Abstracts of Papers

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Peace, Human Rights and Religion

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In the name of God

Preface

The association and interrelationship between religion, human rights and peace present a multi-dimensional challenge for academics, practitioners and religious institutions. Each of the three, individually, has a profound place and impact in human civilization and development. Religion is one of the oldest, most significant and most resilient institutions in human history, which has continued to impact domestic and global discourses and interactions with or without the consent and support of the ruling elite in various countries and historical junctures. Similarly, peace and human rights have been widely recognized as human ideals and along with development constituted the three pillars and foundations of the United Nations Millennium Development Goals. Therefore, understanding the dynamics between the three is important and simultaneously multi-faceted.

How peace affects the enjoyment of human rights and the place and role of the right to peace as a human right has been the subject of much academic and political debate. Similarly, the assertion that systematic and grave denials of human rights constitute threats to peace and security has been debated at length both in academic institutions as well as in the halls of power such as the Security Council of the United Nations. More controversial implications of the interrelationship between

human rights and peace have revolved around contentions on peaceful nature of democratic societies on the one hand and emerging assertions of "the responsibility to protect" on the other.

Concentrating on the role of religion in this relationship not only highlights the importance of respect for religious freedom in the promotion of human rights and peace, but more significantly the contribution of religion and its institutions to peace-building and promotion of human rights. While the former has been the subject of many studies, few have addressed the latter.

To address these and similar questions, we sought to integrate a multi-cultural and multi-religious perspective on the profound and increasingly important interaction between religion, peace and human rights. Building upon our previous International Conference on Religion and Human Rights, we invited scholar and thinkers from academia and religious institutions of various countries to study and submit papers on the multiple aspects of the interrelationship between peace, religion and human rights.

Many responded to our invitation and what follows are the abstracts of papers that dealt with areas that are considered to be pertinent to the issue. Of course, few have dealt with all three dimensions and many have simply addressed one or another aspect of this rather complex picture. But that was expected particularly in view of the enormity of the subject and its complexities and sensitivities. In fact, this is an important step in an endeavor of tremendous academic and practical significance and we hope that not only these papers can generate a mutually enriching debate during the conference, but also the papers and the ensuing discussion could provide incentives and grounds for further research and scholarship.

We are grateful to everyone who contributed to this conference by submitting abstracts and papers. We are also indebted to the scientific advisory board and the scholars who took the time to review the abstracts and papers for the conference. Thanks and appreciations are also due to the sponsors and the secretariat of the conference at the Center for Human Rights Studies of Mofid University.

Mohammad Javad Zarif
The Secretary of the Conference

Human Rights, Human Security and Political Theologies

Alejandro Lorite Escorihuela*

Human rights, particularly in the form of international human rights law, intersect with religion and peace at foundational levels, as symbolically highlighted by the 1948 Universal Declaration of Human Rights (UDHR). The Preamble to the Declaration proclaims in its very first line that respect for human dignity is the foundation of peace, and proceeds to declare that freedom of belief, alongside freedom of speech and freedom from fear, are the highest aspirations of humankind. One could similarly highlight the special relationship between the project of human rights, peace and religion, particularly religious tolerance, in the texts of the universal, as well as regional, human rights instruments adopted since 1948, as well as the text of the Charter of the United Nations of 1945.

The relationship between contemporary human rights, on the one hand, and religion and peace on the other, is arguably determined by the structure of international human rights law as a political discourse, which describes the relationship between individuals, society and the State. The visible influence of social contract theory on the wording of the Universal Declaration reminds us that from its

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inception, the project of human rights is intimately linked to religious diversity (because of the birth of modern sovereignty in European wars of religion and evangelical imperialism) and peace (because of the connection that the Declaration draws between the stability of States and respect for the human dignity of citizens).

Against this known conceptual and historical backdrop, this paper starts with the displacement, at the global level, of human rights by the ambiguous discourse of "human security," since the early 1990s. A general idea is that "human security", which has rapidly evolved to become an organizing principle of policy-making for governments as well as non-governmental and inter-governmental organizations, constitutes an alternative, sometimes deliberately advocated as such, to the discourse of human rights. Although received, and arguably uninformed, commonsense considers human rights as a threat to State sovereignty, the confrontation of human rights with "human security" reveals, first, how human rights is bound to sovereignty and, second, how "human security" refers to political parameters that are foreign to those of the UDHR. In that sense, this paper discusses how the structurally very deep relationship between peace, religion, and the project of equality in diversity promoted within international law by the UDHR is sidelined by the general project of "global governance," to which "human security" has contributed a legitimate basis for disregarding the sovereignty on which human rights depend.

Methodologically, the paper seeks to bring together a structured and coherent conceptual backdrop to the resistance offered more recently by a group of States to the continuous use of "human security" within the United Nations and beyond. This is done through the use of the

technical notion of "political theology," which systematizes the foundational place of religion in political discourse by describing political-theoretical language (such as that of the Universal Declaration) as secularized versions of religious worldviews. This allows for a constructive confrontation of human rights and "human security" as parallel political projects, in a way that describes the project of "human security," connected as it is with other strategic concepts of global governance (like the "responsibility to protect"), as a threat to the original architecture of international human rights law. This threat is shown to derive from "human security's" potential hostility to both human rights' international law component (sovereignty) as well as its human rights component (equality in diversity), particularly by associating humanitarian concerns with the passing security concerns of dominant States.

Renewing Teachers Role in Democratic Citizenship Education for Ensuring Peace

Alok Gardia & Deepa Mehta*

"Averting war is the work of politicians; establishing peace is the work of education." Maria Montessori

Liberal political scientists have discovered a correlation between democratic societies and global peace. Tracing the history of peaceful co-existence of nations, Doyle (1997) showed that citizens' view in democratic societies play a pivotal role in war and peace. Embedded in political scientists' research, findings show three propositions for educators: first, democracy needs democrats; second democrats are created through citizenship education programs emphasizing conflict resolution skills, respect for human rights, good neighborliness and respect for pluralism; third there appears to be a correlation between the teaching of democratic values and peaceful co-existence of citizens of democratic societies. Thus in order to ensure peace in the society, there is need to strengthen citizenship education though trained and efficient teachers. Education of Democratic Citizenship (EDC) is the process by which we teach young people to be effective

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and responsible members of democratic communities. Nothing is more important to the future health of democracies. Teacher is a pivot of whole educational process. Under effective teacher education programme for citizenship education, teachers should come across with different components of peace education. It will help them to be a social agent spreading the message of peace among future generations of the nation.

Teachers in peace education should realize that multicultural, multiethnic, and multi-religious problems in society are not to be dealt with in isolation but being interconnected with all other problems of peace and violence. For example, developing such qualities as compassion and service to others can help reduce racial, religious, or other prejudices.

The core competencies that are identified for education of democratic citizenship for teachers are very much adherent to the competencies needed to be developed for peace education. Grindal (1997) has suggested that a teacher in order to be an effective medium for EDC should have a broad knowledge base in democratic ideals including peace as democratic virtue, the international society and organizations, international co-responsibility, structure and function of social institutions and rules for participation.

The teacher should have skills for Cooperation, managing and resolving conflicts, participation, critical thinking, creative thinking, reflection, dialogue, making choices etc. Lastly the essential value system that a teacher must uphold is equality of opportunity, human rights and rationality. Intellectual freedom, tolerance, solidarity, independence and coexistence, cooperation, consultation, inclusion, understanding of and respect for others and the environment.

As the present teacher education program (with special reference to India) is not geared to develop the skills of providing citizenship education. Present paper identifies this weakness and discusses the concept of EDC in light of providing peace education with broad guidelines for how a good teacher education program can incorporate the essential elements of democratic citizenship and peace education. A renewal of teacher's role, redefinition of their competencies and development of ethical sense of the future teachers is suggested to make them efficient in providing EDC, so that they can be a strong tool for ensuring peace in society, nation and world at large.

