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Ethics, rhetoric and politics of post-conflict reconstruction: How can the concept of social contract help us in understanding how to make peace work?

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## **Ethics, Rhetoric and Politics of Post-conflict Reconstruction**

How Can the Concept of Social Contract  
Help Us in Understanding How to Make  
Peace Work?

Sirkku K. Hellsten\*

November 2006

### **Abstract**

Since existing injustices and the quest for justice are seen to be the main causes for violent clashes, it is often claimed that the restoration of justice must be the most important goal of post-conflict reconstruction. However, the current policy approaches, social movements and theoretical models for conflict resolution tend to look at justice from merely technical point of view, as a rapid fix to overcome war and violence. This relates the notion of 'peace' to 'security' and replaces the concept of 'justice' with the concepts of 'law and order'. Restoration of justice, however, does not merely mean .../

Keywords: power, justice, ethics, peace, social contract, morality, Rousseau, Rawls, Nozick, Hobbes, women, communitarians, contractarianism

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requirement of impartiality. This paper presents an ethical analysis on the relationship between the rule of law, social justice, the principle of impartiality and social cohesion in a post-conflict society by examining the problems of the social contract approach through communitarian and feminist critiques. The aim of the paper is to map out the ethical dilemmas involved in peace negotiations based on ‘constructing’ or ‘restoring’ justice in a society, and to guide a way towards more a comprehensive framework of ethics of justice for post-conflict reconstruction.

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## **1 Introduction**

Theoretical and empirical studies analyzing various ethical aspects of international relations, and particularly those related to war, peace and conflict resolution have primarily focused on the moral justification of war and intervention, as well as on ‘the ethics of peace’<sup>1</sup> by analysing the plausibility of various moral, political and economic ends and means in peace making. Since existing injustices and the quest for justice are usually seen to be the main causes for violent clashes, it is often claimed that the creation or restoration of justice must be the most important goal of post-conflict reconstruction. However, the current policy approaches, social movements and theoretical models for conflict resolution tend to look at justice from merely technical point of view, as a rapid fix to overcome war and violence. This relates the notion of ‘peace’ to ‘security’ and replaces the concept of ‘justice’ with the concepts of ‘law and order’. Creation or restoration of justice, however, does not merely mean establishment of the rule of law, but it has wider moral dimensions. Therefore, the concept of justice and the normative framework justice offers to lasting social harmony needs to be considered in relation to local social ethics, values and to the public ethics requirement of impartiality.

This paper presents an ethical analysis on the relationship between the rule of law, social justice, the principle of impartiality and social cohesion in a post-conflict society by examining the problems of the social contract approach through communitarian and feminist critiques. The aim of the paper is to map out the ethical dilemmas involved in peace negotiations based on ‘constructing’ or ‘restoring’ justice in a society, and to guide a way towards more comprehensive framework of ethics of justice for post-conflict reconstruction. The first part of the papers discusses the role of ethics in politics and rhetoric of post-conflict reconstruction. The second part introduces social contract framework as ethical framework for post-conflict reconstruction and discusses its problems through communitarian and feminist critiques.

## **2 Definitions and relations: ethics, post-conflict reconstruction and justice**

Despite the academic and political attempts to find a solution to the ethical dilemmas above, in many cases the post-conflict social order has not been able to guarantee peaceful co-existence, lasting social harmony and sustainable national and local social ethics. While there are some success stories, such as Mozambique or Timor, in many other cases the attempts to reconstruct peace and harmony have resulted in an unstable and weak states, which, for their part, have collapsed again and thus, have led to further

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<sup>1</sup> With ‘ethics’ in this context we refer to an analytical exploration of ethical dimensions and the analysis of the ethical principles relevant to post-conflict reconstruction.

human rights violations, suffering and poverty. In many cases in which interstate or intrastate conflicts have been justified in the name of national liberation, independence or cultural integrity of particular groups of people, former liberators have turned into ruthless dictators (for example in many of the decolonization and post-colonial wars in Africa); the apparently democratic revolutions have ended up in anarchy (for example Somalia) or the new leaders have chosen undemocratic systems of governance (authoritarian political ideologies, religious fundamentalism, etc.). Injustice and inequality have prevailed and violent clash between different interest groups have emerged in already war torn societies (for example in Iraq, Democratic Republic of Congo, Sierra Leone, Guatemala, El Salvador, etc.).

The traditional conflict resolution and peace-building paradigms have frequently been constructed within the framework of social contract theory, which illustrates the importance of building a society on a mutually beneficial and unanimously accepted agreement on the principles of political power and legitimate governance that guarantees social harmony and security. Thus, while the negotiated peace deals may not actually be fully-formed social contracts, analyzing the strengths and weaknesses of the social contract framework helps us to understand how to make secure and lasting peace deals.

This paper will examine particularly the problems that arise when the social contract framework is applied to a post-conflict context by reflecting on its inefficiencies through communitarian and feminist critiques which both show that the abstractions involved in social contract tend to lead into top-down political agreements that detach people living in the warring and conflict-ridden societies from the peace outcomes. This easily detaches peace-making and reconstruction processes from those involved in the conflict. If the focus is primarily on the warring parties—and particularly on their leaders—in order to gain immediate peace agreements, end the violence and to re-establish order, the peace may be difficult to maintain. Thus, there is a need to build a bridge between bottom-up grassroots social reconstruction and formal, top-down institutional reconstruction of post-conflict society in a manner that gives people in post-conflict societies more ownership of the reconstruction of the principles of justice and their implementation and acknowledges the social complexities involved. All in all, this requires that we more recognize the role of social ties, local values and existing ethical frameworks in order to enhance the full participation and ownership of the contract of those involved in, and affected by, the violence and war.

Ethics in post-war and post-conflict contexts refers then wider dimensions of social harmony and peace co-existence than the concept of justice alone can cover. In general the term ‘ethics’ refers to moral guidelines for our actions set by our values, beliefs, attitudes towards what we consider to be ‘good’ or ‘bad’, and ‘right’ or ‘wrong’. It may seem self-evident that in a context of war, there is a general lack, or at least degeneration, of social ethics and moral values. Conflicts tend to blur our judgments on

what is right and wrong, since in violent conflicts and war people engage in actions most of them themselves would consider immoral, or at least morally most undesirable, during peacetime. On the other hand, conflicts occur and wars emerge often as a result of persistent ethical and related social problems, or due to the lack of clear ethical principles in a society (such as respect for difference, protection of human dignity/human rights, equality, reciprocity and fairness). Conflict can for example follow from unbalanced and unjust power relations, inequality and suppression, intolerance, self-interested leadership and the general lack of public trust. On the other hand, conflicts can be result of conflicting value and belief systems, that is, conflicting sets of 'social ethics'.

