

# The Changing Face of Religion and Human Rights

A Personal Reflection

*Clemens N. Nathan*



Martinus Nijhoff Publishers

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*By*

Clemens N. Nathan

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PRINTED IN THE NETHERLANDS.

*Dedicated to my wife Rachel  
who has always given me the space to be creative*



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## Foreword

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You have in your hands a remarkable book, written by a remarkable man. Clemens N. Nathan has devoted a lifetime to the pursuit of Human Rights – to understanding and reflecting upon the concept of Human Rights; to participating in, and sometimes helping to create, organisations and mechanisms for the protection and promotion of Human Rights; to helping those who have been denied their Human Rights and to encouraging and supporting research into and scholarship on Human Rights. All this has been achieved by a man who has had no formal training in the field, but who has become a recognised expert through his extensive reading, through working with leading exponents, and by drawing upon his lively intellect, his wealth of culture and his knowledge of history, philosophy and religions.

Elsewhere in this volume, an autobiographical sketch can be found, so it is unnecessary for me to chronicle and catalogue the details of the author's activities and his life story.

What should be said here, however, is that the biography tells us much about the man, and thus about this book. Clemens N. Nathan's personal encounter with Nazism and its racist policies has never left him, and has spurred him on to make extraordinary contributions to the advancement of Human Rights. He has worked inexhaustibly for reconciliation, for inter-faith debate, for reparation for victims, for preventative mechanisms and for dialogue. He has gathered about him a circle of friends and colleagues, a 'network' from all corners of the world, from all religions and from many academic disciplines. With these men and women, and the organisations to which they belong, he has succeeded in launching and sustaining useful and constructive events and programmes which have had a beneficial and measurable impact on the improvement of Human Rights. My own institution, the Raoul Wallenberg Institute, Lund University, Sweden has enjoyed a cordial and mutually-enriching relationship with Clemens N. Nathan and his eponymous Research Centre for several years, since we were brought together by the Clemens Nathan Research Centre's Director of Research, Alan Stephens.

This book will make you think; it will stimulate you; it will inform you; it will challenge you; here and there it may puzzle you, as all good books should! The author's own puzzlement with respect to the impact of religion on Human Rights – so much good, so much harm – is the book's central feature, and an irony with which he con-

stantly wrestles. He writes with knowledge, with sympathy and with passion, making this book an addition to Human Rights literature that is as welcome as it is unusual.

Leif Holmström  
Director, Raoul Wallenberg Institute of  
Human Rights and Humanitarian Law,  
Lund

## Preface

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Throughout my life I have been involved with human rights. My first encounters with these vital issues were while working with textile plants in both developing and developed countries. I witnessed first-hand the very different ways in which managers managed their workers. In some instances, employees were treated decently, but in other cases this was not so. I was often quite horrified by what I saw, and protested. This might have put my contract as an adviser to the plant in jeopardy, but by treading carefully, I managed to avoid this, and was able to explain that certain types of behaviour were simply unacceptable to the outside world.

I also witnessed the frustration of managers at the unrealistic demands of textile workers who wanted to see themselves in the same light as those who worked in high-tech industries in other parts of the country. Ultimately, some of these textile plants had to close down because they were unable to compete. Today, of course, we have seen how many of the old, established industries have shifted their production centres from Western Europe to, among other countries, China.

I was fortunate during my professional career to be invited to participate in independent human rights activities through my involvement with the Jewish community in Europe. And I was flattered and overwhelmed at first to be allowed to attend some of the large-scale meetings, including those of the United Nations. Over time, I have been able to see how complex the whole matrix of human rights actually is, and have had a good vantage point from which to see how different cultures perceive this complex issue.

In an attempt to widen my own knowledge and understanding of human rights and religion, and to introduce others to this highly complex area of human activity who like myself have no professional training in the field, I thought it might be useful to write a book.

The more I explore the subject, the more I realise that it is endless, and that it presents a continuously moving target for criticism. While writing this book, I was constantly confronted by topical news items worthy of inclusion. I set about dealing with them until a friend quite rightly pointed out that there comes a moment when you need to close a book and present it as it is! I am conscious of the fact that there will be readers more versed in the minutiae of this subject matter than I, but I hope that they will nevertheless find some interest in my viewpoints. Others may be pleased to

learn a little about the evolution and complexity of the relationship between religion and human rights, and the tension that may exist between the two.

I have travelled to many countries and visited countless synagogues, churches and mosques, and have admired the beautiful diversity as well as the similarities that all faiths seem to share when attempting to explain the inexplicable. I have been lucky enough to establish genuinely deep friendships with people of all faiths, and although I do not devote a great deal of attention to the Far East in this book, this does not mean that I am not fascinated by those friends in India and Japan and other countries of the East who have gone out of their way to talk to me about their beliefs. To me it seems important that all of us, wherever we live, should have faith when thinking about the mysteries of life and death, and I hope that in this book some of these opinions and experiences of myself and my friends come through to you, the reader.

I have also been involved on a voluntary basis with restitution (indemnification) for the gross violations of human rights of the Holocaust.<sup>1</sup> My own personal experience has made me acutely aware of the obscene abuses of human rights from the period of the Third Reich, and I have met many survivors of the concentration camps. I have concluded from all this that the protection of human beings from madmen (whether they be fanatically religious or anti-religious dictators) is absolutely crucial. This is why I am a supporter of the International Criminal Court, which promises to provide an effective and internationally recognised means by which dictators and other international criminals can be put on trial before the eyes of the world. There are, of course, many problems with an international criminal court, but the ICC remains an important additional safeguard, one that will make despots aware of their accountability. This said, the slaughter of innocent people continues unabated from one end of the globe to the other, and one sometimes must wonder whether any legislation to protect the individual will ever achieve its goal.

Ironically, religion has also played a major part both in contributing to fanaticism and to making human beings aware of their accountability. This is what I hope this book will demonstrate.

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1 I have been involved with this work at the United Nations. In addition, The Clemens Nathan Research Centre has been involved in sponsoring research, conferences and publications on these and other issues. In 2007 we held a highly successful conference in the Hague with REDRESS on reparations for victims of genocide.