- Concept and relationship of Democratic Citizenship and Peace Education
- Core competencies for democratic citizenship in Peace Education:
- Making teachers effective for Peace Education by providing democratic citizenship education:
- Inputs in Teachers' Training for Democratic Citizenship and Peace Education
- Conclusion:
  - Renewal of teacher's role:
  - Dispositions:
  - Knowledge and Understanding:
  - Subject Leadership Qualities:
  - Ability for cross-curricular work:

Islam as a Religion of Peace: An Articulated Reply to Terrorism

Anicée (Anisseh) Van Engeland*

Since 9/11, Islam and Islamic have been at the forefront of the international news and debates. There is the constant feeling among the international community that Islam represents a threat to peace today. This is the outcome of a policy of terror led by some extremists who advocate a distorted view of Islam that justifies the massive killings of civilians. The aim of the author is to focus on the case of civilians' protection in Islam to deconstruct extremists' discourse and prove them wrong. In times where Islam is reduced to an ultra-aggressive form of jihad, it is the duty of scholars in the field to demonstrate in what sense Islam is a religion of peace that strictly regulates war and that sets humanitarian principles.

Islamic extremists have presented, among other legal analysis, a version of Islamic humanitarian law that justifies the indiscriminate targeting of civilians. These intellectuals' viewpoints are very important as they are today invoked by terrorists and the ideologues of Al Qaeda. The first part of the paper will introduce their thinking and their discourses. It is important to know what extremists are saying and how they have reached their

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conclusions to fight them and beat them on their own field and territory. The second part of the paper will present the work of Muslims scholars that show how these extremists have distorted Islam to carry out an agenda of terror. The author will then analyze other approaches of Islam, explain how peace is defined in Islamic law and how war is strictly limited. The last part of the paper will come back to the basics: the prohibition to kill civilians during wartime.

Structure:

I. Islam in the eyes of Terror: the killings of civilians
II. The true face of Islam: Regulation of War and Promotion of Peace
III. Protection of Civilians in Islam

The Participation of Children in Post-Conflict Rebuilding Processes

Aoife Daly*

Children are too often the victims of armed conflict. UNICEF estimates that more than two million children have died in the last decade and that there are approximately 300,000 child soldiers operating in over 30 conflicts worldwide. Yet children are all too often neglected in the post-conflict rebuilding process. This paper argues that, despite the vulnerabilities of children and young people, they have much to contribute to post-conflict rebuilding. As well as this, such involvement can prevent youth from feeling marginalised and can provide them with a proper platform from which to influence decision making around matters that affect them.

Article 12 of the UN Convention on the Rights of the Child stipulates that children have the right to be heard on matters affecting them. This is referred to as the 'right of children to participate'. It has resulted in a widespread consideration of children's abilities to contribute to decision-making in the international legal context and elsewhere. It is recommended in the Vienna Declaration and Programme of Action of the World Conference on Human Rights that issues relating to the human rights of

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children be regularly reviewed by all relevant organs of the UN system. It is argued in this paper that in light of Article 12, more regard should be had in post-war reconstruction for the ability of children to contribute.

Children and young people consistently prove that they have much to contribute to their communities. Children are particularly sensitive to environmental issues, for example, sometimes spearheading environmental initiatives in their communities. This agency of children is also to be seen in less constructive activities. It is a well-documented fact that children have been heavily involved in armed conflict from Sierra Leone to Burma, often responsible for atrocities. However they are often then subsequently excluded from the post-conflict reconstruction process. They are considered incapable compared to adults, despite previous heavy involvement in the armed conflict.

It needs to be emphasised that young people generally can be a source of great strength after armed conflicts. They can be involved in planning long-term solutions relating to the recovery of society. This paper draws on past experiences, highlighting examples where children and young people played a significant part in post-conflict reconstruction. For example it is reported that the young people of Teso in Uganda were central to recovery of the wider community after 12 years of conflict (Kuper 1998). McIntyre and Thusi (2002) also document the experience in Sierra Leone of the involvement of children in the political sphere. The successes and challenges of inter-ethnic initiatives between young people in Israel/Palestine are also outlined in this paper.

Most of the research of the experience of children in the post war context has been carried out through the discipline of psychology. This paper uses an inter-disciplinary approach (drawing on international law,

psychology and socio-legal approaches) to analyse the potential for children to contribute to post war rebuilding.

It is undoubtedly true that the provision of economic assistance, psychological treatment and education to children should be major priorities in the post-conflict rebuilding process. However the positive ways that children can contribute to their post-conflict societies must be further examined. It is to be concluded that international law should empower children and young people to work on their own behalf and on behalf of their communities in the post-conflict environment. Guidelines for the effective participation of children in this context will be proposed. The benefits to society regarding long term and sustainable peace are also emphasised.

Peace with Justice: the Grounds of Human Rights from a Faith-Based Perspective

Bas de Gaay Fortman*

This paper addresses the challenge of global peace with justice rights from the perspective of religion. Firstly, peace is conceptualized with respect to order: protection of people in their person (personal security), their things (stability of possessions), and their deals (pacta sunt servanda). In respect of each of these challenges the role of religion is examined as potentially positive or negative depending on its connection with politics. The analysis is then extended to order with justice. Special attention is paid to the "social contract" as a foundation of the public-political community. In this connection some observations are made regarding the theocracy versus democracy controversy. How far could each of these systems be seen as a possible threat to peace and if so, is there room for conciliation?

The second part of the paper starts with a conceptualization of human rights as fundamental human interests protected by law. These core interests are based on human dignity as such, while entailing certain major freedoms and entitlements that everyone ought to enjoy.

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International protection of these by law appears to be rather flawed in the sense of a huge deficit in its realization, pertaining to impunity of state-related perpetrators, inadequate protection of minorities, domestic violence against women and children, and structural violation of the rights of the poor. As to each of these gaps between declared rights and realized freedoms and entitlements, the role of religion is examined in its possible effects on both strategies and outcomes.

Finally, the paper focuses specifically on freedom of religion as a human right. What is the meaning of this right and what does it entail in respect of peace with justice? This is investigated with regard to the public and the private realm as well as what may be called "the sacred realm". Attention is paid here to hermeneutics as the art of interpreting texts, not just in Holy Scriptures but also in human rights documents and declarations. Where lie concrete challenges to institutionalize the role of religion in such a way that threats against global peace could be counteracted, while positive efforts towards global justice might be enhanced? The paper ends with a discussion of concrete issues in the realization of human rights with special reference to the role of religion.

Religious Human Rights and Peace

Carl Wellman*

This paper assumes the author's conceptual analysis of rights as complexes of Hohfeldian positions that confer dominion on the right-holder in face of one or more second parties and his theory of moral reasons as essentially social dual-aspect practical reasons, both explained in previously published books. It analyses the international human right to have or adopt a religion or belief of one's choice and the international human right to manifest one's religion or belief in worship, observance, practice and teaching as liberties of individual human beings protected by duties of non-interference and immunities from extinction holding against State Parties. It then identifies their moral grounds, the most important moral justifications for recognizing and maintaining these religious human rights in international law. It suggests that these are analogous moral religious human rights and some of the morally proper purposes of international law, including the promotion of international peace. It explains how the problematic human rights to change one's religion or belief and to proselytize one's religion or belief can be derived from the more basic human rights to have or adopt a religion or belief and to manifest one's religion or belief

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respectively. It examines the reasons that many deny these rights and argues that, correctly interpreted, they are morally justified. Finally it reexamines the question as to whether the human rights to have or adopt a religion or belief and to manifest one's religion or belief do more to threaten or to promote peace. It argues that although these human rights threaten peace to a limited extent, on balance they would, if universally respected, protect and enhance both internal and international peace even more. It concludes that there are two important relations between these religious human rights and peace. Both would be conducive to peace were they universally respected. And this fact is one of the moral grounds of these human rights in international law.

