

PART II

FRAMING THE SOLUTION: FACTS AND LAW

CHAPTER 4

THE DAYTON AGREEMENT

To end the war, the Dayton Peace Agreement (DPA), more formally known as the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP), was initialed in Dayton, Ohio on 21 November 1995 and signed in Paris on 14 December 1996 (henceforth, Dayton or the Dayton Accords). The Republic of Bosnia and Herzegovina (BiH) remained an intact single country, but one with an extremely weak central government and divided into two entities - the Republika Srpska (RS - an almost entirely Serb area) and the Federation of Bosnia and Herzegovina (the Federation) populated by areas with concentrations of Bosniacs, other areas dominated by Croats and a few mixed areas. In November of 1995.

The location for the signing indicates the important role that the United States played in bringing about the agreement. The Dayton Accords provide a political, military, economic and demographic solution to the violent conflict begun four years earlier. The demographic solution refers to the resolution of the problem of 1.3 million refugees and over 1 million displaced persons. After considering the other parts of the agreement in very general terms, I will go into the details of the agreement on the arrangements for the displaced population.

In general, the agreement is founded on a fundamental principle of diplomacy - *creative ambiguity*. Modern science and philosophy may teach the virtues of clear and distinct ideas, the values of avoiding ambiguity and equivocation, but that is definitely not the foundation for the art of diplomacy as historically practiced. Whenever snags are met between the contending parties - or, for that matter, between one or more of the contending parties and the peace broker as well - if those differences are too difficult to resolve at the time, they are papered over with vague language. This is clearest in noting the political solution which calls for maintaining the integrity and unity of Bosnia and Herzegovina when, in fact, the political settlement endorses ethnic division both in the state as a whole and even within the Federation of Bosnia and Herzegovina, the part of the divided country allocated to the Bosniacs and the Croats. In other words, as in the Vance-Owen proposal in 1993, as in the American diplomatically brokered deal that Clinton vetoed, ethnic cleansing is, in fact, condoned by the very political arrangement provided in the agreement.

Of course, the agreement says no such thing. This effect, however, is obvious in the political terms. This is not simply my own interpretation. The prestigious World Bank, without using such unqualified language, effectively endorses this characterization of the Dayton Accords. "The agreement contains intentional ambiguities on many points, and avoids partition by calling for the three parties to participate in a highly decentralized relationship. It lays out a structure that combines two entities - the Moslem-Croat 'Federation of Bosnia and Herzegovina' and the Serb 'Republika Srpska' (RS) under the aegis of an unusually weak state." (World Bank 1998, *Precis*, 1) The reality is that the central state was left with very few functions.

The central government does not have the power to tax or raise revenues nor to have a state army.

It is responsible for foreign trade, customs policy, monetary policy, controls the Central Bank (in effect, only a Currency Board for the next five years since it may not extend credit by creating money and the new convertible bank notes are pegged to the Deutschmark), manages international communications and inter-city transport and air traffic. In effect, BiH is an economic union of independent states which have not been recognized as such. The central government is given the Central Bank, with the power to issue money, indicating that all we have is an economic union, and a very weak one at that for there is no power to enforce its use. RS could conceivably continue to use FRY issued money, while the sections of the Federation dominated by Croats continue to use Croatian currency. The central state carries the responsibility for foreign policy but little basis for formulating a common policy. Its Prime Minister and Ministers are triumvirates based on ethnic politics or rotating and equal allocations of ministerial posts.

The State has a National Assembly with 42 seats, 19 held by the Party of Democratic Action (SDA) controlled by the Bosniacs, 8 held by the Croatian Democratic Community (CDC) and 9 by the Serbian democratic Party (SDS) with a half dozen other seats shared equally among three minor parties. All of the major parties are ethnically based parties. In the Upper House of Peoples, the three major parties each have 5 of the 15 seats. Legislation requires the approval of both houses, and a triumvirate Presidency shared among a Bosniac, a Croat and a Serb, the last to be elected from RS. The Council of Ministers has two chairs rotating on a weekly basis, and a Vice-Chair coming from the third ethnic group. Similarly, the Ministry of Foreign Affairs, The Ministry of Foreign Trade and Economics, and the Ministry of Civil Affairs and Communications are shared among the three ethnic groups. At the Peace Implementation Council (PIC) meeting in Bonn in December 1997, the Office of the Special Representative (OSR) was given the power to cut through impasses in decisions and make decisions when the political situation was stalled (such as over the design of the new currency, the new BiH flag, common license plates, etc.).