Reconstruction of a post-conflict society, that is a society recovering from violent aggression and war, are then related to the restoration of justice that has its foundations in the establishment of common values, and in general ethical norms that are acceptable to all the parties of conflict. By reconstruction of post-conflict society, we then refer, on the one hand, to the renovation and renewal of the legitimacy of the social, political and institutional structure of the society that is based on shared concept of justice and/or social harmony, and on the other hand, to the shared values held by and common goals strived for, by the society. In current international discussions the post-conflict reconstruction appears to be based on a particular framework of justice that emphasizes the cessation of violent conflict and the return to social harmony and normal social interaction with the help of the rule of law. The goals of reconstruction can in general identified as the following: first aim is to stop violence; the second is to maintain social harmony after the possible extraordinary outside intervention is no longer needed; third is to establish sovereign national governance and to guarantee largely self-determined economic activity and to build/reconstruct working infrastructure with basic public services; fourthly there is a need to ensure that international and external relations are conducted according to international law and international treaties.

This international framework for post-conflict reconstruction can be organized into three conceptual phases, defined as initial response, transformation and fostering sustainability. While responsibility for reconstruction must lie with indigenous actors, international intervention is often thought to be needed during the early stages of post-conflict transition. Not surprisingly, the initial response is often characterized by military intervention for basic security, stability and emergency services. It should be noted, however, that there can be very different military responses to conflict reconstruction. On the one hand, military may be used to restore order, as was the case with the United Kingdom's military presence in Sierra Leone.<sup>2</sup> On the other hand,

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<sup>2</sup> Since 1991, the civil war between the Sierra Leone government and the Liberia-backed rebel Revolutionary United Front (RUF) has crippled the country. In July 1999 the warring parties signed the Lomé Peace Agreement. The UN Security Council established the Mission in Sierra Leone (UNAMSIL) in October 1999 to help implement the Lomé Agreement but despite UNAMSIL's presence fighting continued. In May 2000 the crisis peaked as the RUF took 500 UN peacekeepers hostages and the United

military can be used in various peace-keeping operations that support peace agreements, which the main belligerents have agreed on, like in the case of Mozambique. The second phase, the transformation, focuses on developing legitimate and sustainable indigenous and national capacity, often with special attention to restarting the economy, establishing mechanisms for governance and participation as well as for public services. Also securing a foundation of justice and reconciliation is central for this stage. The final phase, fostering sustainability, consolidates long-term recovery efforts, often leading to the withdrawal of all or most of the external, international military involvement. These efforts include rebuilding justice not only in a form of the rule of law, but also in a distributive sense as economic and political recovery with fair distribution of resources, social goods and power. Only then it is possible to build the foundations for the prevention of further conflict and the re-emergence of violence.<sup>3</sup>

What makes understanding the concept of justice within a post-conflict situation so difficult is that the framework for post-conflict reconstruction is in general organized around four distinct dimensions of justice:

- i) Justice as order and security that addresses all aspects of public safety, in particular the establishment of a safe and secure environment and development of legitimate and stable security institutions for collective and individual security. This is to secure the lives of civilians from immediate and large-scale violence and the restoration of territorial integrity.

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Kingdom stepped up its military presence in Sierra Leone. In January 2002 the UN officially declared the 10-year civil war to be over. The UN and the Sierra Leone government agreed to establish a war crimes tribunal to try perpetrators of atrocities, especially the mutilation of children. It was understood that there might be difficulties, not least because potential defendants might include people now popular or helpful to the implementation of peace.

<sup>3</sup> Following questions arise: if peace is considered to be intrinsically valuable, what is the price we can pay for peace? Can it ever be justified to intervene in a conflict situation in order to obtain peace? If so, when, by whom, and with what kind of interventions? What types of aid and in what form (material, political, intellectual in form of planning, managerial, governmental, institutional, etc.) is to be provided to whom (to the new government, to international and national NGOs, to grass-root organizations) and by whom (international community and multilateral organization or aid provided by NGOs) in the conflict and post-conflict zones? When is the right time to stop providing aid, if independence, sustainability and self-reliance are the final goals of peace assistance?

If we accept that peace is a desired goal more questions arise: is it justified to import a set of 'democratic values' to non-democratic societies, even in cases in which authoritarian governments may be more able to maintain peace better and in which democratic competition may further fragment the society and lead into new conflicts? If democracy *is* the goal of peace, is it justified to use undemocratic means to bring about democracy? If respect for universal human rights is demanded by the international community in the global context, can these rights ever be violated by, or in the name of, the very 'humanitarian interventions' that were taken to promote them in the first place (for example by curbing individuals' freedoms such as freedom of movement or expression). If the rule of law is the agreed goal of the post-conflict reconstruction, and if the rule of law is to be based on the principle of impartiality, how can the international community justify its own priorities particularly if these priorities are based on political, economic or other related interests rather than on universal, impartial humanitarian values?

- ii) Justice as reconciliation addresses the need for an impartial and accountable legal system and for dealing with past abuses; especially the creation of effective law enforcement, an open judicial system, fair laws, correctional system that is humane and in general respects human rights, and formal and informal mechanisms for resolving grievances arising from conflict. Incorporating the concept of restorative justice (that is a justice as fairness that heals the post-conflict society and enhances reconciliation between the warring parties), they include extraordinary and traditional efforts to reconcile ex-combatants, victims and perpetrators.
- iii) Distributive and social justice addresses social and economic wellbeing and focuses on fundamental social and economic needs, particularly the provision of emergency relief and restoration of essential services to the population. Laying the foundations for a viable economy, it is possible to initiate inclusive sustainable development programmes. As the situation stabilizes (protection from starvation disease and other security elements) attention shifts from humanitarian relief to long-term social and economic development.
- iv) Finally, political justice calls for impartial governance and full participation of the citizens is needed for legitimate, effective political and administrative institutions and participatory processes; above all, by establishing a representative constitutional structure, strengthening public sector management and administration, and ensuring active and open participation of civil society in the formulation of government and its policies.

Governance then involves setting rules and procedures for political decision-making, and delivering public services in an efficient and transparent manner. Participation encompasses the process for giving voice to the population through the development of civil society that includes the generation and exchange of ideas through advocacy groups, civic associations, and the media to guarantee justice for all. In the following sections we shall study particularly the ethical foundations of political justice and the problems in their practical applications in international, national and local politics.

### **3 Background to the ethics of international relations**

One of the main elements of morality and ethics in relation to political legitimacy, conflict, war and peace is our understanding of human nature, or the nature of humanity. What we believe human nature to be has an influence on what kind of normative arrangements are we ready to accept for the basis of a social order, and in this context naturally also for the reconstruction of a post-conflict society. If we agree that human beings are by nature socially co-operative, peaceful and even altruistic even if they may occasionally be corrupted by power or great injustices as a result of the misuse of this power, we are more likely to defend idealist and pacifist theories of social justice.<sup>4</sup> On

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<sup>4</sup> Such as the theories supported by Jean-Jacques Rousseau, Samuel von Pufendorf, Hugo Grotius, Karl Marx, and within an African context, for example, by Julius Nyerere.

the other hand, if we consider human beings to be naturally selfish, aggressive and thus, inevitably and relentlessly drawn into conflicts over power and resources, we are more likely to take a realist viewpoint that accepts the existence of war as part of natural state of affairs and thus, sets strict conditions and contractual demands for peace; for realists any social contracts are based on the fact that we need to limit individual freedom in order to protect this very freedom<sup>5</sup> (Sterba 2001; Walzer 1980).