UNESCO and the Right to Peace

David Keane*

The right to peace as a human right has been incidentally mentioned in various documents, though none of them was entirely devoted to the elaboration of this right. As early as 1969, the Istanbul Declaration, adopted during the 21st International Conference of the Red Cross, proclaimed the right to lasting peace as a human right. In 1976, the right to life in peace was recognized as a human right by the Commission on Human Rights. In 1978, the General Assembly adopted resolution 33/73 on the Preparation of Societies for Life in Peace which provides: 'Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace.' Concerning the right of peoples to peace, the African Charter on Human and Peoples' Rights provides that 'All peoples have the right to national and international peace and security'. In 1984, the General Assembly adopted the Declaration on the Right of Peoples to Peace which 'solemnly proclaims that the peoples of our planet have a sacred right to peace'.

In January 1997, the Director-General of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) prepared a draft document, the 1997 Oslo Draft Declaration on the Human Right to Peace, which proclaims that: 'Every human being has the right to peace, which is inherent in the dignity of the human person'. It

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stresses that war, armed conflicts, violence and insecurity are intrinsically incompatible with the human right to peace. The preamble of the Draft Declaration refers to the Charter of the United Nations, the Constitution of UNESCO and the Universal Declaration of Human Rights.

The Director-General of UNESCO circulated the Draft Declaration and issued a report on the human right to peace. It noted, inter alia, that recognition of the human right to peace would give fresh impetus to the struggle against violence and behavioural attitudes based on force and imposition. A culture of peace cannot be built on intolerance, injustice and exclusion. Peace is the result of the observance of human rights and also the precondition for that observance. There is also another intimate dimension of peace, the need for internal peace, for the prohibition of violence of all kinds. The General Assembly, in resolution 51/101 of 12 December 1996 entitled 'Culture of Peace', recognized the importance of this programme and UNESCO's competence in this field.

The paper will explore the work of UNESCO and the right to peace. The question of UNESCO's competence in this area seems to rest on a differentiated idea of peace as being both external and internal, with the latter falling within its remit. According to the 1997 Report, UNESCO is founded on the premise that 'since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed'.

Promoting Peace, En‘force’ing Democracy? The European Court of Human Rights’ Consideration of Islam

Edel Hughes*

Contemporary Europe is undoubtedly a largely secular region where the notion that secularism and ‘progress’ are intertwined has long held sway. Religion in the public sphere is, for many Europeans, associated with emergent or conservative societies, whereas secularism is equated with modernism and seen as an indispensable component of modern governance. Recently, both domestic and European Court of Human Rights (ECtHR) case-law has highlighted the obvious tensions that arise in the manifestation of religion in the European public sphere.

While Article 9 of the European Convention on Human Rights affords everyone the right to freedom of thought, conscience and religion (while allowing for certain limitations as imposed by domestic authorities), in matters related to religion, ECtHR has adopted a deferential attitude towards domestic authorities in the determination of the parameters of this right. This is reflected in the fact that it was not until 1993, some thirty-five years after the Court commenced operating, that a violation of Article 9 of the Convention was found. The Court’s jurisprudence on the Article is therefore somewhat troubling and

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nowhere is this more aptly illustrated than in the jurisprudence relating to the wearing of the Islamic headscarf. Recent case-law in fact suggests that in that the wearing of the headscarf is viewed both as being incompatible with the principle of gender equality and in direct opposition to the principle of secularism.

Through the lens of recent Article 9 jurisprudence, this paper will assess the trends emerging in the European Court's consideration of Islam. Discussion of relevant cases will include Dahlab v. Switzerland, Karaduman v. Turkey, Leyla Şahin v. Turkey, Refah Partisi (The Welfare Party) and Others v. Turkey as well as analysis of cases occurring at the domestic level, most notably the Teacher Headscarf Case of the German Constitutional Court and the English decision of R (on the application of Begum (by her litigation friend, Rahman)) v. Headteacher and Governors of Denbigh High School.

This paper also seeks to challenge the ECtHR reasoning in the area of expression of religion (and particularly where that religion is Islam) by analysing the question of religion in the public sphere in the broader European context. There is in fact increasing evidence to suggest that Europe is undergoing a period of de-secularisation, a reality routinely ignored by the European Court of Human Rights.

The Metaphysics of Violence: Comparative Reflections on the Thought of René Girard and Mahatma Gandhi

Edward J. Alam*

This is not an essay on the acts of violence, but on violence per se. The purpose is to expose violence for what it is in its essence, so as to renounce it, and thus make room for genuine peace. It is widely acknowledged that violence is the very opposite of peace, and thus obviously threatens it, but most discussions of violence remain at the level of acts of violence and rarely attempt to probe the essence lying beneath its outward manifestations. The same could be said of peace. This is understandable, as both concepts entail highly enigmatic subtleties that are difficult to pin down, and therefore require the work of arduous metaphysical analysis. Nonetheless, such work must be carried out, for if discussions of violence do not attempt to probe the inner depths of what it is in itself, we are apt to end up defining certain activities as non-violent, when in fact they are simply different forms of violence, masquerading as non-violence. This may lead to the further identification of peace with these deceptive definitions of non-violence,

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which ultimately amounts to calling violence peace, as, for instance, when so-called non-violent demonstrators, short of inflicting bodily harm upon the other, are nonetheless filled with passionate hatred, with no intention of transforming the other. To adequately understand that non-violence is not automatically to be equated with peace, it is first necessary to get at the core of what violence really is. René Girard and Mahatma Gandhi are two exemplary contemporary thinkers, coming from dissimilar academic, cultural, and religious backgrounds, who do explore the metaphysics of violence profoundly, and whose conclusions are stunningly commensurate. Though their approaches are quite different, they both conclude that violence is an invisible, ambiguously transcendent and disordered force that feeds upon itself by parasitically taking advantage of the whole range of immoral human desire. To renounce it is nothing short of renouncing all evil and immorality through a hyper-conscious decision to strive daily to know the truth and to do the good, precisely by loving the beautiful—the very place where the good and true meet—and that one sacred space where violence dares not show its hideous face.

The Position of Muslim Community and Islamic Education at State Run Schools as an Important Factor of Social Peace in a Secular Society: The German Example

Irene Schneider*

Islamic education in a secular state: The German example

Freedom of religion in the sense of freedom of belief and of religious manifestations; in teaching, practice, worship and observance is one of the basic human rights laid down in the Universal Declaration of Human Rights, art. 18. Freedom of religion in this sense is considered to be an important right and to play an important role in keeping up social peace in society. Germany, being a secular state with a historical connection to Christian religion, has anchored this right of religious freedom in is constitution in Article 4. According to Art. 7 /3 religious education in state- run schools is accomplished in accordance with the religious communities. This religious education is normally provided for by the Catholic and Protestant Churches, but also by the Jewish community.

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There are 3,2 Mio Muslims in Germany , especially from Turkey, but also from the Arab countries and Iran. Most of these Muslims do not plan to return to their native countries and will remain in Germany. They do enjoy freedom of religion in the above-mentioned sense. In my paper I will deal with the question of how religious manifestations of the Muslims in Germany "in teaching, practice, worship and observance"is accomplished. I shall focus on their religious education and endeavor to answer the following questions: What does Islamic education mean in Germany, in a secular state? Who provides for it and how? How does it differ from religious education in Islamic countries? How is it seen by the German society?