## Acknowledgements

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There are so many people who inspired me and gave me excellent advice on how to proceed with this book, and to all of them I am deeply grateful. There are too many to mention, but I would like to acknowledge certain people who painstakingly went through my manuscript and gave me good advice on the structure and layout as well as on some of the theological issues. They include: David Abrahamson, Richard Borchard, Silke Goldberg, Edward Kessler, Lindy Melman, Alex Pearl, John Pickering, Aubrey Rose, William Sholto, Daniel Sperber, Jesper Svartvik, Dan Wilkes and Robin Woolf. Special thanks must go to Alan Stephens, who inspired me to turn vague thoughts and ideas into a full-length manuscript.

Last but by no means least, I need to thank my researcher, Dr Tony Gray, my supporter at every stage of the manuscript, without whom this would never have been finished. His encouragement and ideas have made this book worthwhile for me and hopefully for the reader as well. Above all, I am personally responsible only for what is finally in this manuscript. I am conscious of its limitations but there were certain subjects which I wanted to highlight and others which I felt I wanted to omit.

### **Note on the cover illustration**

The cover illustration, *Zwei Maskenköpfe*, is a painting by Karl Hofer (1878-1955 Berlin) dated 1953, depicting masks for an opera in Sweden. Hofer was one of the painters rejected by Hitler and Goebbels, and was exhibited at the famous Entarte Kunst Exhibition in Munich where many modern paintings were rejected as degenerate art. Many of the 'dregs', as Goebbels called them, were destroyed in a spectacular blaze in front of the Fire Department in Berlin later in 1939. In 1943 Hofer's studio in Berlin was destroyed and 157 paintings were ruined. His son was sent to a concentration camp in 1944 and pictures by Hofer illustrate the hopelessness of Nazi terror. He was the teacher of Ernest William Nay.

I bought this picture in Munich in the 1990s. I thought it was a very powerful expression of the emotions of fear and hunger or hatred. Although it was painted well after the Second World War, the figure on the left looks a little like Adolph Hitler and I wondered whether Hofer's traumatic experiences of this period came through with these two portraits. He was a passionate pacifist.

I am in debt to Beck & Egglinge for discussions on this picture.





**Aims**

This book is an attempt to introduce and explore the relationship between human rights and religion. By examining examples of their interaction, it will explore how religion can both hinder and promote human rights. Would human rights be best served by the disappearance of all religions? Or is the inter-relationship between religion and human rights necessary for the promotion of worldwide human rights? Is this the way forward for greater harmony between human beings?

This introductory section outlines the themes of the book. Chapter 2 will examine the evolution of the human rights movement into the worldwide phenomenon that it now is. How did it arise? Why was it established? What are its main concerns? What are its achievements? What are the aspirations of those involved in this movement?

In order to facilitate an understanding of how rights and religion interact, Chapter 3 will try to clarify what is meant by 'religion.' What is religion? How can the major religions be defined, if at all, and what does it mean to be spiritual? Can one be spiritual without being religious?

Chapter 4 takes the discussion of religion further, and examines how the different ways in which religion is manifested affect the ways in which it impacts on issues of human rights. A draft typology outlines how religion relates to society and, within that society, to the rights of those living in it. The typology reflects the largely negative way in which this has taken place.

The fifth chapter examines a case study that illustrates the complex relationship between religion and human rights. Across Europe, nation states have a variety of approaches to the wearing of the headscarf (the hijab) by Muslim women. What approach do states take toward this type of human right to express religion? Conversely, can the wearing of the headscarf be viewed as an infringement of other people's human rights?

The second case study in Chapter 6 addresses the issue of the death penalty. This can be illustrated by its application in both the USA, and some Muslim states. Yet a fundamental human right, the right to life, is thereby violated, even where someone is guilty of a murder. Should murder lead to the ultimate withdrawal of the perpetrator's human rights? How do these tensions arise, and how, if at all, can they be resolved?

As an exploration of the positive contribution that religion can make to human rights, Chapter 7 will then examine two different political situations where religion has played a positive role – the American Civil Rights movement and the non-violent campaigning of Gandhi, and other organisations and groups.

The penultimate Chapter (8) attempts to suggest a few answers to the problems encountered in the preceding sections of the book. Should rights exist with or without religion? Will the wellbeing of humanity really be advanced if the one is considered as separate from the other? The following suggestions will be developed

- Whilst often being a damaging relationship, the connection between religion and human rights is such that it would be impossible to conceive of human rights progressing in the world as it is without religion taking an active part.
- Despite its record, religion has and can continue to actively promote human rights.
- Whilst there are major differences between the ethics of the world religions, discussions and research have revealed a high level of agreement about their ethical commitment, much of which is enshrined in the human rights movement.
- Rights without religion seem improbable – not only have the world religions been crucial in the development of the human rights movement, but if any rights movements were to advocate the abolition of religion, this would bring into question a basic human right – the right to faith.

The conclusion then highlights some examples of how the human rights movement and religions are working together.

Several caveats must be made about this book. First of all, it is not a discussion of the right to religious freedom, important though that is. Religious freedom is a human right as long as it does not oppress others, and one to be fought for. But we are concerned here with the relationship between rights and religion, not with the right to express religion, even if this topic will come into our discussion as one right among many. Many others are much more able to enter into this discussion, to chart the history of abuses against this right and to detail instances around the globe where this human right still needs to be defended.<sup>2</sup>

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2 See for example the work of the Keston Institute. Xenia Dennen, the Chairman, provides a helpful summary of the history and work of the Institute, at [www.starlightsite.co.uk/keston/lectures/sound/conference.htm](http://www.starlightsite.co.uk/keston/lectures/sound/conference.htm). Another issue of personal interest is *Jews in the Soviet Union* – see Avineri, Chlenov and Gilenu, *Jews of the Former Soviet Union: Yesterday, Today and Tomorrow* (The American Jewish Committee, 1977). I was deeply involved in the Keston Institute when Michael Bourdeaux was the director. We spoke together at a conference in Brussels in 1970, where my objective was to highlight the fact that the Jews in Russia were treated worse than any other minority religious group. During my speech under the chairmanship of René Cassin, I was given the final speech of Vladimir Bukovski to read in front of a large audience of delegates. He was sentenced to seven years' penal servitude, even though he was a communist. His plea was that he was an ideal communist, that he loved the Russian state, and that everything that happened during the trial was a depravity of the ideals of communism. After I read out his

