each side simultaneously both victimizer and victim of the others.[90] So too was the situation in Rwanda, where the

89. Take, for example, the ACLU's controversial defense of the right of the Illinois Nazis—a subgroup of the National Socialist Party of America—to stage a march through Skokie, Illinois, a predominantly Jewish suburb of Chicago. *See* Irving Louis Horowitz & Victoria Curtis Bramson, *Skokie, the ACLU and the Endurance of Democratic Theory*, 43 LAW & CONTEMP. PROBS. 328, 329 (1979).

90. *See* Ewa Tabeau & Jakub Bijak, *War-Related Deaths in the 1992-1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results*, 21

international community's efforts to assign blame for the horrific 1994 genocide suppressed discussion of the widespread war crimes perpetrated by the invading Tutsi rebels as they sought to reestablish control of the country and root out remaining Hutu radicals.[91]

This same complexity is also often present in smaller-scale human rights advocacy efforts, for example, in our third case study. In that example, human rights activists who traditionally focused on shaming major multinational extractive companies with operations in one particularly conflict-ridden sub-Saharan African country and pressuring them to adopt more stringent safeguards against rights abuse found themselves focusing on the corruption and sexism within their own constituent communities.

The eventual decision by an extractive company to provide direct development assistance to communities affected by its operations, and the disappointment that ensued when these efforts proved unsuccessful, provided the impetus for this shift in focus. The failure in the negotiations between communities and the Corporation was due in part to the corruption of the community representatives, who were supposed to represent their neighbors' interests during negotiations with the multinational. The elders who typically negotiated agreements with the multinational were almost always older men and therefore less connected to the needs of women and youth. Furthermore, they typically directed resources towards other members of their own tribes or clans, rather than to the entire communities they were supposedly representing.

For the human rights activists, this situation presented a serious challenge. First, to accuse longstanding allies of corruption, sexism, and discrimination was awkwardly dissonant with past advocacy efforts in which they had described these same communities as

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EUR. J. POPULATION 187, 189 (2005) ("The war in Bosnia . . . comprised several episodes, including such as those with Serb perpetrators and Muslim (or Croat) victims, with Croat perpetrators and Muslim (or Serb) victims, as well as with Muslim perpetrators and Serb (or Croat) victims. At one point there was even a Muslim-Muslim conflict.").

91. *See, e.g.*, ALISON DES FORGES, HUMAN RIGHTS WATCH, LEAVE NONE TO TELL THE STORY 535–59 (1999). *But cf.* Philip Verwimp, *Testing the Double Genocide Thesis for Central and Southern Rwanda*, 47 J. CONFLICT RESOL. 423, 441 (2003) ("[T]he term *genocide* should be reserved for the killings committed by the Interahamwe and the FAR, and another word should be used for the killings committed by the RPF. That word could be *massacre* or *terror* or another word, depending on the event.").

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"innocent victims" of corporate abuse. Thus, this new advocacy agenda targeting prominent members of those very same communities had the potential to undermine the credibility of those earlier allegations, and the NGO as a whole. Second, the NGOs were contemplating to address the human-rights-inconsistent attitudes of the very same elders with whom they had worked in the past to document the abuses of the extractive companies, and upon whom their continued access to the communities depended.

In such situations it is incumbent on the human rights activist to develop strategies for engaging with this cognitive dissonance in a clear-headed way *without* needlessly jeopardizing the continued working relationship. Simply to look the other way in such situations may be tempting in the short-term, but such a response may undermine the credibility of the human rights advocate, and it ultimately fails to address the underlying problem. Similarly, the temptation to walk away from any such relationship in principled indignation is equally unlikely to promote change. Rather, the rights activist is best counseled to manage the tension between maintaining a strong relationship with community partners and encouraging those partners to be introspective and critical of their own failings (maintaining relationships versus demanding critical self-analysis).