While in real life conflicts and actual war situations we usually can recognize both dimension of human nature,<sup>6</sup> in the debates on ethics of international relations and global politics today, the debate between realist and idealist approaches still goes on. Proponents of realism emphasize the enduring propensity for conflict between and within states. The realist approach supposes that ethics and politics cannot go together and that ethical norms do not (at least directly) apply to politics. Sceptical realists may note that international (as well as national) politics are all about power. ‘Power politics’ allow all means available, including violence and war, to be used for national interest. Political goals are not ethical goals, and political interests of the leaders are based on self-interest (whether this self-interest is seen as individual self-interest or as a collective interest of a particular group of people) rather than on universally shared ethical principles and humanistic values for peace, social harmony and the common good of the human kind.<sup>7</sup>

An *idealist* approach, for its part, believes that human nature is a peaceful one and the state is ‘a state of harmony’. Idealism, that also gives foundation to pacifism, claims that there are universal, cosmopolitan moral values and norms, which apply to all human beings in the society of humankind and in all conditions of life. Idealism maintains that these values and principles should be accepted by all, and the norms based on these universal values, should apply also to those countries and people who may not (yet) have recognized or adopted them in their existing political order or in their legal system. Since the idealist approach would also maintain that ethics has an important (if not the core) role in politics and that if the leaders are (professionally) ‘good and ethical

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<sup>5</sup> Here we would refer to the works of such historical political theorists as Niccolo Macchiavelli, Thomas Hobbes and Bernard Mandeville.

<sup>6</sup> An individual or a group of people may in wartime engage in the most horrific deeds that violate human rights and human dignity; or alternatively they may show astonishing altruism and risk their own safety and lives in order to save the lives of their fellow humans.

<sup>7</sup> The more moderate realists may take internationalist and legalist approach and note that while politics may require that the leaders sometimes have to get their ‘hands dirty’ in the interest of their countries, certain ethical norms can be made to apply to international relations. These norms, however, are agreements between the nations and are not derived from any universal moral values. They are agreements achieved by international and national laws; an empirical form of international and national social contracts. These contracts have no more binding moral value than the actual and practical agreements made by those who have signed the treaties and conventions to follow the laws in question, and who have agreed to follow these laws. See Walzer (1997).

leaders', they can keep their hands clean also in the sphere of public affairs and while serving in political positions.<sup>8</sup>

It is evident that neither idealism nor realism can be applied directly to international relations. Instead, contemporary international politics seem to have chosen a path, which tries to combine the two. In other words, international politics use idealist value arguments in order to justify realist politics. Guidelines for 'right action' are not based on any real moral commitments or bound with any generally accepted ethical guidelines in the end, but on power politics drawn from 'might is right' realism. On the one hand, international covenants identified as commitments to 'democratic governance', 'promotion of universal human rights' and enforcement of 'the rule of law' are based on apparently idealistic agreement on certain cosmopolitan principles that all nations should abide to. The same parties, however, see 'pacifism' as nothing more than yet another utopia, and take practical measures, which clearly imply that in order to guarantee peace we have to be ready to go to war.<sup>9</sup>

#### **4 Rhetoric and politics of global justice**

In international relations the term 'justice' has often more rhetorical than ethical use. In contemporary international politics, this has created 'a rhetoric of global justice' rather than 'a global practice of justice'. This means that the language of morality, that is, the general appeal to values and norms in defence of normative recommendations, is used to cover up particularly self-interested national or regional political goals. This is a form of 'neo-Machiavellism', which on the one hand detaches ethics from politics and uses all means possible to win the conflict, even if this means using the language of 'ethics' to justify unethical and unjust actions. In other words, international intervention and even war can be justified in the name of higher moral values of 'democracy' and 'human rights'. Interventions to stop 'bad governance' or 'unjust wars' are then easily justified in the name of universal moral norms and principles. However, the agreements of international law are not considered binding these countries that claim 'moral excellence' in their actions.<sup>10</sup>

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<sup>8</sup> Historically we can find idealists, such as Hugo Grotius, who saw war as a sign of disharmony in nature, and thus, an unnatural state of affairs. This made him to conclude that all violent conflicts and wars had to be naturally 'wrong', and thus 'unjust'. Thus, Grotius used the idea of natural (moral) law to deduce universal principles of justice that provide the foundation for international law.

<sup>9</sup> George W. Bush for instance stated in his televised presidential campaign debate against Senator Kerry that 'if we want security we need to be on the defense'. The general agreement appears to be that the best offense is defense and in politically correct language of world politics you can hear new definitions for intervention such as 'pre-emptive counter attack'.

<sup>10</sup> Examples include the USA invasion of Grenada in 1983, in Iraq after 11 September 2001, Russians in Tzetszenia, etc. A certain kind of realism drives actual politics by economic and political interests, not by actual ethical ideals or commitments to universal moral principles. Thus, the rise of human rights discourse on agenda of international politics is also evidence of the instrumentalization of the ethics theme that searches for universal norms while these principles and values are in reality set by already dominant powers. A skeptic about progress in international human rights promotion could then argue that

The result is that ethics is subordinated to politics in international affairs. While some values are given 'universal' status, the interpretation of their meaning has become relativistic and instrumental. This state of world affairs takes credibility away from the peace negotiations and international involvement in post-conflict reconstruction. Since the commitment to justice tends to be mere lip service in international politics, why should the people in post-conflict societies make serious moral commitment to justice and fairness either? People in post-conflict negotiations tend to be aware of the external interests of the third parties involved, and quite logically make the best out of offers of assistance (whether in forms of political partnership, military assistance for security, trade deals and foreign investments, service delivery management, etc.). There is no more genuine trust in international commitment to justice than there is in local political will.

When military interventions are not internationally sanctioned (i.e. largely by the UN or at least by some measure of international agreement) then the justification for the ethics of the subsequent post-conflict reconstruction is muddled by international and local disagreements over the validity of the intervention itself. This inconsistency in ethical justification of military intervention in international politics blurs the distinction between the ethical and political dimensions of the concept of justice in relation to peace. Particularly evident this is in post-conflict situations in which all the parties; the warring parties as well as the representatives of the international community use the language of ethics to promote their personal, political interests.<sup>11</sup>

## **5 Social contract as a the foundation for an ethical reconstruction of a post-conflict society**

In most fields of conflict studies and even in current peace studies, the realist view prevails. Conflict is seen as a part of human life and human society since the beginning of the times. Disputes, arguments and problems arise in relation to the distribution of resources, economic opportunities, political power, social status and the promotion of values. These disputes may be organized around social class, ethnicity, religion, region, language, culture, or some combination of these factors. In peaceful societies conflict is channelled into non-violent means and dealt with political and social institutions for

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the increasing reference to human rights by state officials is yet another example of empty rhetoric. Human rights language has become strategically useful to those in power, but policy continues to be driven by particular interests.