The weakness of the central government is clearest when it comes to the issue of the monopolization of force. The central government not only lacks such a monopoly, standard in any central government, but does not even have the power to have its own army. All enforcement of laws is left in the hands of the two Entities. That is, the two main warring parties, the Serbs versus the Croats and Bosniacs, are left with separate polities, each with its own army, and both wrapped in the veneer of a central government with little power and many opportunities to engage in conflict on ethnic lines, but with the demand in place that they cannot do so through the use of outright warfare. Each Entity, based explicitly on ethnic politics, is given the power to enforce virtually all the terms of the Dayton Agreement, including those about absorption of the returning populations. "The treaty relies primarily on the Parties for enforcement, although it was perfectly clear from the start that the will to comply was not present on all sides." (ICG, "Dayton: Two Years On," November 1997, 12)

The Dayton Agreement does not provide for a real peace agreement, in the sense of the resumption of full normal relations between two previously warring parties. Instead, the DPA makes provision for a Cold Peace, and even within those types of agreements, this one is set in the high Arctic. The agreement is mainly about not reverting to open and all-out war, not about being at peace. Of course, it was hoped that by means of the DPA, conditions would be established that would gradually move the two Entities into a more positive form of peace arrangement, but the opportunities for conflict, in fact, the incentives for conflict given the ethnic basis of each of the parties and the political responsibilities allocated to each, the

many concrete issues that could divide them, especially when it came to demographic issues interconnected with politics, make it difficult to envisage the new resurrected BiH functioning as any real political entity ever. As the ICG described the agreement, “Dayton is more theory than anything else.”¹

The fact is, the wars were started with two objectives: redrawing the political map of former Yugoslavia so that the Serbs controlled the political territory in which they were both majorities and significant minorities, and to engage in ethnic cleansing to remove populations from that territory that could threaten that power and the envisaged Serbian political control. Both tasks were accomplished by the war, though not as fully as the Serbs would have liked on the political level, nor, in the end, as extensively as they had achieved on the demographic side at the pinnacle of Serb power during the war. This was particularly true in Croatia where the Serbs lost all of their initial gains and it was the Serbs who were forced to flee.

The reality is that ethnic cleansing was not prevented when it first occurred and 80,000 Croats were cleared out of Serb dominated areas of Croatia. This principle of ethnically dominated and virtually ethnically monopolized political entities was not reversed when Croatia recaptured the territory and 200-300,000 Serbs were themselves ethnically cleansed from Croatian territory, even though the peace treaty between Croatia and FRY makes provision for the possibility of just such a reversal. The reality is that the international community - not the warring parties responsible for enforcing the terms of the treaty - attempted to snatch an ideological victory for their collective rhetorical belief in tolerance and ethnic pluralism out of the jaws of defeat, at the very least, rhetorically. “Because those campaigns (of ethnic cleansing) were not halted at the outset by other states that could have stopped them, over time they proved grotesquely successful.” (ICG, “Dayton: Two Years On,” November 1997, 12)

This reality of the split in contrast with the rhetoric of reversing ethnic cleansing is built into the treaty by the few tools provided for translating an ideology of pluralism into reversing the facts on the ground, and the alternative solution for which the treaty makes provision - accepting the reality of the ethnic cleansing as a *fait accompli*. All this is evident in the articles of the DPA dealing with the return of the refugees and displaced persons.

Those provisions are contained in Annex 7, entitled the Agreement on Refugees and Displaced Persons. In general, as the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) depicts the terms of the DPA in its information Bulletin on the Annex, “The fundamental principle of the Dayton Peace Agreement is the right of refugees and displaced persons to return to their home of origin.” The Annex does not impose a specific obligation on the parties to the conflict to reverse ethnic cleansing. It makes it theoretically possible by giving the refugee or displaced person a right of return.

But as I have discussed in the previous chapter and in many places in previous articles², the “right of return” is a rhetorical right unless it has attached to it an effective enforcement mechanism. Further, the right has no reality unless the individual is a member of the political entity in which he or she is said to enjoy such rights. When the political entity in question was set up, in part, to deny such claims of membership, indeed, explicitly to exclude such persons from membership, the right is a rhetorical sop to the international community and an illusion for the refugees and displaced. It ends up postponing the resettlement of the refugees and displaced rather than finding a permanent solution for them. And it sets in place the long term

prospect of creating a group of refugee warriors wedded and committed to reversing the result of any accord which leaves these refugees and displaced persons in limbo.