To some extent, this constitutes a particularly difficult conversation between partners, which is the subject of voluminous negotiation and conflict resolution literature too extensive to review in this Article.[92] Influencing a traditional ally to change her attitude, however, is a complicated and often philosophically fraught task. It is difficult to influence others' deeply-held attitudes. Furthermore, one might question what authority and legitimacy that a human rights advocate—often an outsider to a community—should claim to seek such attitudinal change among her community counterparts. Is it not a

92. *See, e.g.*, Lisa Stanford, *Dissatisfied Lawyers Leaving Practice for Other Pursuits*, NEW HAMPSHIRE BAR ASSOCIATION (DEC. 15, 2000), *available at* http://www.nhbar.org/publications/archives/display-news-issue.asp?id=29. Stanford describes the adversarial nature of the practice of law as one of the primary motives for lawyers to change professions, or see Janine Robben, *Burnout Cautionary Tales*, OREGON STATE BAR BULLETIN (Oct. 2008), *available at* http://www.osbar.org/publications/bulletin/08oct/burnout.html, in which Robbin cites the results of a survey administered by the Oregon Attorney Assistance Program finding that 42 percent of Oregon lawyers said the adversarial nature of their jobs was dissatisfying.

manifestation of cultural imperialism for an outsider to evaluate others' innermost attitudes, practices, and beliefs? These are vexing but crucially important philosophical questions that each human rights practitioner should carefully consider before launching herself into this career. Full examination of these questions, sadly, is beyond the scope of this Article.[93]

That said, it is less ethically questionable for a human rights activist to choose carefully with whom to partner and to revisit such decisions in light of new information about those counterparts and their beliefs. It is therefore not unreasonable to explore the depth and resistance to change of rights-inconsistent attitudes among one's partners, as described below, to understand whether a traditional partnership is worth maintaining in the long-term.

1. Managing This Tension

As alluded to above, rarely do human rights activists have the standing to demand that their counterparts change their attitudes. Even if they do have such standing, demanding change is likely indefensible. Further, activists' demands (if presented as such) are unlikely to produce more than a thin veneer of "political correctness" masking essentially unchanged attitudes. Thus, the best strategies are those that allow the counterparts themselves to reevaluate their attitudes.

Our entry point into this project was consciously to "other" a source of outside pressure—in this case the Corporation's insistence that it would only continue providing development funds if they actually reached their intended beneficiaries. This way, we were able to broach the sensitive topics of the elders' perceived insensitivity towards (or ignorance of) the needs of women, youth, and minorities in their communities without the elders perceiving the project as a personal attack or a critique of traditional practices. We drew

93. For three particularly poignant examples, see Makau Mutua, *Savages, Victims and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L. L.J. 201 (2001); Binyavanga Wainaina, *How to Write About Africa*, GRANTA, http://www.granta.com/Magazine/92/How-to-Write-about-Africa/Page-1 (last visited Feb. 12, 2012); and Ivan Illich, Speech at Meeting of the National Society for Internships and Experimental Education, To Hell With Good Intentions (1968), *available at* http://www.swaraj.org/illich_hell.htm.

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explicitly on the image of two problem solvers sitting side by side on the same side of a table, facing a common problem, as opposed to the image of two negotiators glaring at each other across the table. We hoped to position ourselves side-by-side with the elders in a joint problem-solving effort to keep the development funds flowing.

Of course, in so doing we were consciously using the Corporation and its demands as a crude proxy for the "real" stakeholders with an interest in holding the elders more accountable. These "real" stakeholders included women, youth, and tribal outsiders in the communities, as well as the Human Rights NGOs themselves. Our fear, however, was that had we been more direct we would implicitly frame the elders as standing in opposition to members of their own community, and that by doing so we might have actually exacerbated the conflict and led to an even more defensive posture by the elders.

Since "othering" the Corporation bore its own reputational costs–especially for the Corporation—our partners went to great lengths in advance of the project to reach agreement with our counterparts in the Corporation over the strategy. The Corporation agreed that in order for their development efforts to succeed, the relationship between the elders and their constituencies had to be strengthened—not weakened—and that for the NGOs to be agents of constructive change, their relationship with the elders also had to proceed on the basis of trust.

Furthermore, our counterparts at the Corporation understood that their role as an actor with significant resources was functionally different from that of the NGOs, which typically brought only minimal resources into the community. Put simply, the Corporation and the NGOs both agreed that the elders would be more likely to consider changing their corrupt behavior in the face of an ultimatum from the Corporation than they would be in the face of NGO lobbying or grassroots pressure from below. Ignoring the Corporation's demands in such a situation would have entailed potentially greater costs to the elders than beginning to consider grudgingly the needs of women, youth, and minorities in their community. For this very reason, the Corporation supported us even as we framed it and its inflexible ultimatum as the primary reason why the elders might consider changing their behavior. Needless to say, such a framing also played into hand of the public relations unit

of the Corporation, which could use this scenario as an illustration of how the Corporation stood up for human rights principles.