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Secondly, there are many other books that deal ably and explicitly with the use of violence in the name of religion. For example, Oliver McTernan's *Violence in God's Name: Religion in an Age of Conflict* (Orbis Books, 2003) is an excellent discussion of the use and abuse of religion in conflicts throughout the world. It helpfully redresses the contemporary political balance, where theorists have assumed that religion has little to do with terrorist campaigns and ethnic conflicts across the globe. McTernan argues powerfully that political correctness has wrongly removed religion from the equation and that unless this state of mind is challenged, the world will never eliminate the threat of faith-inspired terror. Whilst this work touches on violence in the name of religion at various points, it is only part of the story of the relationship between religion and human rights. This is one of the reasons why I decided to examine one human rights issue entailing violence (capital punishment), and one non-violent issue (headscarves).

This book cannot be a comprehensive analysis of all these wide-ranging themes. If it encourages more reading and enquiry into the subjects outlined, it will have achieved its objective.

## Setting the Scene

### Equality

On August 28, 1963, Martin Luther King's famous 'I have a dream' speech to over 200,000 civil rights activists in Washington included the following statement from the American Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal.

Dr. King was unwavering in the commitment he made to this belief – a belief informed by religion, and a conviction for which he would ultimately be killed five years later. In his sermons as a religious minister and a black activist, he campaigned for human rights.

Dr. King's attitude contrasts drastically with the horrific attitude of the Nazis to the Jews. As Hitler wrote,

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extremely well written speech, the members of the press rushed to me, and my speech was later broadcast by American Liberty Radio to every East European country in various languages for a whole week, although I was not aware of this until much later. Two years later, in Israel, I was invited by the government to visit an industrial zone south of Jerusalem. During my visit to look at the clothing factory making dinner jackets for *Marks and Spencer*, a whole group of Georgian workers came up to me and kissed me. They had heard my speech in Georgia, USSR, two years earlier, and told me that my speech had given them hope. This was one of the reasons they had felt encouraged to apply to emigrate to Israel. My wife and I hugged them, and tears flowed from our eyes. Now they were living in decent flats, they had crèches for their children and enough to eat, and could worship as they wanted.

Was there any form of filth or profligacy... without at least one Jew involved? If the Jews were alone in this world, they would stifle in filth and offal.<sup>3</sup>

### **Religions: Judaism**

In the second century CE the Mishnah (a recording of Jewish oral law) stated that:

It was for this reason that Adam was created alone: to teach you that anyone who destroys a single life, it is to be accounted to him by Scripture as if he had destroyed the whole world, and whoever preserves a single life, it is accounted to him by Scripture as if he had preserved a whole world... and also to teach you the greatness of God: for a person stamps many coins with one die, and they are all similar; but God has stamped every person with the die of Adam, yet no one is similar to his fellow. Therefore, everyone must say: 'For my sake was the world created.'<sup>4</sup>

Jews also appeal to the Noachide law (seven minimal moral duties enjoined upon all persons) 'an ancient minimal statement on human rights.'<sup>5</sup> Other examples of the ethics of Jewish law include the instruction that judges should neither favour the poor nor the rich in judging people – see the Babylonian Talmud Shabbat 31a.

### **Religions: Islam**

Although they do not talk about rights explicitly, most of the great world religions uphold a commitment to equality and freedom. According to the Qur'an,

We have made you nations and tribes that you may know one another... not that you may despise one another.<sup>6</sup>

As Prince El Hassan Bin Talal explains,

The Holy Prophet Muhammad (peace be with him and his progeny) set out the egalitarian precepts of Islam as law with moral and ethical dimensions in addition to legal ones. Thus, from the very outset – and indeed inherent to its message – Islam rejected any notion of differences based upon racial or ethnic distinction, and thus also rejected any notions of discrimination that may be based upon such differences.<sup>7</sup>

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3 Quoted in Lucy Dawidowicz, *The War Against the Jews, 1933-1945* (London: Penguin, 1975), 45.

4 M Sanhedrin 4.5, quoted in Michael Fishbane, 'The Image of the Human and the Rights of The Individual in Jewish Tradition', 19, in Leroy S Rouer (ed.) *Human Rights and the World's Religions* (Notre Dame: University of Notre Dame Press, 1988), 17-32.

5 Ibid., 26; b. Sanhedrin 56-60.

6 Chapter 49.13.

7 *Racism, Xenophobia and Discrimination – Humanity's Need for a New Ethical Code of Conduct* (London: CCJO, World Conference Against Racism Discussion Papers, 3).

According to one interpretation of Islam, the Qur'an contains a clear commitment to equality before God – even if, for a Muslim, rights are concerned with obligations to God and hence freedom is the personal surrender of self to God.

In contrast with this, Louis Farrakhan, leader of the American-based Nation of Islam, has made the following statements:

The Jews have been so bad at politics they lost half their population in the Holocaust. They thought they could trust in Hitler, and they helped him get the Third Reich on the road.<sup>8</sup> German Jews financed Hitler right here in America.... International bankers financed Hitler and poor Jews died while big Jews were at the root of what you call the Holocaust.... Little Jews died while big Jews made money. Little Jews [were] being turned into soap while big Jews washed themselves with it. Jews [were] playing violins, Jews [were] playing music, while other Jews [were] marching into the gas chambers...<sup>9</sup>

It is worth noting that Louis Farrakhan wanted to visit Great Britain when I was President of the Anglo-Jewish Association – we tried to stop him coming, and visited Douglas Hurd, the then Home Secretary. The Minister agreed with us that Farrakhan was a person who would incite racial hatred and was therefore an unwelcome visitor. The outcome was that he did not receive permission to enter the country, but he sent videotapes including the above speech all over the UK.

### **Religions: Christianity**

Although there is no explicit mention of human rights by Biblical writers, Christians appeal to the opening chapters of Genesis where human beings are created uniquely in the image of God. As God shows no favouritism (Ephesians 6.9), Jesus is held up as the example par excellence of one who welcomes all, whatever their social status or background. The Christian gospel proclaims that Jesus, 'being in very nature God, did not consider equality with God something to be grasped, but made himself nothing, taking the very nature of a servant' (Philippians 2.6-7).