But does this not misrepresent the terms of the agreement? After all, no agreement should force refugees and displaced people to return. The agreement simply says they have the right to return and the right to have their property restored; they are not obliged to do so. The article merely offers an alternative-compensation - if they do not exercise that right. Specifically, Article 1.1 states: "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them."

Yes, the article says precisely that. But what is meant by what is said? Does it mean the refugees have the right to return and get their property back and that such a right will be enforced by the state with the power of both law and the control of violence to enforce such rights?

Not at all. For the political Entities - the Federation and Republika Srpska - are not obligated to guarantee to exercise of such rights. Rather, the only obligation on the polities is not to interfere with the exercise of such rights. Article 1.4 explicitly states that, "The parties shall not interfere with the returnees' choice of destination," and then continues as follows: "nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life." The political entities are not only not obligated to enforce the exercise of such rights, but are obligated **not** to enforce such rights if the enforcement will mean that the individuals when they return will be at risk or if the necessary infrastructure for a normal life is not in place. Now the source of risk, as it has always been historically following peace agreements, does not come primarily from the central state, nor even a political part of the federation, but from vigilante actions. If the peace agreement were serious about the exercise of such rights, then the Entities would have been given the obligation to prevent and inhibit vigilante actions that would create such insecurity. Instead, the political entities are specifically instructed to ensure that the refugees and internally displaced are not to be returned to places where their security would be in danger otherwise the actions of the states would be interpreted as coercive and as an effort to deny the refugee or displaced person freedom of choice.

If that were not enough, the states are obligated **not** to enforce such rights if the area is lacking in normal infrastructure. What is normal infrastructure? It includes the provision water and sanitation, the provision of electricity and of roads, etc. But infrastructure also includes the provision of schools for the children of returnees. The DPA does not obligate the political entities to provide such infrastructure. Quite the reverse. It says that the political entities would be guilty of enforcing return - which the terms of agreement explicitly forbid - if the infrastructure were not available.

Finally, Article 1.4 puts the provision of choice within the context of a larger principle - the preservation of the family unit. The Article in full states: "Choice of the destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved. The parties shall not interfere with the returnees' choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume

a normal life.” In other words, the reference to choice is made in relation to either the individual or the family. What happens if one individual wants to return - the husband or an elderly parent - but the rest of the family, in particular, a mother does not because she is worried about the safety of her children or their future opportunities in a region where they would be minorities and where the dominant majority specifically fought a war to ethnically cleanse their like from the area? Since the reference to choice is an alternative one - either the individual **or** the family has the choice, but the supreme principle for determining choice is based on the integrity of the family, effectively the determination of choice depends on the choice by the family as a whole and not by a single individual in it.

Further, does not this clause simply mean that “humanitarian return” is endorsed? That is, in cases where families have been split up and one part of the family did not flee and another part did, then the part of the family that fled should have the right to return to rejoin the family left behind? This provision is normal in cases where mass return is not expected but where there is a desire to provide for exceptions, particularly in cases of family separation. In such cases, though return in general may not be feasible, stress is placed on ensuring that exceptions will be made for humanitarian cases of family reunification. And though this may have been contemplated and have been the motive for the wording, the way the article has been phrased also makes the option available for movement the other way - the movement of those left behind to join the rest of the family in exile where those left behind will feel insecure or where the normal infrastructure is not available to them. If the emphasis was to be on humanitarian return explicitly, the phrasing would have been different and would have included provision for an arbitration body to consider claims for humanitarian return. Of course, the inclusion of such a stipulation would mean openly accepting that large scale return was not feasible or possibly even desirable, and this is one item that the DPA does not seem to want to explicitly acknowledge.