Once we gained entry into the issue with the elders and positioned ourselves as their partners, we gained their consent to convene a cross-section of representative stakeholders for an exploratory workshop. In addition to the elders, we invited articulate women, young people, and minorities (often already active in issue-based NGOs) and even negotiators from the Corporation to attend the workshop—all in their personal capacities. Since nothing was being decided at these meetings, and since few of the attendees actually lived in the same communities, the elders saw this as a largely non-threatening opportunity to hear the views of others and to demonstrate publicly their openness to addressing the issue—no doubt a message they wanted to send loudly to the participants from the Corporation who were also present.

In preparation for the workshop, our clinic developed a series of specially designed simulations and structured debriefs to open the door to a critical and reflective analysis of the situation. These simulations were designed to make taboos explicit, and to allow participants to discuss them in a simulated and therefore much safer role-play environment.[94] For example, we designed a negotiation simulation where one of the negotiators had grown accustomed to receiving bribes and demanded a substantial "sweetener" in the context of a business negotiation. This simulation—which was *structurally* similar to the negotiations the elders were used to with the extractive Corporation, but *contextually* distinct—proved to be an effective entry point for discussions about different perspectives on bribes and contrasting attitudes about how business and power should be regulated.

By randomly ascribing roles to the participants regardless of their roles in "real life," we were also able to create a much more visceral sense of empathy across the different roles than we might have had

94. We are struck by the significant contributions of Jennifer Brown's excellent article on the use of simulations to "teach" empathy in this volume, and encourage the reader to see that article for its discussion. Jennifer Brown, *Deeply Contacting the Inner World of Another: Practicing Empathy in Values-Based Negotiation Role Plays*, 39 WASH. U. J.L. & POL'Y __ (2012).

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we only led a straightforward discussion of the issue. Often we would find that this empathy produced an entirely different discussion after the simulation—one in which the participants were visibly processing the emotions, reactions, and feelings they had experienced during the simulation.

Much of the facilitated discussion following the simulations was geared towards an exploration of what might be considered "fair" when representing a community. Over time, these workshops and others like it led to a gradual redefinition of the relationship between communities and their elder representatives, and even the explicit inclusion of women, minorities, and young people in the negotiation process with the Corporation.[95]

2. Advantages of Hybridized Approach in This Context

As discussed above, human rights activists often find themselves captured by their own "naming and shaming" narrative in which the world must inevitably be portrayed as a contest between good and evil, perpetrator and victim. Turning away from this simplified narrative and addressing problematic behavior on the part of traditional allies is therefore a complicated task.

As this example shows, some creative maneuvering and coordinated framing of issues with other stakeholders can allow human rights activists to address the shortcomings even of their partners—something that is necessary if activists wish to avoid undermining their own credibility as impartial defenders of human rights. Successfully partnering with the community elders to "placate" the Corporation in our case actually allowed the human rights activists to *strengthen* their relationship with their partnered elders, all while mitigating the underlying human rights problems they had identified among their traditional allies.

Ironically, the interaction also served to strengthen the trust the elders felt towards the human rights NGOs. At the end of the process

95. To be clear, this was a multi-year effort, and progress was incremental. The Harvard Negotiation and Mediation Clinic's involvement with the project lasted for only a few months of that overall process and focused on the development of the simulations and facilitated debriefings, thus we cannot claim credit for the overall success of this longer-term project.

the elders realized that they had managed simultaneously to improve their relationship with their communities while also unlocking greater sources of funding to reinforce their role as community leaders. The NGOs also came away from this collaboration with greater faith in their elder counterparts. Experiencing firsthand the elders' receptivity to change—and in fact their enthusiasm about a more inclusive definition of community—reinforced for the NGOs the wisdom in partnering with the elders in their ongoing efforts to bring positive change to the Niger Delta region.