Many Christians and non-Christians alike uphold the 'Golden Rule' as an ideal, to 'do unto others as you would have them do unto you,' which is taken from Jesus' teaching of the great commandment to love God and 'love your neighbour as yourself' (Matthew 22.39).<sup>10</sup> This itself draws on Leviticus.

William Temple clarified the Christian approach to equality:

8 Saviour's Day Speech, Chicago, February 22, 1998, [www.adl.org/special\\_reports/farrakhan\\_own\\_words2/on\\_holocaust.asp](http://www.adl.org/special_reports/farrakhan_own_words2/on_holocaust.asp).

9 Mosque Maryam, Chicago, March 19, 1995, *ibid*.

10 There are of course, as in any religion, a variety of interpretations of the key figure, in this instance Jesus. For a popularised liberal reading of Jesus which includes instructive history of the first centuries of Christianity, see Keith Hopkins, *A World Full of Gods* (London: Weidenfeld & Nicolson, 1999). We shall examine the varying nature of religion in Chapter 3.

There can be no Rights of Man except on the basis of faith in God. But if God is real, and all men are his sons, that is the true worth of every one of them. My worth is what I am worth to God; and that is a marvellous great deal, for Christ died for me... what gives to each of us his highest worth gives the same worth to everyone; in all that matters most we are all equal.<sup>11</sup>

Yet at the time of the crusades, Christian persecutors viewed Muslims and Jews as worthless, less than human. The slaughter of the Jews in York in the thirteenth century was a prelude to the Crusaders marching to the continent from England; they also made Jews wear the yellow star for the first time.

One of the heroes of the Protestant Reformation, Martin Luther (1483-1546), was strongly critical of Jews during the beginning of the sixteenth century after he failed to convert them to Christianity.

What then shall we Christians do with this damned, rejected race of Jews? ... Let me give you my honest advice. First, their synagogues or churches should be set on fire... Secondly, their homes should likewise be broken down and destroyed...

After an extensive list of what trials the Jews should be subject to, Luther concluded:

To sum up, dear princes and nobles who have Jews in your domains, if this advice of mine does not suit you, then find a better one so that you and we may all be free of this insufferable devilish burden – the Jews.<sup>12</sup>

These contrasting views, taken from within the three main Abrahamic faiths, illustrate the dramatic and conflicting aspects of the relationship between religion and human rights.

In 1948 the United Nations created the Universal Declaration of Human Rights, which enshrines the principles of human equality in its articles. Article 1 sets out the conviction that:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.<sup>13</sup>

If all this is true, why is it that throughout human history there has been and continues to be tension between religions and human rights? If both seem to be promoting similar values, why in the modern world does religious conviction infringe on the

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11 *Citizen and Churchmen* (London: Eyre and Spottiswoode, 1941), 74-5.

12 *The Jews and Their Lies*, quoted in R Landau, *The Nazi Holocaust* (London: I B Tauris, 1992), 47.

13 This will be explored in greater detail later in the book. The Genocide Convention was adopted at the same time.

human rights of so many? These are questions with which we shall deal in depth below.

In considering the interface between religion and society, the Archbishop of Canterbury caused a controversy in early 2008 due to comments he made about Shari'ah Law. On 8th February, *The Daily Telegraph* reported that 'Dr Rowan Williams, the Archbishop of Canterbury, has sparked a political storm by calling for aspects of Sharia law to be adopted in Britain.' The discussion was prompted by a lecture that Dr Williams gave at the Royal Courts of Justice on 'Civil and Religious Law in England: a religious perspective', and a subsequent interview on BBC Radio 4's Today programme. In actual fact, he made no proposals for Shari'ah in either the lecture or the interview, nor did he call for the introduction of Shari'ah as some kind of parallel jurisdiction to civil law, as was widely reported. Rather, he observed that 'as a matter of fact certain provisions of Shari'ah are already recognised in our society and under our law.'

The reactions against his statements were based on the conviction that ethnic communities must integrate into British society without the need for separate jurisdictions and laws applicable to different communities. Prime Minister Gordon Brown's spokesman said that while certain allowances had been made for Muslims, British law would be based on British values and Shari'ah law was no justification for acting against national law. Christian groups were swift to affirm that Britain was a Christian country, with laws based on Christian morality.

At the very least, the debate illustrated the deep divisions that are emerging in British society, and the opposing approaches taken towards issues of integration and accommodation. Dr Williams' lecture was also stimulating for considering the issues of religion and human rights. Regarding Shari'ah Law, and our understanding of it in the West, he said,

I do not think that we should instantly spring to the conclusion that the whole of that world of jurisprudence and practice is somehow monstrously incompatible with human rights just because it doesn't immediately fit with how we understand it.<sup>14</sup>

#### Four Examples

The troubled relationship between religion and human rights can be illustrated in four twentieth-century examples. These are the issue of religious fundamentalism (a Western idiom), as exhibited in the terrorist attacks of September 11, 2001; the ban against wearing head scarves in state schools in France; the atrocities of apartheid in twentieth-century South Africa; and the Holocaust.

The choice of these four issues does not imply that they are of equal importance or gravitas. On the contrary, the infringement of civil liberties that the banning of wearing a headscarf may represent is a far cry from the suffering experienced by black people in South Africa or the destruction caused by the events of 9/11; nor can it be equated with the devastation and horror of the atrocities committed against the Jewish people and others deemed unfit or less than human by the Nazis (including

14 *The Independent*, 8 Feb 2008.



homosexuals, gypsies and handicapped people). However, what these four examples do illustrate is that the complex relationship between religion and rights is a contemporary as well as an historical problem, and that it is one that travels the globe and impinges on a huge spectrum of life. Few, if any, members of the human race remain untouched by this issue.