This interpretation of the provisions of Dayton is further supported by other references in the Appendix and in its explanation. The CRPC, in its information bulletin on its functions, states that, “Where claimants cannot or do not wish to return into possession of their property immediately, a CRPC decision gives them authoritative confirmation of their rights in the form of a legally binding document which can be retained for future use.” In other words, the CRPC contemplates the inability to exercise the right as well as the desire not to do so and makes provision for the protection of property rights, even when the right to return cannot be protected. Further, Article XI makes clear the purpose of the certificate. It is not only a matter of retention for the exercise of return at a later date when the security situation is better or where another family in occupancy has been moved out. The Article provides that, “Claims may be for return of the property *or for just compensation in lieu of return.*” (My italics)

The Commission is not only given the power to give a property certificate which can be used to make a compensation claim, but the DPA gives the Commission a great deal more power - the power to facilitate creating a market for the sale and/or exchange or lease of properties. Further, it is not only a facilitating power; it is an action power. The Commission is given power to effect property transfers or exchanges. Article XII.5 explicitly states that, “The Commission shall have the power to effect any transactions necessary to transfer or assign title, mortgage, lease, or otherwise dispose of property with respect to which a claim is made, or which is determined to be abandoned.” The provision goes even further. The Commission can assume from the holder of the certificate the right to itself engage in sales,

rentals, leases provided the holder of the property has been compensated **or** where the property has been determined to have been abandoned - that is, no claim, under the terms of making such claims, for restoration of property rights has been filed - either because the owner is now dead or because the owner neglected to make such a property claim. As the Article goes on to say, "In particular, the Commission may lawfully sell, mortgage, or lease real property to any resident or citizen of Bosnia and Herzegovina, or to either Party, where the lawful owner has sought and received compensation in lieu of return, or where the property is determined to be abandoned in accordance with local law." In other word, a great deal of attention and explicit text has been built into Dayton to provide for the legal transfer of property or the final settlement of property ownership within a reasonable period of time.

What is even more noticeable in these provisions is the great deal of attention to the provisions and mechanisms for protecting property rights in comparison to the lack of real provisions and mechanisms for exercising in an effective manner the right of return. For example, Article XII.6 states that, "In cases in which the claimant is awarded compensation in lieu of return of the property, the Commission may award a monetary grant or a compensation bond for the future purchase of real property. The Parties welcome the willingness of the international community assisting in the construction and financing of housing in Bosnia and Herzegovina to accept compensation bonds awarded by the Commission as payment, and to award persons holding such compensation bonds priority in obtaining that housing." The agreement even envisions the Commission buying property with paper rather than money by issuing bonds, and then allowing those bonds to be used as script in the purchase of other property presumably in areas where that ethnic group is in the majority and where the displaced person may presently be residing.

But is this not a distorted interpretation of the Dayton agreement? After all, Article 1.1 of the framework agreement explicitly states that, "The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina." Note what it does not say. It does not say it is **the** objective, or even one of **the** objectives. It is an objective, one that does not exclude relocation or other contrary objectives to return to homes. What DPA does do is put the empty rhetoric up front and leave the provisions for filling other mandates in the details of other articles such as those cited above which make extensive provision for relocation rather than return to original homes.

This may appear to be a flimsy answer. After all, DPA goes on further to say in Article 1.5 that the Parties "call upon States that have accepted refugees to promote the early return of refugees consistent with international law." This seems to suggest that even third part states are responsible for promoting the return of refugees.

This clause is the most ironic. On the one hand, it can be interpreted to mean that countries such as Canada, which is not even a signatory to the agreement, is in breach of its provisions because it is not engaged in promoting the repatriation of refugees to whom it had granted landed status, what is, in effect, the right to obtain citizenship in Canada provided the person landed does not engage in criminal or other nefarious activities. Secondly, it calls upon third party states to promote return, but not to promote return to places of origin. In other words, as long as the refugees are back in their home country, even if they have been relocated and have not been able to return to their original homes, the third part states have fulfilled

their obligations. Thirdly, and most importantly, this provision gets third party states off the hook of possibly being accused of breaching the *non-refoulement* provisions of international law, which has been interpreted to mean that states are guilty of *refoulement* of refugees if they return refugees to their homeland where they are not safe in their home areas. Thus, in Canadian case law, Canada grants refugee status to Sri Lankan Tamils from the North if they are judged to be in fear of persecution if they return to their home areas even if it is safe to return such refugees to Colombo, for example. By this clause, Germany is protected from any accusations of breaching international refugee law and forcing the return of refugees even when they cannot return to their homes.

Thus, this clause makes it even clearer that although return to homes is a goal of the DPA, return in general is the supreme goal even if it means relocating the refugees and displaced persons from areas that were not their original homes. The DPA is a framework for relocating the bulk of the refugees and displaced persons and is not primarily a framework for returning refugees and displaced persons to their homes.