I will deal with these questions on two levels (1) on the national level and (2) on the local level. On the national level a clear effort of the German state can be seen to integrate the Muslim minority as a religious group into the German state. For this reason the German Minister Wolfgang Schäuble convened in 2006 the so called "Islamkonferenz inviting jurists, scholars of Islamic studies and representatives of the different Muslim communities as well as independent persons to talk about the situation of Muslims in Germany. The unsolved question still is: how the different Islamic groups comprising Muslims from different social, political and religious backgrounds and from different countries as Turkey, Arab states, Iran, Afghanistan with different national Islamic traditions could find a common platform of religious Islamic belief in a secular state. By establishing the Coordinating Council (Koordinierungsrat) of Muslims in Germany in April 2007, some larger Islamic organizations tried to create a common structure for the representation of all Muslims. So far this

organization has not been recognized by the German state as the official representative of all Muslims, but the discussions at the "Islamkonferenz" are not yet finished and are still going on. One of the main aims of the Muslim Organizations is to gain the right to give Islamic religious lessons at German state-run schools. Whereas on the national level the integration of Islam as a religion within the secular system is discussed, on the local level religious teaching is currently taking place within different projects in many selected state schools in Germany as well as in local mosques. Religious teaching at mosques will be discussed by taking the example of mosques in Goettingen, a small university town in Central Germany. There are two main mosques in Goettingen: one belonging to the Turkish community (Ditib) and the other being an Arab mosque. I shall sketch the concept of religious education given in this Arab mosque with regard to its content and the way it is taught to the children, whether it corresponds to the classical Islamic education and which concepts, beliefs, rituals and cultic acts are being considered important for children growing up in a completely secular context? Finally, I shall compare this approach at the local level with the efforts made on the national level and discuss how these different efforts are judged by the German society.

Beyond Tolerance: Dialogue, Religious Freedom and Human Rights

Jeremy Iggers*

It is widely accepted that the freedom to practice one's religion, and to live according to one's religious beliefs, is a basic human right, and the key to peaceful coexistence among religious communities and among nations. In my paper I will focus on the problems that arise when sincerely held religious beliefs come into conflict with the rights of others.

Recently in the United States, two such situations have received widespread attention. One case involves pharmacists who refuse to fill prescriptions for birth control pills, because they believe that the use of certain kinds of contraception violates their Christian religious beliefs. The other case involves Muslim taxicab drivers who refuse to transport passengers carrying alcohol for similar reasons.

In response to such conflicts, religious tolerance is often embraced as a solution. In western society, the ideal of religious tolerance can be traced back at least to John Locke, and received considerable attention in the work of political philosopher John Rawls. In recent years,

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tolerance has been embraced as a public value through programs that teach tolerance in public schools. But the ideal of tolerance has also come under criticism from theorists such as Wendy Brown, professor of political science at the University of California at Berkeley, and author of Regulating Aversion: Tolerance in the Age of Identity and Empire (Princeton University Press). Brown argues that tolerance is "an impoverished and impoverishing framework through which domestic, civil and international conflicts and events (are) formulated... The experience of being tolerated is inevitably one of being condescended to, of being forborne. The object of tolerance is constructed as marginal, inferior, other, outside the community, in some relation of enmity with the community."

Moreover, as the legal scholar Stanley Fish has noted, the doctrine of tolerance "legitimizes, and even demands, the exercise of intolerance, when the objects of intolerance are persons who, because of their over-attachment to culture, are deemed incapable of being tolerant."

What implications do these critiques of tolerance have for how we should address real-life cases of conflict between religious beliefs and the rights of others? "Obviously" as Wendy Brown points out, "it is always better to be tolerated than not, if those are the choices." But I believe that there are possibilities that go beyond tolerance, that are based on dialogue. The importance of dialogue has been stressed by thinkers including Mohammed Khatami, and philosopher Kwame Anthony Appiah of Princeton University, author of Cosmopolitanism: Ethics in a World of Strangers (W.W. Norton).

I will argue that productive dialogue between different cultures, or even between different segments of a

culturally diverse society, requires more than just reasoned argument. Rather, it requires a deeper conversation that develops an understanding of each other's history and everyday life and strives for a level of mutual trust and respect. In my conclusion, I will discuss the ways in which this kind of dialogue between faiths can contribute to the cause of peace.

Protection against Religious Hatred Under UN ICCR and the European Convention System

Jeroen Temperman & Joseph Powderly*

This paper will explore the exact relation between the right to freedom of expression and the prohibition of religious hatred that constitutes incitement to discrimination, hostility or violence.[1]

Considering the precise formulations of the substantive human rights norms of the International Covenant on Civil and Political Rights (Part III of the treaty: articles 6–27), one could argue that the prohibition of religious hatred that constitutes incitement to discrimination, hostility or violence is the 'odd-one-out' in as far as this norm: (i) does not provide the individual with a clear right (it does specify the duty bearer: the state; however, this clause does not identify a right holder);[2] (ii) if anything, actually constitutes a limit on another substantive human rights norm: the right to freedom of expression.

The principal objective of this paper is to present a

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1- Art. 19 and art. 20 of the International Covenant on Civil and Political Rights of 16 Dec. 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force: 23 Mar. 1976).

2- Unless one would reformulate it as an individual 'right to be free from religious hatred'.

critical analysis of and to provide workable benchmarks and guidelines on the interplay between these two norms. In the context of the interrelatedness of the two norms it has been argued that the prohibition of advocacy of religious hatred should be interpreted as a restriction on the right to freedom of expression in a way that is consistent with the grounds for limitation that are listed by the provision on freedom of expression itself.[1] That is to say, the prohibition of advocacy of religious hatred as a possible limit on free expression needs to be prescribed by law and applying this restriction must be necessary to uphold the fundamental rights of others (i.e. religious minorities, in the present context). Though this sheds some light on the relation between the two rights, many related issues are still to be resolved. Questions that will be addressed in this paper include:

What is the legal threshold for determining whether a discriminatory speech or a speech that advances certain stereotypes constitutes religious hate speech?;[2]

Can an attack on a religious doctrine be so severe as to merit state interference, i.e. can an attack on religions (rather than on religious believers) amount to hate speech?; and how to draw the line between expressions about religious doctrine or ideology on the one hand and religious believers on the other?;

1- I.e. para. (3) of art. 19 of the ICCPR.

2- As David O. Brink, Millian Principles, *Freedom of Expression and Hate Speech*, (2001) 7 LEGAL THEORY, pp. 138-139, observes: "There is much speech that is discriminatory but does not count as hate speech. It reflects and encourages bias and harmful stereotyping, but it does not employ epithets in order to stigmatize and insult … vilify and wound. … hate speech is worse than discriminatory speech … hate speech's use of traditional epithets or symbols of derision to vilify on the basis of group membership expresses contempt for its targets and seems more likely to cause emotional distress and to provoke visceral, rather than articulate, response."

What is the legal relevance of the position or function of the person behind the speech or publication (e.g. are there different thresholds for politicians, civilians, artists, etc.)?;

What is the legal relevance of the type of media (which can range from internet blogs, to propaganda or quasi docu-type films broadcasted on the television or posted on the internet, to written materials) used when it comes to assessing hateful speech or publications?

Is the 'state of society' legally relevant in determining the threshold for hate speech? (e.g. is there a different legal threshold in so-called genocidal societies and post-genocidal societies);[1]

What does the prohibition of advocacy of religious hatred mean in terms of state obligations?; how to transpose this norm into an adequate domestic anti-hate speech Act?; at what exact stage does the state need to interfere with the right to freedom of expression (i.e. is censorship ever merited or should the prohibition of hate speech solely translate into legal repercussions after the fact, that is, in reaction to illegal speech or publications)?