### **Religious Terrorism<sup>15</sup>**

The 9/11 outrage is another example of religious conviction causing unimaginable terror and horror, bringing a new level of terrorism to the world, and once again a fear of religion and what it can be capable of.<sup>16</sup> The strike by al-Qaeda at the heart of Western capitalism and all it stands for is a clash between religion and human rights. In New York, the rights of over 3,000 people (the right to life – Article 3 of the UDHR) were violated by those who claimed to be exercising their right to freedom of belief. This was done as an act of revenge for what the terrorists believed to be interference with their ideology and their way of life. The bombing of trains in Spain in March 2004 and London in July 2005, almost certainly linked to an Islamic terror group, ensures that this terror continues.

Unfortunately, it is all too easy to label this sort of activity ‘religious fundamentalism’ and thus fail to understand what is going on in the minds of the perpetrators. We shall examine this phenomenon more closely in Chapter 4. Fundamentalism is not of course a new concept, and numerous studies of the issues help to unravel the complexities involved.<sup>17</sup> September 11 was a brutal opposition statement. The USA has initiated a long history of involvement in the Middle East for economic and strategic reasons, especially against the former Soviet Union that angered Bin Laden and his followers.

This said, Bin Laden’s major grievance against the USA was its presence in his homeland of Saudi Arabia during the first war against Iraq in 1990 to liberate Kuwait, something considered to be a desecration of one of Islam’s holiest sites. It is likely that he was also angered by US involvement in Somalia, but more importantly by US involvement in the whole of the Arab world – hence Bin Laden’s stated intention of

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15 A conference on terrorism and human rights, sponsored by the Clemens Nathan Research Centre and Martinus Nijhoff Publishers, explored this topical issue in greater depth than these pages allow. General the Lord Guthrie of Craigiebank spoke on the current threat, following the London bombings on July 7, 2005. The proceedings were published as *Terrorism and Human Rights* (Clemens Nathan Research Centre, 2007).

16 Though it is worth noting that there are a few Muslims who do not believe 9/11 to be an act of terrorism. Many consider this a hijacking of their faith.

17 See, amongst others, Karen Armstrong, *The Battle for God: Fundamentalism in Judaism, Christianity and Islam* (London: Harper Collins, 2000), Chris Partridge (ed) *Fundamentalisms* (Carlisle: Paternoster, 2002), and the volumes on Fundamentalism edited by Martin Marty.

forcing America to 'desist from aggressive intervention against Muslims in the whole world'.<sup>18</sup>

Bin Laden originates from an extremely wealthy and large Saudi Arabian family. When he was studying in Arizona he brought together a group of rich Arabs who were highly intelligent. They created the whole network, founded on their so-called idealistic principles which never once remarked on the inequality of people in the Arab countries where they lived. Al-Qaeda thus began its attacks on America, beginning with the bomb attack on the World Trade Centre in 1993, then bombing US air bases in Saudi Arabia and culminating in 9/11.

These groups also heard the powerful American Evangelicals whose extreme Christian ideology was broadcast to Arabic television stations all over the Middle East and translated into Arabic. Sadly, the crusading language adopted by those groups has not helped to foster greater understanding between Muslims and Christians. Whilst all the parties involved claim that the current 'war' on terror is non-religious, this remains debatable. Many see it as an example of religion clashing with human rights on a massive scale, and in this case, using modern technology to do so. However, the questions concerning human rights do not end here. The subsequent 'war on terrorism'<sup>19</sup> launched in the USA by President Bush and his allies around the world resulted in the internment of hundreds of Muslims suspected of being terrorists or of having links to al-Qaeda.

After 9/11 and other terrorist acts worldwide, most countries began to accept the need for counter-terrorism measures, although they might previously have been indifferent. President Bush campaigned internationally for the war on terror as a war against evil, a war that had to be waged in defence of all that is good and right and godly – in fact, of his self-declared Christian principles. Just 45 days after September 11, Congress passed the USA Patriot Act 'to deter and punish terrorist acts in the United States and around the world' (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001).

The state of being 'terrorised' may not in fact always infringe particular human rights. For example, to fear a natural disaster or a comet obliterating human life on the planet may leave one in a state of terror, but this is neither terrorism nor an infringement of a human right. However, to be held captive at gunpoint by a religious group demanding the release of political prisoners is both an act of terror and an infringement of a human right – that is, the right to liberty or even life.

The task of defining terrorism is so fraught with difficulty that several bodies have refused to provide an ultimate definition. The report by the International Bar Association's Task Force on International Terrorism, 'International Terrorism: Legal Challenges and Responses', wrote that:

18 Lawrence Freedman, 'Out of Nowhere?', [www.bbc.co.uk/history/recent/sept\\_11/build\\_up\\_01.shtml](http://www.bbc.co.uk/history/recent/sept_11/build_up_01.shtml). However, the atrocities carried out by Muslims against Christians and other Muslims in the Sudan and Somalia does not appear to worry Bin Laden.

19 Delegates of a recent Clemens Nathan Research Centre conference on terrorism and human rights were of differing opinion as to whether this is properly a 'war' – with the human rights lawyers criticizing the use of the term, and the army strategists being more favourable towards it.

Agreement upon a definition of terrorism has eluded the international community for many years. After grappling with this issue for some time, the Task Force felt that it was not necessary to come to a conclusive definition. Instead, it noted that acts of terrorism are defined as crimes in virtually all countries around the world and that, within a domestic context, it may not be necessary to agree upon a specific crime of terrorism.<sup>20</sup>

It is not the task of this study to define 'terrorism'. In both hypothetical discussions and real situations, it is generally recognised what terrorism is. Of course, those groups perpetrating the 'terror' may not argue that this is the case – the over-quoted phrase which declares that, 'one person's terrorist is the next person's freedom fighter', does at least illustrate this point. However, it is not necessary that everyone should hold the same political or religious views for the international community to agree that such a thing as terrorism exists.

Terrorist activity affects human rights in a huge number of ways. It may result in the taking of life, the physical and mental harm of persons ('innocent' or otherwise), the dispossession of people or groups from their homes and land, the contamination of basic necessities of life, such as food and water, etc.