<sup>11</sup> In practice this results in 'pseudo-morality' in which the actions are whether the UN Security Council approves or not. As the US Secretary of State Colin Powell said on the invasion of Iraq; the Bush administration will bring the Iraq case to the United Nations, but that doesn't mean 'we lose our option to do what we might think is appropriate to do'. If the UN Security Council makes a 'right' recommendation, it strengthens the case. If not, one can always ignore it and enforce one's own 'moral judgment' and needed action on the issue at hand. See Kagan (2002) and Roche (2004: x-xi).

both their expression and their resolution. In restless and unstable societies and weak states civil war and internal aggressions arise easily to solve the struggles over political power, land use, and other resources. Many of the modern violent conflicts, inter-state and intra-state wars combine the elements of ethnic dimension and clashes between values. The clash, however, is not necessarily between different moral values but rather between moral values (on agreed moral principles and ethical norms) and other set of values such as economic values, or traditional cultural values.

Strive for justice and attempts to correct the injustices are often the core causes of conflict. In many cases the unequal and suppressive power relations may be based on the intolerance and inequality due to ethnic, or faith and belief based discrimination that has led to demand for group rights. Murshed (2002) notes that both greed and grievances play major role as motives in contemporary conflicts. On the one hand, greed, that is, the desire to control resources and capture rents enters into the calculus of conflict. On the one hand, ask grievances ask for compensation of such past injustices and restoration of justice. It is then suggested that in order to balance greed and grievances reconstructing an ethical framework for a post-conflict society, there is a need to establish or reconstitute a strong social contract, which guarantees justice in a form of impartiality of the state institutions and distributional mechanisms. The idea of the social contract as a method to build peace is an attractive one. By its very definition as ‘a mutual agreement of rational and autonomous individual to govern themselves’, it promises to promote democracy, respect for individual rights and freedoms equally, to enhance tolerance and mutual participation. It gives a universalistic model for the framework of justice based on impartiality and reciprocity.<sup>12</sup>

However, since justice is a complex concept and stretches to our past and to our future, the nature of working social contract needs further evaluation. Also, because it is often very difficult to distinguish between greed and grievance as motives of conflict in practice, it is then difficult to decide whether the social contract should be based on backwards-looking concept of justice that emphasizes compensation and ‘righting’ the past wrongs<sup>13</sup> or whether it should strive for forward looking justice that forgets the past and focuses on the fairness of the future social, political and economic arrangements.<sup>14</sup>

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<sup>12</sup> In contradiction to its claimed universalism, the social contract theory has its theoretical and philosophical foundation in the Western political and economic thought and even within the Western tradition it had various formulations throughout the Western history. What is ironic is that all these various formulations of social contract claimed to present ‘universal’ principles for justice. The set of these principles, nevertheless, appears to vary depending on the historical, economic and political context as well as on the personal beliefs and values held by theorists themselves.

<sup>13</sup> This would be the case in applying Nozick’s entitlement theory (1974) that claims that justice must be backward looking and any political system that is just must compensate or correct past injustices.

<sup>14</sup> Such as John Rawls’s justice as fairness that is discussed more in detail later in this paper.

Before discussing the different contemporary approaches to social contract, we need to take a brief historical look to the development of the social contract thinking in politics, economics and law. The oldest example of a social contract is the divine command law, which takes moral principles to be laws issued by God to humanity, and their authority derives from God's supremacy. Understandably, this framework in the current world situation does not provide a sound basis for most peace negotiations or post-conflict social reconstruction, since it cannot provide a justification to bring together different regions, faith, belief and value systems in a post-conflict context. A secular form of social contract represents moral principles as the ideal terms of social co-operation for people who (want to) live together in fellowship and regard each other as equal rational and autonomous moral agents. This mutual respect and recognition of equal moral agency is taken to be the condition of an ideal agreement. This agreement defines the social arrangements governing the relations between individuals, and in a wider context individuals and the state as the institutional organization of political authority. All in all, social contract derives the moral code for political order that is to be accepted by all parties from a hypothetical consent of the governors themselves. Within this method of legitimating political authority, there is room for various concepts of good. It also respects different beliefs and sets of values, as long as individuals believing in them agreed on certain principles of justice that set at least procedural standards of right and wrong for the institutional structure of society and public life.

In the realist tradition the idea of social contract is based on a hypothetical or imaginary contract between self-interested, autonomous and fully rational people, who agree on certain limitations of justice to their 'natural unlimited rights and freedoms' in exchange for their personal security and political order. Thomas Hobbes, for instance, offered a social contract as in which sovereign ruled in order to avoid everyone engaging in war against everyone else in the state of nature. In this state of nature nothing is unjust and everyone has unlimited rights to everything. Thus, there is no security. For Hobbes justice and injustice arise in the social context and the commonwealth was needed to establish security and justice. He acknowledged that people's self-interest and desire for self-preservation were the basis of all their actions. Thus, in order to guarantee security and social order people had to agree to give up some of their unlimited natural rights to the sovereign.

Today, however, Hobbes's sovereign is often seen to present a form of authoritarian rather than democratic governance. Hobbes' pessimistic realism was probably at least partly based on his observations of the on-going violent conflicts and wars across Europe in the seventeenth century. For Hobbes it was a necessity to unite people under strong sovereign rule in order to maintain stability and peace. The necessity to use force, even state violence, to back up social contracts became clear in Hobbes' famous

statement: ‘Covenants without swords are but words’.<sup>15</sup> A century later John Locke (1632-1704) presented a very different formulation of the social contract theory. For Locke people were in the state of nature living in peace, but the evident disputes on the issues of ownership created a need to establish a social contract in the form of representational democracy which guarantees all citizens their fundamental and natural rights to life, liberty and property. While Locke’s view was based on Christian natural-law philosophy it provided outlines of the modern conception of individual rights and has had great influence on the French Declaration of the Rights of Man in 1789 as well as the Declaration of Independence of the United States of America in 1776.<sup>16</sup>

The discourse of the social contract tries not only to find an agreement on the principles of institutional justice, but it also attempts to guarantee the legitimacy of the methods used to legitimize such principles. Thus, the principles of justice have to be as an expression of a legislative will of all involved. The social contract must then include political, economic and moral dimensions. After all, whatever economic system the society agrees on is based on the societal choice of ethical principles related to the adopted concept of justice and its interpretation of such values as fairness, equality and individual rights and responsibilities. Similarly the political dimensions of the hypothetical idea of a social contract involve our considerations of the justification of political authority and the values we give, or believe to be part of, particular forms of governance. While this paper focuses on political aspects of social contract, in practice politics and economics for their part have to go hand in hand in deciding the role of the state in economic affairs, and the principles to govern the distribution and redistribution of resources and economic benefits. Only when all these aspects of social life are dealt with in a social contract, we create justice and a sustainable peace within a post-conflict society. Particularly in the post-conflict situation, in which the original contract has been ignored, violated or torn apart, restoration of the contract becomes complex since

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<sup>15</sup> Hobbes in *Leviathan* (1651: chapter 17) ‘Of the Causes, Generation, and Definition of a Commonwealth’ explains *why* and *how* individuals join together in civil states (or commonwealths in his terms).