The proposed output of the paper is a comprehensive principles model on the interplay between the right to freedom of expression and the prohibition of religious hatred that constitutes incitement to discrimination, hostility or violence, taking into account the relevant international human rights norms and jurisprudence surrounding the issue of hate speech.

1- One can think in this context of William Schabas' observation that "[t]he road to genocide in Rwanda was paved with hate speech" (William A. Schabas, *Hate Speech in Rwanda: The Road to Genocide*, (2000) 46 MCGILL LAW JOURNAL, p. 144.

Militant Democracy: Lowenstein Revisited

Kathleen Cavanaugh*

The emerging right to democracy (e.g. Franck, T) within international law favours a liberal, democratic packaging. Yet as Abedolkarim Sourash argues, there has been a conflation of liberalism and democracy, which must be decoupled. It is from this point of departure that this paper will examine the international legality of militant democracy and interrogate when and how a constitutional democracy can legally act in an antidemocratic manner to combat threats to its democratic existence.

Militant democracy was a term introduced in 1937 by Karl Lowenstein. It refers to a form of constitutional democracy authorized to protect civil and political freedom by pre-emptively restricting its exercise. Lowenstein's writings, at the time, were concerned with the limitations of democratic institutions in containing fascism. Militant democracies stand in contrast with the principles of legal pluralism, but the extent to which international law authorizes transformative political agendas that seek to implement forms of religious, cultural or national autonomy is unclear.

The legal lacunae of both of these 'political' developments create a space for abuse. State powers that

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engage with the concept of militant democracy argue the rather paradoxical position of defending democracy by sidelining civil and political rights. Equally, pluralist models create space for religious, cultural and national communities who endeavour to create autonomous legal regimes, which often limit or restrict the rights of minorities and others. At the intersection of both militant democracy and legal pluralism is the principle of self-determination. The tension that exists between protecting the human rights regime through the undermining of the same is highlighted both in case study (the Occupied Territories and Algeria for example) and case law (specifically, the European Court of Human Rights decision in Refah v. Turkey, in which the Court upheld the banning of a political party that advocated a form of legal pluralism which would introduce elements of Islamic law in Turkey).

The purpose of this examination will be two fold. First, to examine the debates which engulf the concept of democracy and to interrogate the argument Sourash and others have proffered to critically evaluate the underpinnings of the emerging right of democracy. Second, to look at the question of military democracy vs. legal pluralism. References will be made to case studies (Occupied Territories and Algeria) as well as to the illiberal secular trends in Europe which serve as the backdrop for the Refah Partisi (Welfare Party) and Others v Turkey case.

Section 1- The 'democratic' debate
Section 2- The emerging right to democracy
Section 3- The origins of Militant Democracy
Section 4- The international legality of Militant Democracy
Section 5- Militant Democracy vs. legal pluralism
Section 6- Case studies: a political agenda?

Getting the Relationship Backwards: Human Rights, Peace and Religion

(Habermas's Religious Turn)

Kevin W. Gray*

In my conference paper, I investigate the relationship between religion and peace, as proposed in Question 2. The Call for Papers defines peace as "a situation in which individuals, groups and nations, keeping their dignity, live with justice, security, flourishing, tolerance, cooperation, and self-determination." In this paper, I concern myself with peace as the situation where individuals and groups live together; and thus, by implication, I ignore the question of the relationship between religion and international peace. I understand peace in the paper as something like tolerance.

I challenge the assumption, implicit in the Call for Papers, that there is a causal relationship between religious values and human rights (or, to put in another way, that a correct understanding of human rights springs from a religious conception of right and wrong). I argue that to understand religion as a source of human rights (and thus tolerance and social peace) is to get the causality wrong.

Instead, in the first part of the paper, I trace the development of human rights through the increased

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rationalization of society in early capitalist society. Referring to the original model of positive law in Marx and Weber, the discussion of the rationalization of separate spheres of social activity in Weber and Durkheim, and the standard Frankfurt School understanding of the rationalization of society, I argue that the development of human rights law can only be seen as an idealization of capitalist exchange. Proceeding in a method of immanent critique, I adopt this standard model to argue that religious tolerance supervenes on economic rationalization, and thus religion is not a source of human rights, but that religious tolerance occurs alongside the growth of positive law.

In the second part of the paper, I address the potential objection that all I have done is to redefine human rights to exclude the influence of religion (and, for example, to disqualify any idea of Islamic Human Rights). I show that my argument is not affected by this accusation of nominalism and that to try to root human right in religious tradition is to miss the potential of the method of immanent critique I adopt in the first section.

Instead, I argue that religious critiques must remain within the Weberian-Durkheimian model of social rationalization, and not try to transcend it. The upshot is that this allows for religious involvement in modern discourse, while allowing the voices of critique of tradition a say in how human rights law exists. Toleration then is only possible, on this telling, by accepting Weber's original model of social development.

Creating Understanding for Peace and Human Rights

Linda Briskman*

Peaceful co-existence is a universal but elusive aspiration. Despite the search for tools to create a peaceful world, conflict remains between nations and within nations. The fostering of peace is a question to which scholars, religious leaders and politicians put their minds, but despite this attention the paradox remains that there is little evidence that local and global conflict have subsided.

Ideally the key to providing solutions can be found in the tenets of the world's major religions and cultural traditions and in the musing of some of the great philosophy voices of past and modern times. Regrettably these tenets are often absent in education systems where there are limited endeavours to encourage young people to think locally and globally about social justice, peace and human rights.

Many of the current ways of imparting knowledge of human rights and peace are limited, with the emphasis on the legal aspect alone and on international instruments such as the Universal Declaration of Human Rights (UDHR). Although the UDHR is an inspiring document given that its creation stemmed from a commitment to all

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humanity, its uncritical acceptance negates the critiques about western dominance. Arguably, unless humankind can find a way to grapple with the tension between universal and relativist approaches to human rights by acknowledging diversity, the search for peace and social justice will be limited.

This paper contemplates the creation of human rights understandings beyond legal constructs to explore how human rights concepts can be invoked through education to reduce ignorance, prejudice, religious intolerance and fear that detracts from the goal of peaceful co-existence. It explores the question of responsibility to 'the other', a form of responsibility that is not apparent in the clash of cultures and the conflict between nations.

The paper suggests a schema for human rights understandings based on philosophical, political, historical, anthropological, legal and practical approaches to human rights. This includes forging the connection between theory and practice; engaging in critical pedagogy through a process of collaborative dialogue and inquiry; being familiar with the historical origins of human rights and their application; and understanding that concepts of human rights are found in every cultural and religious tradition. In advocating such a schema it draws on examples that present barriers and prospects and in so doing outlines the endeavours that take place in the inter-disciplinary Master of Human Rights program at Curtin University in Australia as a model that may be adaptable to other contexts.

The paper concludes by suggesting practical ways in which the schema could be enacted including through a lifetime educational commitment to human rights through historical and philosophical understandings, inter-faith dialogue and cultural exchanges.

STRUCTURE OF PAPER

1. Introduction to the arguments and concepts;
2. Discussion of the complex quest for a common humanity that can lead to peace within and between nations;
3. Presentation of a schema for conveying human rights understandings and for eliminating prejudice, misunderstandings and fear;
4. Applying the schema to specific examples of intra-national (including examples from Australia) and inter-national conflict;
5. Outlining the manner in which such understandings are conveyed in the Master of Human Rights program at Curtin University, Australia; and
6. Providing some suggestions for practical measures to create a human rights model for peaceful co-existence that draws on a sound knowledge base and a sense of responsibility to all humankind.