However, whilst the terrorist act itself is the decisive point, the resulting impact can have a knock-on effect on a wide range of human rights issues. Terrorist acts can instil a feeling of terror in those who feel vulnerable. The randomness of terrorist acts, commonly thought to be perpetrated against the innocent, compounds this. Chief Rabbi Dr Jonathan Sacks observes in an article in *The Times*,

That was when I realised that this is the ultimate terror – not violence and death in themselves, but the sheer randomness, striking the innocent for no reason, for there is nothing that terror has achieved or ever will that could not have been better reached by other means. It is destruction for destruction's sake.<sup>21</sup>

It could be argued that to live in a state of fear erodes an individual's sense of freedom and safety in their home, and thereby infringes a basic human right.

Beyond the fear of terrorism, terrorist activity can then have other implications. For example, after terrorist acts, counter-terrorist actions, usually implemented by governments, can restrict the freedom of citizens. Regulations are imposed which restrict the freedom of movement; personal information has to be revealed before certain jobs can be undertaken, or even before certain buildings can be entered or conferences attended. At issue in the UK is the whole debate concerning identity cards. In the wake of increasing terrorist activity, the British government has proposed an identity card scheme, which includes biometric data about every British citizen. Whilst the plans would not make identity cards compulsory, the arguments that advance the cause include the notion that identity cards will help prevent terrorism. A number of human rights organisations have argued strongly against the proposals, questioning how a non-compulsory system could actually prevent criminal or

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20 *International Terrorism: Legal Challenges and Responses* (London: IBA, 2003), xix.

21 Jonathan Sacks, 'Credo', *The Times*, March 2004.

terrorist activity. However, at present the proposals are receiving widespread popular support. Whether identity cards would actually infringe human rights is questionable, and is naturally something that will continue to be debated.

Terrorism can also lead to the enactment of laws that are deemed, at least by some, to be infringements of human rights. In the UK, the Terrorism Act of 2000 and the Anti-Terrorist Crime and Security Act of 2001 present particular concerns for human rights activists. Through this legislation, both the definition of what constitutes terrorist activity is widened, and also the rights of those then treated under this definition seem to have been diminished. As Dr Emilio Cárdenas, former President of the International Bar Association, recently argued,

The definition in the Terrorism Act is broad and vague. It is expansive enough to include animal rights activists and tree protestors in certain circumstances. [It has] significantly extended periods of detention and restricted access to legal representation.<sup>22</sup>

Furthermore the Anti-Terrorism Crime and Security Act, he continued,

Allows the government to detain those who cannot be deported indefinitely, and without charge. ... The Home Secretary does not have to provide any substantial proof of his accusations, and certainly not to the criminal standard of beyond a reasonable doubt, even though the indefinite nature of the detention makes it far more severe than imprisonment following conviction.

Such have been the concerns about these human rights abuses, an ironic result of terrorist activity, that a recent ruling by British Law Lords has now forced the government to reconsider its position. Whilst no immediate change of mind is on the horizon, it is now clear that brandishing the term ‘War on Terror’ should not blind even the best of democracies to human rights violations.

Perhaps the most celebrated (and shameful) example of how the impact of terrorism has led to human rights abuses, is the situation in Guantánamo Bay in Cuba. As Dr Cárdenas comments,

The US government labels [the prisoners] ‘enemy combatants’ or ‘terrorists’, flouting their right to be presumed innocent and legally presuming justification for the denial of many of their most basic human rights.

This situation brings to mind the observation by Dostoevsky, that, ‘The degree of civilization in a society can be judged by entering its prisons.’<sup>23</sup>

In *Guantánamo: America’s War on Human Rights*, David Rose illustrates the awful conditions in which the inmates were made to live, through a series of interviews with four British citizens who were kept at Guantánamo and then released. In con-

22 *International Terrorism: Legal Challenges and Responses*, op. cit.

23 *The House of the Dead* (1857) (London: Penguin, 1985), 76 – Dostoyevsky spent four years in a Russian prison in Omsk.

cluding his appraisal of the impact and meaning of what went on at the prison, Rose writes,

The conservative writer Samuel Huntingdon has famously spoken of a clash of civilisations between the West and Islam, a coming titanic conflict which will drench the world in blood. At Guantánamo, America adopted some of the modes and techniques of those it classed as enemies. In so doing, it has brought Huntingdon's baleful prophecy nearer to fruition.<sup>24</sup>

In March 2004, three Britons of Arab descent captured in Afghanistan by the Americans were released from the now notorious Guantánamo Bay prison in Cuba. These British nationals were imprisoned for over two years with no legal representation and no charges being preferred. On their return to the UK they were interviewed by anti-terrorist police and then released. Their conditions included solitary confinement, repeated interrogations at gunpoint, random brutality, and a lack of legal representation. When interviewed after their release, they stated that they suspected that there were few genuine terrorists at Guantánamo Bay. One of the released men described the conditions there and how an officer had asked how he was:

I started crying, saying, 'I can't believe I'm here.' He says, 'I don't want to know how you are emotionally. I'm only interested in your physical state.' You'd look at people and see they'd lost it. There was nothing in their eyes any more. They didn't talk.<sup>25</sup>

They were not assigned lawyers, as would have been the case if they were accused of being common criminals. They had poor translators and they were not treated as prisoners of war under the Geneva Convention. On the other hand, the extent to which *habeas corpus*, which exists to defend civilian prisoners, might be available has been and is being tested in the courts in the USA. Of course, the issue of how states should deal with terrorist prisoners remains complex: how, for instance, can information be lawfully elicited in an emergency created by ignorance of where the next bomb is to be detonated?<sup>26</sup>

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24 London: Faber & Faber, 2004, 158. It is worth noting that Iraqi prisoners were not held at Guantánamo Bay, only those from Afghanistan and elsewhere.

25 *The Guardian*, March 14, 2004, 6.