For the laws of nature, as justice, equality, modesty, mercy, and in sum, doing to others as we would have done to, of ourselves, without the terror of some power to cause them to be observed, are contrary to our natural passions, that carry us to partiality, pride, revenge, and the like. And covenants, without the swords, are but words, and of no strength to secure a man at all.

<sup>16</sup> A French philosopher and social critique Jean-Jacque Rousseau, for his part, saw human nature as naturally good and peaceful, but the ‘noble savage’ was corrupted by culture and social institutions. Thus, we need political institutions and legal sanctions. Particularly the issues property brought about self-interest and competition. Social contract made by people were an expression of the General Will of the people and thus more collective agreement on values and the principles of justice than mere agreement to balance individuals self-interests.

it needs to be able to bring (back) together the different social ethics and value systems under a new contract.<sup>17</sup>

Against this historical background of social contract, current frameworks for global justice get a different interpretation. It appears that we still need the arms to guarantee social harmony and individual rights. Without such order and clear limitations to their greed, people (and peoples) tend to fall into the war-state of nature. If we believe Hobbes' view on human nature the continuous distrust to each other is the natural condition of human beings and thus, contracts need to bind all and need to be accepted by all in order to succeed. Thus, while individuals at the critical level of peace discourse may rationally agree that a system of substantial rights is mutually beneficial, and while they might concur that the contractarian approach provides such a system, this agreement will only be rational if and only if it is also rationally expected that those rights will be influential at the practical level of decision-making. However, often in a post-conflict context, there is nothing to ensure that individuals will comply with rules or rights just because they are grounded in some form of agreement at a particular time between particular representatives of the warring parties, and within the context of particular interests of international politics.

## **6 Contractarian method and its communitarian critique**

The social contract approach to the reconstruction of justice in a post-society is problematic because it intrinsically involves some elements of social Darwinism where, through struggle, only the fittest survive. While the contract claims to promote equality, it sets existing individual autonomy and decision-making capacity as its precondition. In other words, the contract approach presumes that all parties and all individuals engaging in the contractual agreement have the same opportunities and equal negotiating power in choosing the principles of justice. In most post-conflict situations this is not the case, but various groups of individuals are heavily disadvantaged in participation in political decision-making and institutional reconstruction.

The legitimacy of political order is based on the idea that individual parties to the contract can identify themselves, as well as each other, as self-governing moral and political agents who share common membership in a society and ownership of its governance. In many post-conflict societies such recognition is often difficult and

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<sup>17</sup> In social contract thinking peace is not about trust but rather it is about distrust. The very moral authority of the social contract was traditionally based on the idea of self-interest individuals, who cannot trust on each other to start with, and thus, need to limit their personal freedoms in order to gain mutual security. If individuals can trust only to the fact that everyone is looking merely after his or her self-interest rather than the interest of the social collective as a whole or any form of the common good, national and or political unity is hard to gain. In a society in which there is not trust, contracts are made to be broken.

people become socially detached from their common political goals. Instead they tend to have their loyalties set to smaller social entities, such as families, immediate communities, tribes, clans, kinships, ethnic units, and in general groups that share the same systems of traditions, beliefs and values, etc.

Such communitarian theorists as Alasdair MacIntyre (1984, 1988), Michael Sandel (1982), and Michael Walzer (1980, 1983) have all pointed out that contemporary individualistic contractarianism, based on the concept of justice as perceived by liberal democracy, is usually too abstract to provide solutions to real life problems of social justice. The main criticism that communitarians presented against John Rawls's influential contemporary version of social contract theory presented in *A Theory of Justice* (1971), can provide us a useful example of contractarian problems when its theoretical framework is applied to a post-conflict situation. For Rawls with a hypothetical social contract we can establish fair and impartial institutional principles for a just society. Rawls uses the idea of 'the veil of ignorance' to set out the principles of justice that all rational people would inevitably choose 'in the original position'. The 'veil of ignorance' assumes that in the process of choosing the principles of justice, individuals must set aside their social ties and ignore their personal backgrounds, in order to choose principles of justice that would be accepted by all. In the original position all the rational and self-interested decisionmakers are assumed not to know their own gender, ethnic background, social status, natural talents or disabilities, or even their values and beliefs.<sup>18</sup> This cuts off the assumed fully rational and reasonable moral and political subjects from their own ends, values and social ties, altogether from the environment where the social contract is to be made.

Communitarians note that this Rawlsian individualist image of an independent and fully rational moral agency behind the veil of ignorance has nothing to do with real life decision-making situations in which communal values and social ties affect the autonomy of the moral and political choices which individuals as citizens make. If we take the contractarian image of an ideal and autonomous decisionmaker as our starting point we end up with a distorted picture of an individual who is cut loose from all social ties and common value systems. If applied to real life politics this would bring to the bargaining table political agents who have lost touch with everyday social problems, ethical dilemmas and political conflicts.

The veil of ignorance is particularly difficult to imagine in a post-conflict situation in which individuals' social ties, personal histories and related emotions, memories, as well as communal loyalties play the strongest role in people's personal attempts to overcome the original causes for conflict. If the framework of justice is meant to

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<sup>18</sup> David Gauthier, for his part, in his *Morals by Agreement* (1986) defends social contract as mutual, reciprocal agreement between naturally selfish and self-interested individuals not only as a social agreement but as the basis of morality itself.

promote impartiality while tolerating pluralist values and multiculturalism in the form of peaceful co-existence and co-operation, various parties to the conflict need to be able to express their various views, values they promote and the traditional local concepts of justice. While it is important to bring violence to an end and to establish order both at a community and state level in order to deal with instabilities created by conflict, it is also important to attend to the psycho-social effects of war. The principles of justice in a post-conflict society have to then be based on recognition of the past injustices and have to include an element of righting the wrongs. In such a situation the attempt to bring a top-down approach that asks people to accept an abstract principles of impartiality and not to leave their past behind but to forget their identity and social injustices and victimization it might have brought about, does not guarantee impartiality in building justice for a post-conflict society. Instead, it creates discontent when people expect to injustice done to be recognized, maybe to be apologized and to be somehow compensated.<sup>19</sup>

While the idea of social contract to be made behind ‘the veil of ignorance’ may strike us as nothing to do with contemporary peace negotiations, examples of its application can be found in international politics. One practical example of the reconstitution of a social contract can be found in post-genocide Rwanda. The post-conflict government and the policies of impartiality and justice it agreed to promote were based on attempts to technically abolish the ethnic divide between Hutus and Tutsis. In post-genocide Rwanda, Rwandans no longer have ethnic identities according to the government. The law formally eliminates the separation between Hutus and Tutsis: individuals are no longer allowed to carry any identification papers, which refer to their original ethnic background. Nevertheless, individuals and social collectives still relate to their ethnic identities; they also know the ethnic background of their neighbours and those in political power. Their personal memories of the genocide strengthen the social ties and communal networks based around ethnicity, while there remains a general distrust of ‘official’ politics of reconciliation. The process of reconstruction of Rwandan national unity has not been significantly improved by these technical measures taken to erase ethnicity. After all, as Paul Kagame, president of Rwanda explains, in between the two intentions of justice, the desire for order and the need for social reconciliation, ‘there are problems, there are the feelings of the people’ (Gourevitch 1998: 308).