MAIN ARGUMENTS

1. That the pursuit of peaceful co-existence within and between nations is fraught;
2. That in many countries educational programs have largely failed to prepare future adults for the complex understandings to achieve this goal; and
3. That there are a number of basic principles that can be applied to peace and human rights education.

Shi'ism and the Vision of Islamic Democracy: Ways to Secure Peace and Human Rights

Liselotte (Jamile-Zahra) Abid *

Democracy is a much used and abused word. As a possible structure of political organisation, democratic concepts are very much under debate in Muslim countries. Democracy in a western sense has become associated with a forceful "democratisation" of the Middle East, which in effect has brought war and various forms of foreign domination to crucial areas of this sensitive region. However, up to now democratic structures are an exception in Muslim countries. Due to historical developments during the past centuries, there seems to be a lack of theoretical backing for democracy in the culture of the Middle East. This is surprising, because Islam, from its beginning, has offered the model of shura (consultation), which can and should be developed to serve modern governance.

Especially Shi'ism can offer a theological backing through interpretations and explanations conducive to the formation and implementation of an Islamic democracy. In Imam Ali's (a.s.) letter to Malik al-Ashtar, we find a beautiful outline of what today is called "good governance".

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Moreover, Shi'ism postulates the Imamate of the Mahdi (a.s.) as a just rule to-come. In the absence of the Imam-e zaman, an Islamic democracy should prevail with full participation of Muslims. But how is it possible to organize a modern Muslim country democratically? In addition to a working government and a majlis or parliament formed on the basis of elections, the expertise of religious scholars is needed – scholars who are capable of Ijtihad[1], so that they can find answers to the needs of present-day life in the wake of ongoing social change.

In an Islamic polity, the period of awaiting al-Mahdi al-muntazar requires active participation of the people, since unless there is widespread readiness to support the good cause, the Mahdi will not appear. This participation is a basic human right and also a duty of men and women. For this purpose, every individual should have the opportunity to develop his/her moral, religious and cultural consciousness and the social and political awareness through education and self-education, so that citizens may fulfil their social and democratic responsibilities within the framework of Islam.

1 *ijtihad* = exegesis and interpretation of primary religious sources based on reason

Peace and Subjectivity

Louis E. Wolcher*

So long as there is law there can be no universal human right to peace. This is because legalized violence, whether in threat or in deed, constitutes the very antithesis of peaceful relations from the point of view of those whom law represses. Law cannot define peace as the absence of all violence—and still less as the absence of all legalized suffering—without gainsaying justice, for as Pascal says, "Justice without might is helpless; might without justice is tyrannical." Although legal outcomes, like falling boulders and pouncing lions, can always be imputed to historical causes, experience teaches that legal actors generally seek to legitimate their deeds by grounding the law in some non-causal narrative of the right or the good. According to a tenet of political liberalism that can be traced to Descartes' discovery (or invention) of the irreducible "I" that thinks, the legitimacy of law's narrative is both given and taken by free and rational politico-legal subjects.

In truth, however, the Western philosophical tradition gives us two separate grammars for discussing what it takes to be two different kinds of rational subjects: the causal subject and the grounding subject. The causal subject stands in a relation to the world. Acting

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strategically as the cause of effects, it uses the object world and other human beings as means to its ends. But the causal subject is also itself caused: its desires and actions are effects of history in the largest sense of the word. Such a one is fated by grammar and custom to become an object and a means in its own right: an object for scientific inquiry and knowledge, for example, and, more generally, a means to the ends of other causal subjects. From the standpoint of the causal subject, there can be no human right not to use or be used as a means.

Unlike the causal subject, the grounding subject is supposed to be a genuine origin rather than a mere link in an infinite chain of causes and effects. In Greek terms, this subject is an archē as opposed to an aitia. It also corresponds to the original Latin meaning of the word "sub-ject": it is thrown (jacere) under (sub) its world as (not in) an unmediated relation to its projects. This second kind of subject has gone by many different names, including "soul" (Plato), "freedom" (Kant) and "Spirit" (Hegel). In one way or another, the idea of the grounding subject performs its primary task within the moral sphere: it is supposed to provide a secure foundation which explains how it is possible for its doppelganger, the causal subject, at once to accomplish something in the world and to refute Plautus's notorious argument that man is wolf to man. If the causal subject reacts in the manner of an animal, then the grounding subject allegedly responds in the manner of an animal rationale. If the causal subject produces effects, then the grounding subject is supposed to create and bear responsibility for those effects.

Given the foregoing distinctions, the most pressing juridical and moral question facing twenty-first century humanity seems to be: How can law and politics become at once effective and just, coercive and compassionate,

responsive and responsible? How, in short, is it possible (to borrow Kant's somewhat quaint terminology) to use oneself and other human beings simultaneously as ends and as means? But here, as elsewhere in philosophy, appearances can be deceiving, for this question presupposes far too much.

This paper investigates the strong connection between the foregoing concepts of subjectivity and the notion of a just peace. The question is not, "Are there rational subjects and can they found something new, such as a just peace?" Instead, the question at the heart of the matter is how something as flimsy and ephemeral as an "idea" could ever found anything at all. I will attempt to unmask the terrible tensions or contradictions between justice and ethics, freedom and responsibility, and reason and compassion, and trace them to their origin: the will (or desire) to deny tragedy. I claim that the concept of the grounding subject represents a desperate and ultimately futile attempt to repress awareness of (and evade personal responsibility for) the essential sadness and tragedy of the world. Reason and faith provide the human body with a thin tissue of grounding statements comprised of symbols and images. At best these symbols and images are mere stimuli: action-triggers that will never adequately span the vast existential distance separating the grounding subject from the causal subject, our ends from our means, our words from our deeds, and, more generally, human suffering from the endless secular and religious casuistries we offer to justify it.

Qutb and Aquinas on Divine Law and the Limits of the State

(Liberalism and Religious Peace: The Case of Sayyid Qutb)

Lucas Thorpe*

In the first half of this paper I examine the importance of peace as an ideal in the liberal tradition. I begin by tracing the evolution of this ideal through the works of Hobbes, Locke, Rousseau and Kant, showing how the idea that relations between human beings should not be based upon force lies at the heart of the liberal tradition. Amongst some contemporary liberals, however, especially those influenced by John Rawls, there is a suggestion that liberal peace is only possible between individuals who are willing to make a radical separation between the religious and political domains, assigning religion exclusively to the private domain.

In the second half of this paper I question this claim and argue that liberal peace does not necessarily involve the privatization of religion. I believe that such question are better discussed in concrete rather than abstract terms and I so focus on a particular thinker who is clearly against the privatization of religion: Sayyid Qutb. On the surface it might seem that long term peace between secularist liberals and a thinker like Qutb would be impossible, because he seems to be an implacable enemy of liberal democracy. His

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most radical and influential work, Milestones, was, in part, written as a polemic against those Muslims who believed that the Koran only sanctions defensive Jihad and not offensive Jihad. Qutb argues that Islam offers a universal message and at the heart of this universal faith is a hatred of tyranny. Therefore, Muslims must not just struggle to defend Islamic lands from attack but must fight against tyranny wherever it occurs. And Qutb identifies tyranny with any society where human beings have usurped the God's sovereignty. Now, in so far as western liberal societies are based on the idea of popular sovereignty and self-determination this might seem to suggest that Qutb is arguing for the legitimacy of Muslims waging violent jihad against western liberal democracies, and this is how he is often read, both by many western liberals and by contemporary Islamic jihadists. I argue, however, that this is a hasty conclusion to draw, for it is clear that Qutb's primary target was oppressive authoritarian regimes in the Arab world and his views towards western liberal democratic society were far more ambiguous. Firstly, it is not clear that the liberal tradition is really based upon the idea of human sovereignty in the way Qutb rejects it, for this tradition is seeped in the natural law tradition, and there is a strong agreement amongst liberals that a legitimate society is one ruled by law and not the arbitrary will of human beings. Secondly, although Qutb is opposed to the idea of popular sovereignty, he himself seems to offer an analogue of the social contract, for he believes that although all law ultimately comes from God, Islamic law cannot be imposed by force and so that before one can have a society governed by divine law there needs to be an Islamic community, and which can only come into existence through the free submission of its members to the law. Finally, Qutb's views on hermeneutics also suggest a far more liberal position that is usually attributed to him.

