

Rights after War. Christine Bell, Peace Agreements and Human Rights, Oxford University Press, 2000

Professor Christine Bell has written a lucid, valuable and wide-ranging analysis of the role of human rights, human rights institutions, and international law in four recent peace processes and peace agreements. She argues persuasively that we should interpret peace agreements, usually multi-stranded multi-documents and highly politicised products of bargains reached at several negotiating tables, as transitional constitutions. Her book should be read by academics, human rights activists and general readers.

Transitional constitutions vary in the extent to which they are the product of authentic, consensual and shared understandings, and in the degree to which they predict final constitutional outcomes. They also vary significantly in the articulation of human rights demands in what she usefully distinguishes as pre-negotiations, framework (or substantive) agreements, and agreements on implementation.

Her four cases are South Africa, Northern Ireland, Bosnia Hercegovina and Israel/Palestine. I have rank-ordered these, much as she does, in current order of success. My explanations of the different outcomes are slightly different.

In South Africa there has been a transition from minority to majority rule. Its negotiated transitional constitution had the four key consociational elements:

- (i) arrangements for executive power-sharing;
- (ii) proportionality rules in government and the wider public sector;
- (iii) equality and autonomy for groups – in this case linguistic communities and provinces; and
- (iv) veto rights for minorities in the management of the transition and the making of the final constitution.

South Africa's final constitution, by contrast, is much less consociational. It is based on majority rule, tempered by a proportional representation electoral system, federalism, judicial review, a Bill of Rights, and a range of human rights related commissions.

There is an apparent surprise here. A left-wing ANC, interested in a strongly interventionist state, and backed by the overwhelming majority of the previously disenfranchised, has presided over a constitutional consolidation that, on paper, is one of the most liberal, individualist, human-rights suffused orders in the world. Why? In South Africa the agreement to have common citizenship and national identity within an agreed set of borders meant that the weakening of group rights was relatively easy to accomplish – outside of KwaZulu Natal. Self-determination was mostly understood as achieving democratic and liberal rights – aside from linguistic provisions for the country's nine major languages. And because apartheid had meant separate and unequal groups under the dominance of one, its opponents understandably, though incorrectly, associated consociation with merely reforming apartheid. So the previous regime's hierarchical and authoritarian racism has meant that the new order is largely formally intolerant of any explicit recognition of racial

or ethnic status. Whether the new South Africa will be a success is an open question but its chances seem better than in much of the rest of Africa.

In Ireland the Belfast Agreement also sketched a transitional constitution, though it was not universally seen that way – some supporters saw it as a permanent settlement, other critics denied that it had any transitional traits. It envisaged a strong consociational government as long as Northern Ireland remains within the UK. Its dual premiership and d'Hondt executive committee is the most sophisticated consociational executive design currently in existence, combining elements of concurrent majority, proportionality and rules for operating a coalition government without a formal coalition pact. Its electoral system is proportional (STV) and can facilitate inter-group voting deals. Its independent commissions – including on policing, criminal justice, human rights, and equality – were expected to protect both individual and collective group rights and achieve 'representativeness' (proportionality). Its Assembly rules, the European Convention on Human Rights (and promised local add-ons), and its rights of participation in wider governance arrangements also prefigure systematic veto-rights.

The Belfast Agreement was a voluntary consociation – with strong group political participation rights, for nationalists, unionists and others. Unlike the transitional South African agreement there was no agreement on common national identity and final borders – though there was an agreement on mutual recognition of citizenship rights, and national identities, and on how a border might be changed. Moreover, the endorsement of the Agreement rested on different understandings of self-determination. Its sophisticated Irish supporters saw it as a determination of the Irish people to establish a new constitutional order throughout Ireland, with arrangements for how Northern Ireland would be governed as long as it remained within the UK, and procedures and institutions to achieve and encourage Irish unification (probably in a confederal or federal format) in the future. They saw it as a revision of Westminster's absolute claim to be sovereign in and over Northern Ireland. Its sophisticated unionist supporters by contrast saw it as a way of achieving formal recognition of the Union, and as a means to weaken Irish nationalism through sharing some power.

The Agreement did build insurance for whoever get it wrong about the future: if nationalists are wrong at least they get consociation, and confederal links to the rest of Ireland in the North-South Ministerial Council. If unionists are wrong at least their rights as a British national community and as individuals, would be better protected in a new Ireland. The least sketched out but most imaginative part of the Belfast Agreement is the idea that both parts of Ireland, through Human Rights Commissions, legal reform and possible amendments to the European Convention will eventually protect national, ethnic, religious and individual human rights in functionally equivalent ways.

In Bosnia Herzegovina and Palestine-Israel there remain real question marks over whether authentic framework agreements have been reached, and over whether the relevant groups are still in pre-negotiations. In the former case the USA and the European Union insisted on Bosnia's territorial integrity and

at Dayton pushed them into an utterly loveless combination of coerced consociation and confederation – with no real place for others and no likely mechanisms to achieve human rights redress and protection. In the case of Israel/Palestine the respective parties wish for separation, of whatever kind, has meant that the protection of future minorities and of human rights in the two ultimate polities have not received serious negotiating attention or institutional fleshing out.

What is especially valuable in Bell's book is how she demonstrates that the nature of the respective conflicts in these four zones, and debates about what they are really about, the 'meta-conflict', explain the relevant salience of human rights activism and institution-building in what we must eventually hope become post-conflict zones.

The book may be criticised on two grounds. The large data on other peace agreements collected in an Appendix should have been replaced by the texts of the pre-negotiations and negotiations from the four conflict-zones – that would have enabled readers to test the author's arguments against the texts themselves. Secondly the author perhaps underplays the extent to which conflict-groups use and abuse international law and human rights to advance their partisan positions. But long may they do so: the more they and their leaders become enmeshed in rights-discourses the more likely they are to engage in constitutional and institutional management or resolution of their disagreements.