26 The British government recently debated new anti-terrorism legislation, and was defeated in bringing in legislation that would allow suspects to be detained for up to 90 days. Perhaps both sides of the debate were too polarized – the human rights activists ignored the fact that a judge would be involved with such detention on a regular basis, whilst those campaigning for the law regularly appealed to their trump card, 'Well, if you knew what we know...'. See 'Can the Human Rights Act undermine national security? A debate between David Goodhart, the editor of *Prospect*, and Roger Smith, the director of Justice.' *Prospect* September 2005, 18-22 – the question of the Terrorism act, and then its progression through parliament, especially the discussion over holding suspects for 90 days. This type of debate tends only to harden positions on either side. Most recently, the European Court of Human Rights considered claims from eleven terrorist suspects that

The Director of the Centre for the Study of Human Rights at the London School of Economics, Professor Conor Gearty, gave a fascinating paper which argued that, in the case of the war on terror, human rights language has been misused to such an extent, that it is now acting against its own interest – thus answering partly affirmatively the question in the title of the paper, ‘Is the idea of human rights now doing more harm than good?’ Commenting on the war in Iraq, Gearty argues that the War on Terror has become a human rights virus:

In its most vicious form it renders the whole human rights programme into an aggressive search engine, one which relentlessly seeks out other cultures on the basis of extraneous criteria (oil reserves; natural wealth; amenability to US influence; strategic value) and then destroys them, bombs their cities, kills tens of thousands of their people, incinerates their cultural history, appropriates their natural wealth; installs a puppet regime to maintain their subjugation; all in order to secure for them their human rights.<sup>27</sup>

The events of 9/11 (in which many Muslims were also killed), and the after-effects which have been felt and seen around the world, provide perhaps a helpful study in miniature and an example of this.

It has not taken long for other Christian fundamentalist groups to seize the events of 2001 and portray them as climactic events in Armageddon. The *Left Behind* series is a succession of fictional stories written by Tim LaHaye, based on his interpretation of the book of Revelation. The author believes that ‘the Scriptures lay out a precise time-table for the end of the world, and the *Left Behind* books let us in on that chronology’<sup>28</sup> They are the best-selling works of Christian fiction, outstripping the likes of C. S. Lewis and J. R. R. Tolkien. Since the publication of the first book in 1995, nearly forty million copies of the series have been sold. The title issued in 2002 had an initial print run of 2,750,000 copies, and sales of the books increased by 60 per cent after September 11. On September 19, 2001 an article in *Christianity Today* quoted the TV Evangelist Jack Van Impe,

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they suffered psychiatric damage when they were imprisoned by the British government. A ruling was still being awaited at the time of writing.

27 10-11. This paper also promotes a fascinating thesis about why the language of human rights, born, as we have seen, in the religious world of pre-modernism, continues to hold power in both modernism (with its rationalistic anti-religious approach) and post-modernism (with its anti-rationalism that favours no foundations nor holds to any meta-narratives). It is because it talks of a world that we do not want to leave behind, that we hold on to human rights, and that in fact human rights language flourishes more and more as we move into the twenty-first century.

28 ‘Meet the Prophet’, *Time*, July 1, 2002.

I have been warning the nation and the world... for the past two years that terrorists would soon strike America. That moment has arrived. Jesus predicted the rise of terrorism just before his return to set up his kingdom on earth.<sup>29</sup>

Similarly, a North Carolina pastor linked 9/11 to Isaiah 30.25, 'The day of the great slaughter, when the towers fall,' and a pre-millennial dispensationalist declared that, 'I believe World War III actually began September 11, 2001.'<sup>30</sup>

Jeremiah Wright, at one time a pastor associated with US President Barack Obama illustrated in March 2008 the turbulent relationship between religion and state in America. Wright's comments appear in sermons circulating on the internet, where he makes comments about Americans bearing some responsibility for the 9/11 attacks, saying 'America's chickens are coming home to roost.' In addition he said that the government was responsible for the spread of AIDS amongst African Americans. The racist comments affected Obama's campaign to become the Democratic Presidential candidate, and were used by Hillary Clinton in an attack on her opponent's position. The outcome of the 2008 Presidential race notwithstanding, it serves as another illustration of how religion can influence a modern society. This rhetoric has led to an increasing fear of Muslims, whether fundamentalist or not, and undoubtedly helped many to justify in their own minds the infringements of rights seen at Guantánamo Bay, where the situation appears to be more and more like a modern-day replica of McCarthyism and its witch-hunt against communism. With the current fears about international terrorism, the witch-hunt is fed by religious fervour and causes a clash between religion and rights.

Sadly, history is littered with such examples, the Crusades and the Spanish Inquisition being perhaps the most notorious instances of religious hatred infringing rights, prior to the twentieth century.<sup>31</sup>

In the midst of the terror of 9/11, however, common humanity was demonstrated in a positive way – people displayed incredible sensitivity and helped thousands to escape from the Twin Towers and cared for them. These were people of all races and religions, living and working on Manhattan Island.

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29 This whole phenomenon is helpfully analysed by Carl E. Olson in 'No End in Sight', *First Things*, 127 (November 2002) 12-14.

30 Quoted in Olson, *ibid*.

31 Within the US, the persecution of the Salem witches may be one of the earlier examples, not forgetting of course the massacre of Indians in the USA by new immigrants. Predating this were the horrors that the Spanish carried out in Central and Southern America from the sixteenth century onwards. Early in 2006 the Vatican began moves to rehabilitate the Crusaders, sponsoring a conference that portrayed them as men with 'noble aims'. 'Vatican change of heart over "barbaric" Crusades,' *The Times*, March 20, 2006, 27.



## Headscarves

In February 2004 the French Cabinet adopted a Bill that prevented Muslim girls from wearing headscarves in schools.<sup>32</sup> The Bill stipulates: ‘In schools, junior high schools and high schools, signs and dress that conspicuously show the religious affiliation of students are forbidden.’ The law therefore also forbids Islamic headscarves, Jewish skullcaps and Christian crosses, but it was clearly aimed primarily at Muslim head coverings.

France has the largest Muslim population in Western Europe, estimated at about five million. There is concern in the strongly secular French government that Muslims are not fully integrated into French society, a concern that is of course fuelled by the events of 9/11. Such concerns were further strengthened by the riots of 2005 which involved the Muslim community, although they were ignited by economic, social and racial factors, rather than solely by religious issues.

