

## The Questions

### Peace

Who is responsible for peace after war?

Should war criminals partake in discussions surrounding peace and peacemaking?

What measures are needed to achieve jus post bellum?

### Peace and Justice

How do peace and justice intersect?

Can you have peace without justice?

What forms of justice are needed to achieve peace?

Should peace or justice be prioritized? If so, which one and why?

### Governments and Peace

Are governments beholden to ensuring justice or peace?

Can a government decide for its citizens whether to pursue justice or peace?

## Issues in Contemporary Ethics:

## Jus Post Bellum

### At a Glance

The ways in which peace and justice are arrived at following conflict have taken many different forms. Prevalent examples include the Truth and Reconciliation Commissions that have been established in places like South Africa, and The Gambia. Other examples include amnesty laws in Nigeria and Afghanistan and yet others include criminal trials, like those that have taken place in Germany and Rwanda. This brief will examine the country of Afghanistan and the creation of an amnesty law for war criminals.



*Hamid Karzai, former president of Afghanistan (2001 – 2014).*

### Case Study: Granting Criminals Amnesty in Afghanistan

In 2007, Afghanistan's parliament passed an amnesty law that prevented the state from independently prosecuting people for war crimes committed during conflicts from 1979 to 2001. This meant that any prosecutions against war criminals in Afghanistan had to be supported and/or brought forward by the victims of the crimes. The law recognized the rights of victims of war crimes to seek justice and to bring cases against those alleged to have committed war crimes, unlike in places like South Africa and The Gambia. However, critics of the law asserted that it was only passed to protect alleged war criminals in the parliament from prosecution. According to Human Rights Watch, former Vice President Karim Khalili was among those who should have faced trial before a special court for alleged war crimes, including but not limited to leading the civil war and indiscriminating shelling that threw the country into turmoil from 1978 to 2009 (Human Rights Watch, 2010).

### Implications

The invasion of Afghanistan by Soviet forces in 1979 marked the beginning of a prolonged period of conflict in a region that was in the midst of relative peace. As resistance groups grew in strength and began waging guerrilla warfare against the Soviets, the abuses committed by both sides intensified. In the years of conflict that followed, more than 870,000 Afghans were killed, three million were maimed or wounded and over 6 million were internally or externally displaced (Oxfam Canada, 2009). When Soviet forces withdrew in 1989, things did not get better as the various resistance groups turned on one another in a bid for broader control. In the midst of all of this, civilians often suffered war crimes such as torture and rape that were employed by resistance groups as they waged bloody battles. Rather than making the government prosecute all those involved in these war crimes, the amnesty law

## Further Reading

**Amnesty International**  
[Afghanistan](#)

**Afghanistan Analysts**  
**Network**

[After Two Years in Limbo:  
A first Glance at The  
Approved 'Amnesty Law'](#)

**Reuters**  
[UN Calls for Repeal of  
Afghan Amnesty Law](#)

**The Guardian**  
[Afghanistan Quietly Brings  
into Force Taliban Amnesty  
Law](#)

**Fondation Hirondele**  
[Uganda's Amnesty Law and  
the Peace/Justice Dilemma](#)

**Eurasianet**  
[Afghanistan: Amnesty Law  
Fuels Debate on  
Reconciliation Process](#)

**Mallinder, L. (2009)**  
[Global Comparison of  
Amnesty Laws.](#)

**Naqvi, Y. (2003)**  
[Amnesty for War Crimes :  
Defining the Limits of  
International Recognition.](#)

made it so that “all political parties and belligerent groups who fought each other during the past two-and-a-half decades...will not be pursued legally or judicially” (Human Rights Watch, 2010). Rather, the law calls for them to be included in the national reconciliation process. One major question that arose from this decision was whether in not pursuing justice, the Afghanistan government was aiding war criminals.

### Comparing Perspectives

In this series, one rationalist ethics theory and one alternative ethics theory are explored to present contrasting views on issues and questions raised.

### Act Utilitarianism

Act Utilitarianism is a rationalist theory of ethics which states that a person's act is morally right if and only if it produces the best possible results in that specific situation. With regards to this scenario, the government of Afghanistan justified the creation of the amnesty law by insisting that it would create the foundation for a renewed national reconciliation and solidarity. This argument has also been utilized in other situations where governments have chosen not to prosecute war criminals as a means of working toward ‘national unity’. In examining whether the creation of this law was ethically justifiable, an act utilitarian would examine whether the goal of national unity was accomplished in Afghanistan. Following that, they might also examine whether this was due to the non-prosecution of war criminals and the creation of the amnesty law. If so, because the best possible results were achieved, an act utilitarian might argue that the creation of this law was ethically justifiable.

### Feminist Ethics

As an alternative ethical theory, some feminist ethicists are concerned with how institutions in society undermine underprivileged groups of people and act to serve the elite. In examining whether the creation of the amnesty law is ethical, a feminist ethicist might examine the reaction of the victims of the war crimes perpetrated in Afghanistan along with their families with regard to the creation of the law and their ideas of what is needed for peace and justice. Seeing the shock and anger that has emerged within the citizenry as a result of this law, a feminist ethicist might argue that by placing national unity over justice and refusing to prosecute war criminals, the government has chosen to further oppress and undermine the underprivileged people of Afghanistan who have suffered through various war crimes while protecting the powerful elite (some of the same people who brought the law into being).

### Questions for Reflections

In times of conflict, women and children often disproportionately suffer, especially with regards to sexual wartime violence. The decision of the Parliament of Afghanistan to grant war criminals amnesty. Although the law as passed by the legislature might seem neutral, it raises questions of power, inequality, and voice. Should this have been considered before the implementation of the law? In passing this law, the government is seemingly prioritizing national unity over prosecuting criminals, is this a justifiable trade-off? Should this trade-off even be considered at all? Can the government better balance the victims’ need for justice and the country’s need for national healing? If so, how can this be done?

Human Rights Watch. Afghanistan: Repeal Amnesty Law. (2020, March 10). Retrieved July 14, 2020, from <https://www.hrw.org/news/2010/03/10/afghanistan-repeal-amnesty-law>

Oxfam Canada. [The Cost Of War: Afghan Experiences of Conflict, 1978 - 2009]. (2009, November). PDF.