While impartiality principles are important for post-conflict reconstruction and in building public trust and national unity, it can only be enforced when people at the grassroots level are ready to commit themselves to common goals and overcome and reconcile their differences. A top-down social contract needs to be backed by a bottom-up recognition of the role that our personal values, social ties, cultural influences and

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<sup>19</sup> On impartiality as the basis of social contract see Burton (1993); Gourevitch (1998); Rawls (1971, 1993); and Walzer (1980).

tradition play in setting people against each other as well as in healing these relations after a conflict. In a wider post-conflict context this means that while the principles of impartiality require that a state must be governed by principles of political justice that do not presuppose any particular conception of the good life or favour any particular group of people, whether this good is described in cultural, religious, ideological or in other terms, the existence of such concepts must be respected and the existence of social ties and loyalties recognized.

As communitarians claim our values are always tied to our history, culture, traditions, our social commitments, and in general to our social contexts. Whatever values we chose to cherish and principles of justice to follow, these values and principles we find from our communities and our societies. In other words, in peace negotiations, all parties need to acknowledge that the core social structure of any society, and maybe even more so in any post-conflict society, is based on social values that already have a role in our lives. The communitarian argument that we are all embedded in various value and belief systems and social networks, and thus, cannot be socially detached 'liberal pluralism' and take on some abstract principles of justice, is central in trying to make peace work.

The individual members of all these societies are always socially situated. They find their personhood and moral identity as members of certain communities rather than as hypothetical members of any abstract and morally neutral liberal political constructions. In order to encourage all citizens to promote peace as their common good, the real task of post-conflict society is then to build political order, which acknowledges the differences, providing compensation and equal opportunity for those most disadvantaged by the conflict, while maintaining impartiality in its formal procedures.

If the post-conflict frameworks of justice do not succeed in this the result is further fragmentation of society and new conflicts. If the political institutions fail to provide political, social and moral circumstances in which individual citizens can identify themselves as autonomous, moral and political agents and as such commit themselves to the actualization of common values, the post-conflict state becomes the home of many different, further conflicting and competing interest groups. In a post-conflict society the most immediate goal should be in finding the common good of the citizens of various backgrounds. This cannot be achieved by merely applying the framework of justice as impartiality as suggested by Rawls's theory. It also needs commitment to building national unity by encouraging equal political participation and by providing means to empower the various sections of the society.

The communitarian nationalist alternative to social harmony and justice suggests that in order to find common moral understanding and political consensus, a multicultural society should be further divided into smaller, independently governed democratic communities with their own value systems and shared traditions. In conflict and post-

conflict situations this would appear to further fuel the disintegration of the state and society.<sup>20</sup> The theoretical communitarian perspective on political issues justifies a given political arrangement (e.g., a nation-state) by appeal to philosophical assumptions about human nature as well as the political role of tradition, language, community ties and cultural identity. Communitarians see that there is some intrinsically good in our traditions and in our ethnic identities.

Thus, preservation of communities which embrace these values and identities is essential and the best political way to do it is to build ethno-cultural nation. In order such a community to preserve its own identity and support the identity of its members, it has to assume the political form of a state. The conclusion of this type of argument is that the national community based on ethnicity and culture has the right, in respect to any third party and to its own members, to have an ethno-national state (nation state), and the citizens of the state have the right and obligation to favour their own ethnic culture in relation to any other. In its most extreme forms, the communitarian nationalism does not then appear to provide a plausible solution post-conflict unification by system of lasting justice. Rather it may lead into further conflicts and problems in definitions of groups who should remain independent and have autonomy.<sup>21</sup>

The dilemma of post-conflict reconstruction is thus in finding a balance between formal framework of justice and local values and commitments to various traditional ethical frameworks. The requirement of impartiality in promotion of heterogeneity and pluralism enforces 'communitarian social ethics' in practice. This creates a danger of falling back into social fragmentation and political disintegration, which can lead into a new break-up of the state. Without any shared, common idea of the good of the nation and without any shared national identity, the smaller internal groups with their own set of values tend to conflict again and again both with each other as well as with the state. AT the same time the communitarian emphasis on group rights and cultural rights tend to create not only moral justification to allow suppression of individual rights either in the name of the common good or in the name of cultural identity, but also creates

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<sup>20</sup> MacIntyre (1988) and as discussed more in detail in Miller (1997), and Walzer (1990). Miller, for his part defends the principle of nationality, arguing that national identities are valid sources of personal identity; that we are justified in recognizing special obligations to our co-nationals; that nations have good grounds for wanting to be politically self-determining; but that recognizing the claims of nationality does not entail suppressing other sources of personal identity such as ethnicity.

<sup>21</sup> In relation to post-conflict reconstruction it is important to note that nationalism itself can be divided 'civic' and 'ethnic and/or cultural' nationalism. Philosophical discussions centered on nationalism tend to concern the ethnic-cultural variants in which one's ethnic-cultural background which determines one's membership in the community. One cannot choose to be a member; instead, membership depends on the accident of origin and early socializing (early nation states, previously German or lately Japan often given as an example). In civic nationalism the commitment is to the civic ties and political sovereignty (like the USA) rather than to particular ethnic or cultural background.

loopholes in new constitutions and legislative arrangements that legalizes violations of individual rights.<sup>22</sup>

Since individual members of a post-conflict society tend to be loyal to these smaller groups rather than to the newly constructed states, the danger of new conflicts can rise. If people's commitment to the newly constructed political order, and their identity as self-governing members of a liberal democracy, is only secondary and national unity cannot be reached, new conflicts emerge. In practice this has become regrettably evident for instance from the conflicts and wars in the newly independent states in Africa after decolonization or in Eastern and Central Europe after the fall of the Soviet Union.<sup>23</sup>

## **7 Feminist critique and gender in post-conflict reconstruction**

Another important deficiency of the social contract approach in conflict resolution and post-conflict reconstruction is that it fails to take into account issues of gender equality. The feminist critique has pointed out that while the contractarian approach appears to promote impartial institutional structures it tends to justify persistent structural injustices based on gender, as well as those based on ethnicity, social status, etc. In the historical formulations of the social contract theory, women have traditionally been excluded from the social contract because they have not been considered to have the status of an autonomous rational decisionmaker or moral and political agent. The theoretical exclusion of women in the social contract has enforced, if not justified, women's marginalization in political participation in practice. This creates a vicious circle when it comes to peace-negotiations and post-conflict reconstruction: since women have through out times been excluded from having political, economic and social parity, women have also been the group that is most consistently left on the periphery of any peace processes.

If the social contract is the main approach to peace and post-conflict reconstruction of justice, on the one hand, it tends to ignore particular violations of women's rights within the conflict situation and on the other hand, it continues to exclude women as autonomous decisionmakers with full access to the bargaining table of peace negotiations and post-conflict reconstruction.<sup>24</sup> Despite some recent acknowledgement of women's role in post-conflict reconstruction (such as the Women and Armed

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<sup>22</sup> In many newly independent post-colonial countries the constitutions contain both individual and collective rights thus, leaving room for the leaders to use the law to justify the violation of individual rights in the name of national security or in the name of cultural rights. See Hellsten (2004).