One final note is necessary on methodology and hermeneutics. The method of analysis used here goes by the name of “textualism”. Basically, instead of going into the mind set of the drafters - their intentions, norms, anticipated consequences and the conditions as they perceived them to discern the meaning of the provisions of the agreement, and/or instead of contextualizing the document historically and making clear the situation which the drafters faced, the prime basis for determining the meaning of the agreement is the analysis of the text itself according to its plain meaning.³ It is the method that I have used to unpack the meanings of DPA, but, as anyone familiar with my writings would know, it is not a method I generally employ or endorse. However, in cases of documents that are deliberately vague, that are intended by some parties to carry out certain objectives, and by other parties, to reverse those objectives, then it is not the intentions of the parties in writing the document that count, but the residual meaning contained in the lowest common denominator determined to result from those negotiations, the text as it stands.

I introduce this discussion of method within the body of the chapter, rather than in an endnote, because texts which are deliberately equivocal are open to such opposite interpretations; after all, creative ambiguity was involved in writing the text in the first place. Certainly the DPA can be read as endorsing and putting forth as a prime objective the reversal of ethnic cleansing by returning refugees and displaced persons to their homes. My claim is not that the agreement is not open to such interpretation or that the interpretation that I have given of its provisions is the only one. The issue here is **not** what interpretation can be made of the text of the agreement, since that interpretation and its opposite are both feasible, but what interpretation is more plausible given the actual wording, the clauses actually included and those which could have been included but are not when weighing which meaning is the more likely.

Textualism is the most appropriate method when we more or less know the intentions of at least some of the signatories - to make ethnic cleansing stick and to consolidate political gains - the Serbs and Croats - while the intentions of others, such as the Bosniacs, are to reverse such gains, if possible, through the use of ‘right of return’, while the intention of the United States was most likely, at the least, to endorse the principle of reversing ethnic cleansing and, if feasible, without leading to war, in practice reversing it,

then the issue is generally not to discern intentions, but to discern how effective the text has articulated each of the competing intentions. Therefore, while it would be of great historical interest to have interviewed the negotiators extensively and to even have the notes and private minutes of the drafters as well as the minutes of the negotiations and submitted drafts of the document by the various parties and the changes they went through, in this case I do not think that this process is of prime importance.

That is not because I discount the meaning and importance of intentions and contexts in discerning meaning. It is just that in this case the meanings seem all-too-easy to discern. If I am mistaken on that count - and that is very possible - then this procedure *might be* inappropriate. But many different interpretations of intentions and context could yield the same equivocal and vague results based on compromises between and among contending positions. So even though a different set of intentions and a somewhat different context than the one I discerned might be found, it is quite likely that the results would be the same, for in the end one would have to rely on the most plausible interpretation.

Thus, this is a method opposed to relativism, opposed to saying that a text can mean anything you want it to mean. Anyone can take advantage of ambiguities to read into a text their own meaning. But if that is all that texts are to be used for, they are not worth the paper they are written on, and those with the guns and grenades are just as capable of reading in their own meaning as the humanitarians, but with far more lethal effect. More importantly, such readings make the principle of the rule of law meaningless, for the abusers of that principle believe that it is might not right that determines the interpretation of law rather than principle of justice and the importance of the rule of law as the highest principle. Reading into texts one's own meaning, even for a lofty moral purpose, is merely the complement to reading into text one's own meaning for the most nefarious of purposes. Both make a mockery of standards and of legal texts as a basis for action.

In this, and perhaps in this only, I share a common vision with the users of textualism with whom I would usually be considered to be at odds. For my purposes in the use of textualism is not to claim to discern an *original* meaning. Quite the reverse. I would claim that in a peace document, there is no original meaning because there is no singular original intent that can be read through the plain language. My purpose, further, is not the conservative one of preventing change. It is intended to facilitate change, effective change for the victims, rather than perpetuating impasses between humanitarians and power brokers in which humanitarianism becomes war pursued through other means where almost always it is the humanitarians as well as the victims who will be the losers. My purpose is not the conservative one of embedding rights so that they can never be interfered with. That is the cause of both the upholders of universal theories of rights, of legal conservative employers of textualist methodology and of might is right theories, only the rights each group has in mind refer to very different sets. I am not an essentialist and do not believe that morality is embedded in a divine set of received rights. Rights are products of long historical fights and the processes of institutionalizing them in political and legal systems. There is no ahistorical a priori existing set of rights. In other words, I endorse the use of textualism in this case precisely because I am an historicist.