X. THE INTERNATIONAL HUMAN RIGHTS AND CONFLICT RESOLUTION CLINIC AT STANFORD

The above case studies and much of the reflections stem from the authors' previous experience with NGOs and in supervising clinical projects through either a human rights clinic or a conflict resolution clinic.[96] Each of the projects forced those involved to engage with elements of both disciplines, or at least to recognize the limits of a single discipline to respond effectively. The analysis above considers how the teams managed the tensions arising in the context of the hybridized projects while also identifying challenges and lessons learned.

We leave it to others to assess whether these examples might serve as "best practices" or even "good practices." We certainly learned significant lessons from each experience. As importantly, we are aware of a number of ways that we might improve our approach were we to engage in the projects over again.

Undoubtedly, there are other contexts in which a hybridized approach can be relevant. Above, we note that one major area in which such an approach might prove particularly relevant is the

96. Specifically, the Harvard International Human Rights Clinic, then under the Directorship of Professor James Cavallaro, and the Harvard Negotiation and Mediation Clinical Program, where Stephan Sonnenberg at the time was active as Clinical Instructor and Lecturer on Law. *International Human Rights Clinic*, HARVARD LAW SCHOOL, http://www.law.harvard.edu/programs/hrp/ihrc.html (last visited Feb. 12, 2012); *Harvard Negotiation and Mediation Clinical, Program*, HARVARD LAW SCHOOL, http://www.law.harvard.edu/academics/clinical/hnmcp/web/index.html (last visited Feb. 12, 2012).

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progressive realization of social, economic, and cultural rights.[97] Indeed, both of the authors have been involved in projects aiming to secure such rights in which this assertion has been borne out. Thus, our selection of the three case studies above should by no means be confused with a full typology of situations in which a hybridized approach can be relevant. We must leave this topic to future scholarship and to the accumulated wisdom of our clinic once it has been running for a significant period of time.

We contend that the three tensions we highlighted are potentially applicable for all types of hybridized human rights and conflict resolution projects. Thus, although we introduced each tension in the context of a case study, this does not imply that this tension arises only in scenarios similar to the ones profiled above.

One theme that we noted across each of our case studies is stakeholder empowerment. In fact, we contend that stakeholder empowerment is one of the particular strengths of a hybridized human rights and conflict resolution practice. We also considered the issue of rights prioritization in contexts with many rights violations. Limited resources often force rights advocates to make difficult tradeoffs about which rights to pursue actively and which to ignore temporarily. Inevitably, such decisions leave those claiming forgotten rights feeling abandoned and neglected, as though their claims were of lesser importance. And yet the prioritization of objectives in light of limited resources is also not a tension at all, but rather a challenge that any activist—not just human rights practitioners—faces on a constant basis. In our view, a consensus-building strategy can help address this challenge, so that the individual human rights practitioner can rely on her partners in the community, rather than on herself, to make these difficult decisions.[98]

One important tension inherent in any effort to merge human rights and conflict resolution involves the potential threat to the reputation of professionals from each camp. Thus, if a human rights practitioner is reputed as a result of one particularly adversarial

97. *See Yamin*, *supra* note 17.

98. We recognize, of course, that often the decision about which right or rights to pursue in a given context is driven as much by the mandate restrictions of particular NGOs or associations as they are by the views of those on the ground.

project to be a fierce advocate on behalf of her clients, it might be difficult for that practitioner—even if she has very high skills as a facilitator—to attract the attention of someone seeking a consensus builder/facilitator. In this same way, a facilitator reputed to be particularly skillful at building bridges between victims and offenders in reconciliation processes may have difficulty gaining the trust of a client or community seeking a zealous advocate. Thus there might be a tension between keeping one's "toolbox" large, as it were, and simultaneously developing a reputation based on past projects. This tension may be diffused by a clear definition of the role and objective of a hybrid practitioner in each particular engagement. Thus, a hybrid practitioner may engage as a facilitator in one context and as an advocate in another. Provided she is clear and transparent about her role at the beginning of and throughout the engagement, she should be able to retain her professional reputation. The ability to engage in multiple, synergistic but methodologically distinct practice areas is common among those in the practice of law. We contend that hybridized human rights and conflict resolution can also operate successfully in methodologically distinct practice areas.[99]

Before concluding, we return to our attempt to merge these two foundational approaches in a new clinic at Stanford Law School. The projects we select for our new clinic, and the pedagogy we develop to provide students a robust grounding in the skills and theory of such a hybridized practice, are still very much a work in progress. Over time, we hope to continue revisiting our analysis, and to build a more robust theory of hybridized human rights and conflict resolution practice.

