



## The Politics of Global Justice

During the waning days of South Africa's apartheid era, Judge Richard Goldstone led a series of investigations that exposed the human rights abuses committed by his own country's security forces, and quite likely headed off a full-blown civil war in the process. He then went on to serve as chief prosecutor for two international war crimes tribunals—one for the former Yugoslavia, the other for Rwanda. In early December, Judge Goldstone spoke with *California Lawyer* editor Martin Lasden. Here are edited excerpts from that videotaped discussion.



Judge Richard Goldstone



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**Q You've acknowledged that it's impossible to take politics out of international justice. Is that the same thing as saying that, no matter how much integrity lawyers bring to these international war crime tribunals, there's always going to be an element of hypocrisy associated with them?**

I think one has to separate the judicial job and the jobs of prosecutors on the one hand, and the politics on the other. I believe that it's absolutely essential for any justice system, whether domestic or international, to have absolute integrity and impartiality and judicial independence. But for international tribunals to succeed, one has to rely on the political process.

**The language of politics, though, is the language of expedience and self-interest, while the language of the law is supposed to be about principles. So how do you reconcile those two paradigms?**

I think the politics that intervene in the work of international tribunals is politics with a lowercase *p*. It doesn't turn judges and prosecutors into politicians. But it does make them realize that what they have to live with, in fact, is the political system, whether it's domestic or international.

**At Nuremberg, it was of course quite satisfying to see Nazis judged for what they had done during World War II. But from a purely legal standpoint, weren't there real problems with that tribunal?**

Well, certainly, with the benefit of hindsight, questions have been raised over whether it was victor's justice.

**Indeed, it's one thing to judge the Nazis guilty of criminal aggression for invading Poland. But whether Stalin was guilty of criminal aggression when in 1939 he entered into a pact with Hitler to partition Poland—that question was, of course, off the table.**

As was the bombing of German cities.

**Exactly. So is hypocrisy the price of international justice?**

No. I wouldn't call it hypocrisy. I suppose to an extent there might be double standards. But that doesn't make it a dishonest or dishonorable proceeding.

**You've been a big supporter of the International Criminal Court (ICC). But since that court's creation twelve years ago it has mounted exactly eight investigations, and every one of them has focused on an African country. What's the explanation for that?**

The explanation is a little bit complex. But first of all, out of the situations that have been investigated, three came as a result of a request from the African governments themselves. Two others came from the U.N. Security Council, and three were initiated by the ICC's prosecutor. ... Of course, as an African I understand why Africans would object to the fact that, so far, only African situations have been investigated. And as a supporter of the ICC, I certainly will sleep better at night when the court takes up a non-African situation.

**In the mid-1990s, South Africa had to figure out what to do with its own citizens who had committed human rights abuses in defense of apartheid. You had by then already spent a fair amount of time chasing human rights abusers in other parts of the world. So when your own country decided, as part of its Truth and Reconciliation process, to trade amnesty for the truth, did**

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**you think it was the right thing to do?**

The Truth and Reconciliation Commission represented both a political and a moral compromise. And I think the biggest gift it's given to my country is that we now have one history of what happened during the apartheid era. Without the TRC we'd have at least two histories. We'd have the history of the victims, which would approximate the truth. And we would have had the white denials based on the fabrications put out by the apartheid government, which many people believed. Now having said that, the world has moved on. I believe if there were a similar situation in South Africa today, it would be very difficult to get the global community to accept amnesties for crimes against humanity.

**As chairman of the commission that looked into South Africa's political violence in the '90s, you had weekly meetings with Nelson Mandela. Do you have any insights into how Mandela was able to work as effectively as he did with President F. W. de Klerk?**

I was never with them together. But from the discussions that I had with each of them, I had no doubt that they didn't like each other at all. They did, however, respect each other, and they both knew and accepted that each could deliver on what he promised, which was crucial.

**How would you characterize the role the United States has played in advancing the cause of international justice?**

No other country has done more to advance that cause—from the setting up of the Yugoslavia and Rwanda tribunals, for the other tribunals that have followed, and now for the International Criminal Court. But the United States has also had this ambivalence. It has said to the world: We will support international justice, we will pay for it, but it's for you, leave us out of it.

**Some would call that hypocrisy.**

No, it's not hypocrisy. It's the politics of the situation. But I'm hopeful that eventually—though probably not in my lifetime—that will change. <sup>14</sup>

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