For parties ending a war, particularly a civil war where some sides had the support of adjacent states and, hence, emerged as relative winners, the peace agreement is their substitute for a constitution, particularly when the document has bound them together, against the will of many if not most of them, in

a common, however weak, polity. Ending a war means not only the exhaustion of the parties and the abandonment of further potential gains at acceptable costs. It also means establishing that differences can be settled according to a common set of rules. It means demonstrating that the document can be interpreted to have rules which bind everyone. Reading into the document only your own interpretation defeats such a purpose. This means that it cannot be treated as a one-sided document for discerning any possible meaning, but must be used to establish a common plausible meaning. In other words, reading into the document one particular meaning on the basis of a prior set of moral commitments in direct contravention to the most plausible reading of the text undercuts the far more important goal of establishing the rule of law and a common set of rules as the basis for resolving disputes instead of resorting to violence.

In a sense, this use of textualism seems even more extreme than Scalia's admittedly very conservative methodology since even he acknowledges that discerning intent and context becomes appropriate when the text is vague and unclear. In fact, the reverse principle is at work here compared to Scalia. For it is precisely when the text is deliberately vague that I argue that textualism is appropriate, whereas, in most cases, where parties ostensibly shared a common goal, then intentions and context are critical not only to understanding the goal, but the conditions, standing norms and anticipated consequences which limit the application of the intentions and, therefore, allow looser or more creative interpretations of the text to be made. But where texts are deliberately the products of compromise and obfuscation, then it is the plain meaning of words and the most plausible interpretation that is most appropriate, not simply because there is a resumption of war if the wrong interpretation is made which angers one of the parties, but primarily because the salvation of the lives of victims should not depend on the illusions and ideals of those of good will *who were not parties to the agreement* but who have such a great influence in carrying out the provisions of the agreement. For historically illusory readings will certainly be possible, but they will have enormous difficulty in being translated into reality. And it will be over the bodies and suffering of the victims that the war between good and evil will be fought, not nearly as viciously as wars between one evil and another, perhaps lesser one, but nevertheless quite, if not equally, lethal.

Thus, it is not on the basis of some vaunted heavenly neutrality that I espouse the use of textualist methods in interpreting peace agreements in these contexts, but because I am morally committed to resolving the plight of the victims in as efficacious and effective way as possible with the least compromise to my own principles, while not allowing those principles to stand in the way of a resolution even if it means that the villains are allowed to win more or less, and that ethnic cleansing will, in effect, determine the shape of the political map. Better the villains win than that the victims continue to be losers for no discernible benefit whatsoever. This means that interpretation requires reasonable judgement and not the mechanical application of some preestablished set of virtues and moral principles.

My preference for textualist interpretations of text is intended to be the exceptional method rather than the standard one, particularly applicable to texts which are products of compromises and written in deliberately vague language. Most importantly, this method, unlike its normal users who claim to avoid imposing their own morality on a text but take the text to be supplying its own morality, is utilized because of the morality I espoused in Chapter 2, humanitarian realism, humanitarianism which does not believe in fighting losing causes over the backs of its victims but in ensuring that those people do not continue to be victims, only this time in the name of a higher ideology such as pluralism or multiculturalism or democracy.

1. This statement was originally made at a meeting with senior UNHCR officials and has been widely quoted since. To the best of my knowledge, it was first quoted in a report by Amnesty International, Bosnia-Herzegovina, "Who's living in my House? Obstacles to the Safe Return of Refugees and Displaced Persons," April 1997, fn. 15. It was requoted in the ICG report cited in the previous quotation, "Dayton: Two Years On," November 1997, 40.

2. Cf., for example, Howard Adelman, "Refugees: The Right of Return" in *Group Rights*, ed. Judith Baker, University of Toronto Press, 1994, 164-185.

3. Supreme Court Justice of the United States, Antonin Scalia, is an upholder of the doctrine of legal textualism, a mode of interpretation which now dominates Supreme Court decisions in that country. For a precise defense of its theory, see the published version of his 1995 Tanner lectures at Princeton University and his replies to his critics contained in, A. Scalia, *A Matter of Interpretation: Federal Courts and the Law*, Princeton: Princeton University Press. My use of this technique here should not be interpreted to mean that I generally endorse textualism as a prime method of interpretation.