A. Pedagogy and Structure of the Clinic

At Stanford Law School, clinics are full-time, quarter-length commitments.[100] This means that students enrolled in clinics have no

99. While we believe this to be true in the case of clinics and relatively small NGOs, it is at least subject to doubt whether such an approach could work for a very high-profile NGO such as Human Rights Watch or Amnesty International, to name two prominent examples, given their already cemented reputations as reputable, but quintessentially "traditional," human rights NGOs in the way we defined such a practice above.

100. *See* Larry Kramer, *Stanford Law School Dean: We Aim to Teach our Students Not*

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competing classes, no other finals or papers, and no competing daytime extra-curricular commitments to limit full-time commitment to the clinic. This clinic thus becomes an intense experience, much like a small NGO, but with time and space for reflection. The quarter is launched with an intense "boot camp" in which we present students with theory and skills training necessary to complete their projects. This "boot camp" relies heavily on simulation-based learning, focusing on human rights skills such as fact-finding, media advocacy, and report writing, as well as on conflict resolution skills such as active listening, conflict analysis, and study of interest-based approaches to resolving conflict. The seminar readings accompanying the clinic focus on critical analysis of both the human rights and the conflict resolution approaches. The readings and class discussions seek to disabuse students of the notion that human rights practitioners can do no harm by virtue of their altruistic noble intentions, while providing some insight on how to advance rights even in light of these critiques. Once this initial "boot camp" is over, the seminar transitions to lessons from the experiences students have in their clinical projects.

B. The Clinic's Projects

As noted above, there exists a potential tension between the types of projects a hybridized human rights and conflict resolution practice accepts and its ability to continue to attract a diverse range of projects. The risk is that any one high-profile project can prove "sticky" and make it increasingly unlikely for the clinic to attract anything but similar projects again in the future.

As mentioned above, we believe that by being very explicit with clients, students, and colleagues about what type of approach we are using in each project, and resisting pressure from either our human rights or conflict resolution colleagues to employ only one methodology at the expense of the other, our clinic can maintain and build on its reputation as a place where both methods can coexist. Thus, we can—and indeed should—take both "pure" conflict

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Just to Spot Problems, But to Solve Them, LEGAL REBELS (Mar. 29, 2012, 8:00 AM), http://www.abajournal.com/legalrebels/article/stanford_law_school_dean_larry_kramer/.

resolution and human rights projects as part of our mix of projects. Given the existing landscape in which these clinics are siloed, we do not elaborate in greater detail on these "pure" human rights or conflict resolution projects. Of particular interest are those projects that draw actively on both methodologies: projects involving a "perpetrator" (or someone who is commonly described as such) seeking to improve his human rights record or ones in which adversarial strategies have stalled and new directions are sought. Or perhaps the Clinic might address a project in which there are no obvious perpetrators at all—only "wicked" problems that need to be resolved if people are to enjoy their rights.[101]

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101. While we also love the sound of this terminology on its own merits, "wicked" problems were first defined by public planners to describe problems with the following characteristics:

- The problem is ill-defined and resists clear definition as a technical issue, because wicked problems are also social, political, and moral in nature. Each proposed definition of the problem implies a particular kind of solution which is loaded with contested values. Consequently, merely defining the problem can incite passionate conflict.
- Solutions to a wicked problem cannot be labeled good or bad; they can only be considered better or worse, good enough or not good enough. Whether a solution is good enough depends on the values and judgment of each of the parties, who will inevitably assess the problem and its potential solutions from their respective positions within the social context of the problem.
- Every wicked problem is unique and novel, because even if the technical elements appear similar from one situation to another, the social, political, and moral features are context-specific.
- A wicked problem contains an interconnected web of sub-problems; every proposed solution to part or the whole of the wicked problem will affect other problems in the web.
- The only way to address a wicked problem is to try solutions; every solution we try is expensive and has lasting unintended consequences. So, although we have only one shot to solve *this* wicked problem, we will have plenty of opportunities to develop our skills as we deal with the wicked problems that we create with our attempted solutions.