<sup>23</sup> On the post-colonial critique of the Western liberal approach and on African concept of 'communalist' democracy see, for instance, Ahluwalia (2001), Nkrumah (1970), Nyerere (1967).

<sup>24</sup> Violence against women is not just a by product of war, but often a deliberate military strategy, with women particularly targeted in ethnic cleaning campaigns, as occurred in current genocides in Bosnia and in Rwanda, for example.

Conflict plank in the Beijing Platform for Action (BPA), and Security Council Resolution 1325 which acknowledges the impacts of conflict on women and of women on conflict and conflict resolution. While the potential of adding women to the conflict resolution is recognized, women continue to be discriminated and marginalized in post-conflict societies. In order to change the situation there has been attempts to add women into decision-making processes in peace negotiations, peace-keeping, and peace-making. However, in many places where these processes tend to be top-town negotiations, women at the grassroots level are still not be given a chance to contribute to the framework of justice and/or to get their voices heard. Nevertheless particularly important it would be add the gender dimensions to development of post-conflict reconstruction, which often is based on structural violence, whether this violence is based on ethnic or gender (or often both) biases.

Structural injustices need not only be corrected but also compensated for earlier disparities—in rights, education, resources and power, and thereby enable all to contribute equally and fully to reconstruction of post-conflict societies. In most conflict-ridden societies women have suffered most from these disparities, and have been under double jeopardy. They have been violated due to their gender *and* due to their ethnicity, political opinion, or social status (Zuckerman and Greenberg 2004). While women's rights are in many societies violated not only during the periods of war and conflict, it is interesting to note that unlike other social conflicts based on structural injustices, gender equality in itself has not led actual violent 'gender wars'. This, however, does not mean that women are necessarily less aggressive or more docile than men. Instead, in other conflicts women have been fighting alongside men for ethnic and racial equality, for cultural and religious rights, and for economic justice. The irony is that despite their participation in the combats against injustice women have often ended up losing in the peace. After the external or internal enemy forces have been conquered and the social harmony has been restored the gender bias maintains that women do not have any more access to power than they had before the conflict, such as was the case in Algerian war against colonization or in the Eritrean war against Ethiopia. While few women may become heroes others maintain their traditional culture bound status and remain suppressed by the traditional values (Moghadam 1994).

It appears that women do not gain more equality by participating in wars that are for national emancipation or for correcting other past structural injustices. Instead, women's rights activism that has gained women more equality tends to be a peacetime political activity when women can focus on their own rights and not to the goals of national liberation. Thus, women's rights movements tend to remain 'women's movement' which do not attract significant numbers of men. The fact that women's struggles to gain their rights have not overall been violent conflicts, but rather meaningful political movements (while the attempts to suffocate them might have been more violent), might be considered as a sign the sign that the 'female' approach to conflict is more less aggressive and more peaceful one. One might conclude then that the lack of men in

feminist frontiers has meant the lack of fire and reluctance to use violent warfare. While, no doubt, this is a hasty generalization that romanticizes women's nature to more peaceful one than that of men, since women do participate in conflict and war activities as noted before, it is be important to understand how gendered relations share values, and how they chose certain lines of actions to solve value and other conflicts.

Feminist approaches to peace note that the social contract thinking focuses on 'negative peace', that is, the absence of violence and warfare, while, as Reardon (1996) describes, the feminist conception of peace and security focuses more on 'positive peace'. 'Positive peace' is a concept presented originally by Galtung (1975) means an absence of structural violence, which is much more than merely a laying down of arms. Structural violence involves exploitation, penetration of the autonomy of those at the bottom of society, fragmentation and marginalization. The way in which power relations—including gender—are configured at the end of any conflict will affect post-conflict reconstruction and the likelihood of sustainable peace. Many of the countries experiencing actual or latent conflicts have never experienced 'development' in the sense of social justice, Democratic Republic of Congo being a prime example of such situation. Societies in these countries cannot return to 'democracy' with the help of a social contract, because democratic institutions need to be grounded in local realities and in order to be fully participatory must evolve over time and cannot be merely set from above. However, external agencies involved in peace-making and reconstruction tend to focus not on local capacities but on their own interventions (what can they do to prevent conflict and enhance development as they see it). In many cases these agencies do not appreciate the impact that the role of gender relations has on 'the ability of traumatized, poor, and ill-educated populations to play their full role in the post-conflict reconstruction'.

Similarly feminists have noted that the communitarian nationalist approaches as well as their defence of cultural pluralism and collective rights (cultural, indigenous and group rights) tends to ignore women's rights or directly allow their violation. Particularly evident this is with 'traditional communitarianism', which defends the traditional cultures as social wholes, and demands that they have a place on the (peace) negotiation table as social collectives rather than representatives as collections of individual members who all actually have agreed on the same social ethics and cultural values. However, if democracy is the aim for post-conflict governance, and fundamental equality its central value, this should be reflected in public policies and law. After conflict, however, the quest for guaranteeing democratic diversity and multiculturalism tends to jeopardize women's rights. The conflict between different types of human rights is evident, particularly when the conflict is between cultural and religion based group rights and human rights as rights of individual women. Normative and legal application of diversity and multiculturalism as well as normative enforcement of

cultural nationalism can both lead into gender discrimination.<sup>25</sup> Thus, women's rights face a double jeopardy; not only can they be socially overlooked or suppressed, but they can also be legally undermined or overridden by collective rights in the name of cultural equality and social harmony.

From the point of view of distributive justice more problems arise. Since post-conflict reconstruction often involves sorting out property ownership, and drafting new property laws that uphold the rights of individuals to property, it is important that such processes must guarantee women's full and equal rights to own property, *de jure*, and their ability to enjoy those rights, *de facto*. Too often, as in Namibia, Rwanda and Uganda, Eritrea, customary law, which does not recognize women's rights to own property, prevails even after new civil laws, which uphold gender (as well as ethnic) equality are promulgated. Also even if the customary laws were overruled by the changes in the new legislation women can rarely benefit *de facto* from new (particularly property) laws without understanding their legal rights, and having resources (including literacy, money, and power) (Zuckerman and Greenberg 2004).

Thus, post-conflict reconstruction programmes must not focus merely on legislative changes but they also have to guarantee women legal and political literacy and social access to justice. Simultaneously building democracy across society and across ethnic and social boundaries, the grassroots participation of all citizens can provide a wider commitment to democracy than setting up of the formal democratic institutions and processes, such as free elections of multiparty politics and the institutional rule of law (Eade 2004: 188-92). Some post-conflict reconstruction programmes have successfully included women-focused approaches. In Rwanda, Pro-Femmes Twese-Hamwe, a women's umbrella organization, trains members as leaders. UNESCO developed Rwanda's Mandela Peace Village (MPV) to provide shelter and literacy programmes to displaced widow- and orphan-headed households.<sup>26</sup> The International Community has also funded major women's initiatives in Bosnia and Kosovo. Yet despite such achievement in some countries, it is a challenge for women's rights advocates to get most governments and donors to allocate sufficient funding for women's rights-based approaches. Any initiatives, which cannot engage all stakeholders, including elder male leaders and younger men, to accept gender equality, cannot lead into structural change of social justice (Zuckerman and Greenberg 2004: 4).