Civil Disobedience on Respect for Law and Human Rights

Marta Kunecka*

> An individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law.
>
> Martin Luther King, Jr.

The following paper will present the theory and possibilities of implication of the phenomenon of civil disobedience understood as one of the most powerful and most effective tools of democratic society when it comes to implementing the necessary and indispensible changes required for the improvement of the political domain and the social public sphere.

In the first part I will present the narrow but orthodox and widely discussed definition of civil disobedience presented by John Rawls in his Theory of Justice (1971). Given such a definition, as well as the major conditions under which the actions undertaken in the name of civil disobedience can be justified, I will focus my analysis on two major aspects of the discussed notion.

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Firstly, I will discuss civil disobedience, which is in its essense an unlawful act, paradoxically expresses the highest respect for the positive law by the person performing the civilly disobedient act through one's submission to the judgment of the law which is an object of one's protest. This way, civil disobedience presents itself as the phenomenon which, not having a legal recognition (not being legalized), holds super-legal force required to impose the changes on the unjust legal system or on the particular unjust regulation.

Secondly, I will point out that civil disobedience, as a public act performed by the people (the subjects of the particular law), expresses the will of the people and, therefore, it can not be used (by themselves) in the ways contradictory to their best self-interest but always supported by the "the commonly shared sense of justice" (Rawls). From this premise I conclude that the universal human rights, as thir supporters claim, are one of the main ends of the political activism in the recent decade and should be advocated in the civilly disobedient manner.

In the last part I will contrast the Rawlsean definition in a much broader and more relevant way when it concerns today's globalizing world. In this world, the nation-states cease to be the only political actors when confronted with the transnational public sphere, and, therefore, the understanding of civil disobedience as a transversal arena of public dissent presented by Roland Bleiker (2000) is more appropriate. In this definition civil disobedience becomes, not only a political instrument of particular subjects of a particular society, but it also becomes a tool for the international mobilization of means and of people in the name of presenting and imposing the respect for the universal human rights despite the national borders and societal paradigms.

The Role of Women in Nation-Building: Rocking the Boat at the Risk of Making it Capsize?

Myra Williamson*

I have been in exile for a long time, and I was amazed at the resilience, intelligence, strength and ability of the Afghan women that I met who came from inside the country and around the world. These women, I promise, can rebuild the country with no problem.[1]

In this paper I propose to examine the role played by women in post-conflict scenarios, especially with regards to peace-keeping and nation building. I would like to begin with a general statement about the important and equal role of women in society, a principle which is enshrined in both international human rights documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It is also a principle that is accepted by the major religions, including Islam.

The proposed title of the paper takes its inspiration from the following quote:[2]

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1- Zeiba Shorish-Shamley, quoted in Bernard, C., Jones, S., Oliker, O., Thurston, C Q., Stearns, B. And Cordell, K *Women and Nation-Building* (Rand: 2008, USA) at 150.

2- Ibid, 3.

Few policymakers responsible for nation-building would argue against the ultimate goal of establishing equitable, democratic and egalitarian societies in which the human rights of women are respected. Many however, express the fear that pursuing that goal "too soon" may rock the boat, and that in dealing with a boat so shaky that it may capsize anyway, you just can't take the risk.

This paper seeks to determine what role women should play in post-conflict scenarios, without "capsizing the boat". It questions to what degree women's involvement must be postponed in order to first "stabilize the situation". Some would argue that given the various advantages in women's involvement sooner rather than later, that their involvement ought not to be postponed.[1] The paper will particularly draw upon the involvement of women in Afghanistan. However, Afghanistan itself provides examples of the danger and difficulty of promoting women's involvement in nation-building. For example, as recently as Sunday 29th September 2008 it was reported that an iconic Afghan policewoman, Malalai Kakar, had been shot and killed, and that the Taliban had claimed responsibility for her death.[2] This was not the first instance of a woman in Afghanistan's post-2001 police force being directly targeted for assassination. The question these incidents raise is whether an emphasis on promoting the participation of women in the Afghani police-force is premature: is this an example of "rocking the boat" or is this all part and parcel of nation-building?

1- Ibid, 4-5.

2- *Aljazeera.net* "Iconic Afghan Policewoman Shot Dead" 28 September 2008, available online at: http://english.aljazeera.net/news/asia/2008/09/20089287317569974.html (last accessed on 29 September 2008).

The proposed broad outline for the paper is as follows:

1. Introduction and basic premises: The equality of women and the role of women in society: general legal, social and religious principles
2. Women and nation-building: definitions, general principles, international documents and statistics
3. Afghanistan: processes and problems – historical context and modern issues
4. Conclusion: recommendations for Afghanistan in particular and for women in nation-building in a more general sense

Islamophobia and Disrespecting the Sanctity of Islam as a Threat to World Peace

Nazim MI Goolam*

Islam emanates from the word 'salaam' meaning peace. The paper will examine some of the common misunderstandings regarding Islam today and the Islamophobia flowing from such misunderstandings in many parts of the world.

The starting point is thus to understand the fundamental teachings of Islam. In this regard it will be argued, with specific reference to the work of Maulana Wahiduddin Khan, that the true jihad is founded on the concepts or ideas of peace, tolerance and non-violence. Each of these three ideas will be briefly examined. Khan argues that all the teachings of Islam are based on the principle of peace.

In the context of human rights discourse, the paper will ask why we have so much human rights, but so few right humans (or humans who are right). Perhaps a greater emphasis needs to be placed on human duties rather than human rights.

What about human dignity? With specific reference to the 2006 cartoon controversy, the paper will argue that there needs to be limitations on the right to freedom of

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expression in secular societies so as not to encroach on the human dignity of people of faith, whatever faith that may be. This is crucial to the maintenance of peace in societies.

Inextricably related to the question of human dignity is the question of religious dignity. It will be argued that the right to religious dignity includes the right not to be victimised, intimidated or provoked on grounds of one's religion or faith.

After some 300 years of the dominance of Western secularism and human reason, perhaps it is time for a return to the harmonization of faith and reason, to the harmonization of Revelation and reason. This call was made, in a project headed by Prof McLean, by the Catholic University in Washington in 2008. There is a need to have regard to faith-based values and the need for a human rights discourse founded on faith-based values.

The paper will also make reference to the important work and writings of a leading Turkish scholar, Fethullah Gulen, in respect of Islamic ideals, humanistic discourse and the dialogue of civilizations.

In the final analysis, if human rights are to serve to maintain world peace and human dignity it must be founded on a respect for religious values.

It is envisaged that this paper will fall into two of the sub-topics listed for the conference, namely Religion and Peace and the Interrelationship between Human Rights and Peace.