Christopher Honeyman & James Coben, *Navigating Wickedness: A New Frontier in Teaching Negotiation*, *in* VENTURING BEYOND THE CLASSROOM 439, 440 (Christopher Honeyman, James Coben & Giuseppe De Palo eds., 2010) (citing Horst W. J. Rittel & Melvin M. Webber, *Dilemmas in a General Theory of Planning*, 4 POL'Y SCI.155 (1973); Tom Ritchey, *Wicked Problems: Structuring Social Messes with Morphological Analysis*, SWEDISH MORPHOLOGICAL SOCIETY, http://swemorph.com/pdf/wp.pdf (last visited Feb. 12, 2012); JEFFREY CONKLIN, DIALOGUE MAPPING: BUILDING SHARED UNDERSTANDING OF WICKED PROBLEMS (2005)).

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In addition to ensuring methodological diversity in our project mix, we also seek to secure projects focusing on not only civil and political rights, but also economic, social, and cultural rights. Finally, we seek to undertake projects in various regions of the world—including the United States—to ensure that we tap into the wide variety of experiences human rights practitioners encounter.[102]

A second aspect of our project selection is the process of contracting with potential clients or partners. Given that our hybridized approach to human rights is relatively novel, and one that entails methodological innovations not immediately apparent to a casual observer, we try to make sure that our partners understand thoroughly why we tend to approach projects the way we describe above, and what role they can (and should) play consistent with that approach. Not all clients seek the approach we use. Our strong sense, therefore, is that it is preferable to identify any disconnect in methodology or objectives for a project *before the outset* rather than after the project is already underway.

Substantively, we prefer projects that require students to think creatively about how best to achieve maximum human-rights-consistent outcomes—projects in which the "best practice" manual may not yet be written. For this creative process to happen, we ideally look for partners who are themselves interested in the hybridized human rights and conflict resolution approach, and partners who are eager to engage in a reflective learning process. This helps us simultaneously meet our twin goals of teaching and learning human rights advocacy and conflict resolution while helping clients and communities advance their interests through high quality representation.

102. We will, however, limit our definition of rights to only those rights that must be claimed by a rights holder. Thus, for example, although efforts to provide charitable development assistance to an impoverished community certainly might work towards satisfying a right to economic security for the beneficiaries of that project, we would not conceive of that effort as a "human rights project" per se. Partnering with that community, however, in an effort to assert and secure such economic security based on a rights claim, however, might well fall within our definition.

C. Criteria for Success

Much of what is written above will be subject to ongoing learning and critical (re)evaluation as our experience grows. Thus, it is appropriate to end this Article with a brief description of four criteria by which we seek to evaluate ourselves.

First, we hope to train our students to be more familiar with the methods, baseline assumptions, and above all the practical skills of both human rights and conflict resolution practitioners. Ample courses exist at Stanford and elsewhere that introduce students to these disciplines in a classroom setting. Rather than replicate these courses, we hope to whet students' appetites by engaging them in critical analysis and practical work in these areas. We hope as well to encourage students to pursue careers in this area.

Second, we expect to be judged by how much we help our clients and affected stakeholders find sustainable solutions to their problems. Given the range of projects we might undertake, and the methodological dexterity we wish to retain, it may be hard to develop a better metric of all our projects' success (or failure) than the degree to which any action points coming out of the projects remain relevant once the project is complete. If a project's goal is to raise awareness about a certain human rights issue, for example, we might inquire whether that awareness proved to be lasting, or whether the sense of urgency dissipated again once the project was over. Similarly, if a project is intended to find a solution to an ongoing situation of labor violations, then it might be interesting to revisit that situation once some time has passed to see whether the solution proposed was indeed implemented, and if so, how it weathered the tests of time.

Third, given our clinic's hybrid methodology, we hope that our intervention will lead to an *improvement* in the various stakeholders' capacity to manage future disputes or problems collaboratively. Thus, an important benchmark would be that the relationship between the parties improve or at least remains the same as before we began the project. This goal is important if it is true, as we believe, that the pursuit of human rights is entirely consistent with the pursuit of more peaceful societies.

Fourth and finally, we envision our clinic as a laboratory of sorts for ongoing theory development, and a place where scholars and

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practitioners alike can look for guidance on how to address situations of rights abuse that increasingly defy categorization as either a human rights problem or a conflict ripe for resolution.