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<sup>25</sup> The problematic relationship between women's rights and multiculturalism/pluralism is argued for instance in Moller Okin (1999). See also Hellsten (2004) in relation to Tanzanian constitution and the status of women's rights vs. collective rights.

<sup>26</sup> However, the conditions of women remain poor even within these programmes. For instance many impoverished MPV women still have to walk several hours daily to fetch contaminated water and fuel (Zuckerman and Greenberg 2004: 4).

The paradox is then that in introducing gender equality as a part of the pack of peace agreement, however women's situation in society may deteriorate rather than improve, and women's rights might be 'justifiable' suppressed in the name of the common good or traditional values. The attempts to introduce or support gender-mainstreaming might even lead into (violent) resistance by traditional societies (and this resistance might include women with traditional view on their role). This paradox can easily lead to an argument that justice has to be introduced step by step, by keeping the gender dimension for later, after national-level violence is reduced and national unity is achieved. Impartiality and justice, however, cannot be introduced in a partial fashion. If the reconstruction of the society is to be based on justice, all types of structural violence should be taken into account. Failing to do so moves us again ethics of post-construction back to internal power politics. Women's rights should not be based on 'the yielding duty of gender equality' that would require that all other constitutional rights and freedoms come first: gender equality yielding for 'religious freedom', 'freedom of negotiation', 'freedom of association', 'freedom of expression', when the realization of all these rights seem to require that the protection of gender discrimination is set aside to wait for a more suitable and less explosive time to be introduced to the post-conflict society; or to any society for that matter.<sup>27</sup>

When it comes to actual participation in peace-building and post-conflict reconstruction women's rights, role and efforts are then still often overlooked. Instead structural violence against women continues. Even after a formal, top-down agreement on a social contract framework as the basis for institutional justice (whether on the rule of law or distributional issues), women remain marginalized and continue suffering from the atrocities of the conflict as well as injustices of the post-conflict gender relations. Gender equality, however, is particularly important in post-conflict governance and in the process of structural transformation and reconstruction, since women can often influence the social construction of the mind-set of the society as a whole. Women in many societies are the backbone of social networks (whether in their roles of communal activists, as parents, and as uniting forces of families and communities). Not only is women's commitment to peace crucial for any post-conflict society in sustaining peace agreements, but it is evident that if the society maintains its structural injustices, it remains infected with partiality and conflict (that can easily spread beyond gender issues). If structural violence and social injustice is not dealt with locally, the top-town negotiated 'social contract' with its formal but often merely illusionary impartiality cannot guarantee social justice in practice and thus, fails to sustain security based on impartiality and fairness.

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<sup>27</sup> On the metaphor of 'yielding duty of equality', see, for instance, Skjeie (1998).

In order to avoid the persistence of structural violence and inequality there is a need to integrate gender equality into all emerging state institutions and to social structures. In practice this means gender mainstreaming both within state institutions and at the centre of the structural base of power in post-conflict societies. All in all, women's participation in post-conflict reconstruction has then multidimensional effect on the establishment of plausible social ethics and practice of justice: first, women's participation promotes the very principles of equality and equitable representation in general for legitimate conflict resolution. This provides more sustainable peace and a wider trust for the public commitment to equality. Second, women not only bring in the gender perspective to the substance of negotiations, but they often also have a wider respect for difference, and concern for those most disadvantaged (Keating and Knight 2001).

Women's full participation could offer a social contract wider social credibility and promote the bottom-up construction of social justice by extending the practice of the formal principles of justice through existing grassroots networks, and through family and community relations. In other words, instead of falling into communitarian nationalism and further fragmentation of society, the bottom-up approach dealing with structural injustice could build on cultural traditions, existing networks, and the participation of the communities, parties interested in promoting peace, work to establish new relationships to promote reconciliation and understanding within and between communities. The feminist approach that points out that the contractarian blindness to difference ignores existing injustices, can then be used to address the web of complexities of different opinions, needs and fears across ethnic and cultural divides. New alliances are formed when common values are identified across the collective divides, and respectful spaces are created to address divisions, which sustain violence and conflict. Group all over the world illustrate the healing potential of such practice. For example in the Wajir district of Kenya, women's commitment to peace has built a bridge over clan divisions facilitated non-violent negotiations between groups as well as further peace building practice and peace education in other communities (Elworthy 2004).

This approach can take bottom-up form since it does not expect people to detach themselves from their social environment (as the contractarian framework does); neither does it lead into further fragmentation between the different social collectives (as communitarian nationalism does). Instead it recognizes differences while searching for common values and goals within our social contexts and thus, brings people closer together by minimizing and/or extending boundaries between competing or conflicting groups.

## 8 Conclusion

This paper introduced ethical dimensions of the concept of justice in the framework of post-conflict reconstruction. It analyzed particularly the problematic nature of the social contract approach to peace-building and reconstruction of political order and the rule of law in the post-conflict societies. We concluded that with the involvement of the international community, the reconstruction of the social contract continues to be a top-down process that often does not reach people at the grassroots levels despite the fact that these are usually the people who suffered the most and might have had very little to do with the emergence of the original conflict. While the contractarian theoretical framework promises impartiality, respect for individual rights and democratic participation, in practice 'the social contract' between the warring parties is often negotiated between the high-level representatives of these parties. This leaves out the people whose lives have been most affected by the conflict.

As long as the international community intervenes with the choice of representatives of contracting parties and uses its influence in selecting leaders to represent the different fractions of society, the social contract cannot have full legitimacy from bottom-up and cannot guarantee sustainable peace. While the leaders represent the different interests of the various parties involved, they do not represent the individual citizens on the grassroots level. Thus, the contract does not carry full concurrence of all the individual members of various communities involved in the conflict.

The main problem for reconstruction of justice in post-conflict societies is related to various other ethical aspects of justice that need to be taken into consideration and incorporated in peace-building actions. The theoretical formulation of the social contract reasoning ignores the persistent structural injustice and inequalities and conflicts, which are usually the main causes of the original conflict. In order to overcome the existing structural injustices and in order to give people ownership in reconstructing impartial framework for justice, there is a need to pay more attention to the bottom-up approach to peace-building that can foster a climate of interrelated understanding between the ethnic, cultural and religious divides from which violence has stemmed in the past. These movements can reduce the tendency to identify 'the evil other', which shaped the consciousness of many communities and nations, and has damage peaceful coexistence. The ethics of post-conflict reconstruction cannot rely merely on building the institutional and formal framework for justice and the rule of law. It also needs a parallel ethical framework, which takes humanistic values as well as culturally contexts into account acknowledging local values, loyalties, human needs, as well as fears and hopes in order to overcome the boundaries of conflicts.

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