Islam, Peace and Religious Pluralism: An Analysis of the Works of Asghar Ali Engineer

Nigar Ataulla*

At a time when religion has assumed a particular potency in shaping and defining inter-community and inter-state relations the world over, the need for evolving alternate understandings of religion to creatively deal with the fact of religious pluralism has emerged as a pressing necessity. This is an issue for concerned and socially engaged believers in all religious traditions. This paper deals with how, contrary to widely-head stereotypical notions, Islam can be interpreted to promote inter-faith dialogue and amity between followers of different faiths. This discussion centers on the work of a noted Indian Muslim scholar-activist, Asghar 'Ali Engineer, seeing how he deals with the primary sources of Islam in order to develop an Islamic theology of pluralism and social justice. Given the fact that in many parts of the world today conflicts involve Muslims and people of other faiths, Engineer's creative approach to the Qur'an offers us an alternate way of imagining Islam and Islamic rules for relations between Muslims and others. In turn, this way of approaching Islam, fashioning Islam as an instrument of peace instead of a tool for war and bloodshed, can provide insights and inspiration to work towards the peaceful resolution of many conflicts in which Muslims are involved.

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Constructing Citizenship through War in the Human Rights Era

Timothy William Waters*

War's historical relationship to the creation of territorial nation-states is well known, but what empirical and normative role does war play in creating the citizen in a modern democracy? Although contemporary theories of citizenship and human rights do not readily acknowledge a legitimate, generative function for war – as evidenced by restrictions on aggression, annexation of occupied territory, expulsions, denationalization, or derogation of fundamental rights – an empirical assessment of state practice, including the interpretation of international legal obligations, suggests that war plays a powerfully transformative role in the construction of citizenship, and that international law and norms implicitly accept this.

Dominant discourses on citizenship in the liberal and cosmopolitan traditions focus on the individual as the unit of analysis and normative concern, and on his rights against the state. At the same time, the choice of how to construct citizenship – to whom to grant it or from whom to withhold it, and what content to give citizenship – is closely linked to questions of security and identity: citizenship either presupposes or purports to create some measure of common identity among citizens, and implies obligations as well as

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rights. This chapter argues that, in assessing legal and moral positions, this role – if not necessarily approved – must be accounted for to achieve a fuller understanding of how peace, war and rights are related.

Human rights may be conceptualized as universal, but their application and specific content are often mediated through the state, and therefore understanding how states retain the ability to define the contours of citizenship, including through the effects of war, is critical to an understanding of the actual scope of human rights as a legal enterprise and a lived experience.

The article will examine the formal limits placed on war as an instrument that could affect citizenship; then it will examine the evidence for war's continued effect (through means such as differentiation between citizens and alien residents, expulsion of aliens, assimilation of refugee flows, and border changes); then it will advance an argument about how the factual effects of war interact with legal doctrine (such as through selective definition and interpretation of wars, perfection of wartime changes in peace treaties, and novel demographic changes introduced by peace treaties).

The article considers the concepts of participation, loyalty, and treason; the evidence and implications of wartime propaganda; the rules and practice governing transfer of populated territory between sovereigns; the incentives that the laws of war create for individuals' identification with the state; and the accommodation in peace plans of demographic change wrought by war.

Principal reference is made to changes in citizenship status following the wars of the former Yugoslavia, the Algerian decolonization, the postwar settlement of Europe, and to the debates about the contours of citizenship in Israel and the Palestinian territories.

Two Mistaken Conceptions of Human Rights in Both Islam and the West

Ulrich Steinvorth*

The first mistaken conception is this. Some Muslim theorists argue that only God can proclaim what justice, right, and rights are; hence parliaments and other state institutions lack the sovereignty to create laws and to proclaim rights. They presume that Western states in their legislation and the UN in their Universal Declaration of Human Rights of 1948 claim such sovereignty. Many Western theorists share their view, differing only in the evaluation. But human rights imply that states must follow them and lack the sovereignty for legislation incompatible with them. The German constitution is explicit on this lack of human sovereignty. It declares in Art.1: "The following basic rights shall bind the legislature, the executive, and the judiciary as directly applicable law." Hence, the idea of human rights implies that human rights and basic principles of legislation are valid not because states have declared them but because of their inherent qualities. It also implies that states are legitimate only if they conform to such basic principles and excludes the idea that the principles are legitimate because states or mankind have accepted them. Therefore,

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Western and Islam conceptions of law and sovereignty are less different than they seem.

Second, it is generally accepted in Islam and the West that there is a right and even the duty of every human being to fight for justice and the protection of human rights. But there are two conceptions of such a fight both in Islam and the West, a centralist and an autonomous conception. According to the centralist conception, the fight is a venture led by an avant-garde of chosen individuals and united in a revolutionary party (Marx, Lenin), in a religious group (Qutb) or in the representatives of the representatives of all nations such as the UN. They impose rules of justice that are the same everywhere. People outside such institutions are downgraded to applauding the avant-garde. According to the autonomous conception, the fight for human rights cannot be separated from solving the concrete problems and conflicts that divide people. Human rights and general justice principles can help to solve them, but they must be applied and the solutions must be accomplished by those concerned by the conflicts.

The model of the fight for human rights in the centralist conception is a bureaucracy that imposes its rules on the cases it administers. The model in the autonomous conception is a scientific community that solves its differences by principles developed in the community itself. Like the centralist conception, the autonomous conception allows for avant-gardes, as there may be particularly able scientists. But the rules they apply are the rules that can be developed only in the community and require for their application not the applause but the judgment of every member of the community. Replacing the centralist by the autonomous conception would remove a serious danger for peace.

Religion, Race and Human Rights Struggle for Protection of Vulnerable People

Kamran Hashemi

Discrimination and xenophobia are threats to peace and in many occasions have led to armed conflicts. Similarly the UN Special Rapporteur on Racism, Doudou Diène finds racism and xenophobia, rather than terrorism, as "the most serious threats to democracy" On the other hand, international struggle against non-discrimination, fascism and xenophobia, along with protection of minorities, has been concentrated on the racial and national aspects of vulnerable people, rather than the religious ones. This policy seems no more adequate when as Abdelfattah Amor, the former UN Special Rapporteur on religious intolerance states that "there are borderline cases where racial and religious distinctions are far from clear-cut

Abdelfattah Amor adds, "apart from any discrimination, the identity of many minorities, or even large groups of people, is defined by both racial and religious aspects. Hence, many instances of discrimination are aggravated by the effects of multiple identities." Similarly Diène refers to "the centrality of the amalgamation of the factors of race, culture and religion in the post-9/11 ideological atmosphere of intolerance and polarization." According to him this atmosphere "favors the incitement to racial and religious hatred… [and] is indicated by the latest controversies about the caricatures of the Prophet Muhammad published by the *Jyllands-Posten* newspaper in Denmark."

The main argument of the paper will be on the similar purpose of race oriented human rights instruments such as CERD Convention, Apartheid Convention and Genocide Convention on the one hand, and religion oriented instruments, such as the Declaration on the Elimination of All Forms of Intolerance Based on Religion or Belief, on the other. The research suggests that while the main purpose of these instruments are to protect all vulnerable people, including some people on the ground of race or ethnic and excluding others on ground of religion is not in line with the purpose of these instruments , and itself is discriminatory .

To support the argument, another comparison can be made between the purpose of limiting clauses in Articles 19(2) of the ICCPR and 10(2) of the ECHR on the one hand, and Article s 20(2) of the ICCPR and 4 of the CERD Convention, on the other hand. While the purposes of the limitation clauses of the former articles are such matters as public policy or rights of others, the main purpose of the latter articles are protection of vulnerable 'others', which is similar to the purpose of all international and regional instruments on protection of vulnerable, for which affirmative measures have to be undertaken.

To protect security and peace and , and in this line to address the shortcoming of legal bases of combating xenophobe and to include all 'others' under the protection of anti-discrimination, anti-racism and anti-xenophobia struggle, the paper suggests exploring the concept of ethnoreligousity to be replaced, when appropriate, with merely ethnic (racial) or religion element .