The legislation is intended to protect France from *communautarisme* – that is, that ethnic minorities live apart from the mainstream – and to allay the fear that the wearing of headscarves might be used as a means of proselytising other non-Muslim children. What is at stake is the concept of *laïcité*, a cornerstone of French republicanism. As Tim King explains,

Derived from the Greek *laos* (the people, as distinct from the clergy), it is a specifically anti-clerical term. Its meaning is active, unlike the passive notion of secularism. *Laïcité* is about purging all state-run establishments – schools, prisons, hospitals – of any whiff of the *soutane*.<sup>33</sup>

France has a constitutional principle of secularism that underpins French society, stemming in part from rebellion against Jesuit schools and royalty in the Revolution. This is why the prevention of interference by religion in school education is fundamental to the French constitution. France also upholds the Universal Declaration of Human Rights, which in Article 18 states that,

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

In 2004 the French Prime Minister Jean-Pierre Raffarin stated:

<sup>32</sup> For a detailed discussion of the headscarf itself, and the European-wide situation, see Chapter 5.

<sup>33</sup> Tim King, ‘Secularism in France’, *Prospect*, March 2004, 64. *Soutane* refers to the church’s presence and influence, literally a cassock.



Our vision of secularity is not opposed to religions. Everybody has the right to express his faith as long as he respects the laws of the Republic inside the Republic's schools.<sup>34</sup>

The issue is complex, but a large majority voted for the Act of 2004. The practical consequence of the Bill could result in a conflict between rights and religion or be accepted as the wish of the population. In France's recent history, before the Bill was introduced, a few young girls were expelled from schools where such rules were already in place, because they refused to remove their headscarves. Far from aiding the integration of Muslims into French society, it could have the reverse effect of pushing them away. The bill was heavily criticised by the International Helsinki Federation for Human Rights and the US-based Commission on International Religious Freedom. It is also possible that France may be taken before the European Court of Human Rights, as the European Convention on Human Rights is as clear as the UDHR that everyone has the freedom to display their religious faith in public.

The irony is that girls who wish to continue wearing the headscarf may end up in Catholic private schools (where most of the costs are paid for by the Republic) since they are more tolerant and outside the scope of the Act's enforcement. Up to 90% of the pupils in the nine Catholic schools in Marseilles are Muslim!<sup>35</sup>

In the late autumn of 2006, the former Home Secretary of the British Government, Jack Straw, wrote an article in *The Lancashire Telegraph* on the wearing of the veil. In the context of a number of high-profile cases concerning the wearing of religious dress, his comments caused a media storm, and attracted both criticism and approval from a whole spectrum of quarters.<sup>36</sup>

In such a clash between religion and human rights where issues of state are involved, what is the most helpful way forward? And how is it possible to know whether headscarves are really the issue, or whether they are being used as a pretext? If headscarves cause conflict, then should they be banned? And if this is the case, then should the ban cover crucifixes and other symbols of religious observance? If headscarves and other religious symbols result in the isolation of individuals, they can be viewed negatively or opposed. But, if that is the case, then the freedom to observe religion could be lost altogether. In other words, there is potential not only for a clash between religion and rights, but between different rights themselves.<sup>37</sup> These issues

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34 <http://news.bbc.co.uk/1/hi/world/europe/3531151.stm>.

35 King, op cit, 65.

36 See the discussion in Chapter 5.

37 I have acted as an advisor to the Alliance israélite universelle for many years. They manage schools throughout France and Arab countries such as Tunisia and Morocco, originally French-controlled. They also have schools in Israel which were primarily based on non-sectarian Jewish principles – in other words, any Jew, however orthodox or liberal, was welcome. They felt their approach was best to give a secure Jewish basis to education and help children to face the outside world of non-Jews in a society where Jews were mainly a minority (except in Israel). The schools have thrived because academically the children have done well, and today many of the leading Jews in France and the Middle East, including Israel, are descendants of grandparents who first attended these schools.

will be explored in greater detail in Chapter 5, where it will be shown how different the views are on these issues across Europe.

### **Apartheid**

The atrocities committed by the apartheid regime in South Africa during the twentieth century are well documented. Apartheid saw rights and privileges as something exclusive to the white population, the people who were the carriers of civilized values and of the Christian Gospel. The philosophical justification for apartheid, whilst not wholly Christian, often alluded to Christian principles and derived from fundamentalist movements that emanated from Holland.

Such concerns often led to a condemnation of the human rights movement. Even today, many Christian fundamentalists are critical of a human rights movement which is seen as humanistic, secularist, arrogant, and to use some religious terminology, sinful. Lutheran scholars Foster McCurley and John Reumann argued that human rights 'are rooted in the assumptions of deism' which, 'in its concept of God and its view of human autonomy, was far removed from any notion of God who acts in history.'<sup>38</sup>

During the apartheid regime in South Africa, J. M. Potgeiter, Professor of Private Law at the University of South Africa, used religious arguments to resist a Bill of Rights for South Africa. He maintained that the image of God in human beings is restored only through conversion, and that the masses had no essential rights.<sup>39</sup> At the core of his conviction was the ideology of white (Afrikaaner) Christian nationalism.

An honest person needs no special "rights" in order to associate, dissociate, read, speak, perform or travel... The rights [demanded by human rights activists]... for the arrested, accused and convicted seem to be aimed primarily at limiting the power of the police.<sup>40</sup>

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Of course, it could be maintained that all children should be mixed and there should be no faith-specific schools, so helping the children to become familiar with each other. Similarly the Anglo-Jewish Association has had schools in India, Israel and Iraq, and I have been involved with these excellent schools in the past as Treasurer and President of the AJA.

- 38 Foster R. McCurley and John H. Reumann, 'Human Rights in the Law and Romans (Series A)', in George W. Forell and William H. Lazareth (eds.) *Human Rights: Rhetoric or Reality*, (Fortress Press, Justice Books, 1978). Deism here is the belief that God creates and then leaves humanity to its own devices.
- 39 Many did convert in South Africa, but mainly because it was easier to get a job as a Christian. It is often surprising that the harsh treatment endured by many at the hands of their Christian 'masters' made them even more loyal to the church in the midst of a hopeless situation.
- 40 *The Gospel Defence League Newsletter*, June 1989, quoted in Charles Villa-Vicencio, *A Theology of Reconstruction: Nation Building and Human Rights* (Cambridge: CUP, 1992), 122.

A similar philosophy existed behind Premier Verwoerd's retort to the famous 'Wind of Change' speech in Cape Town in 1960 by Harold Macmillan, then British Prime Minister. As he urged South Africa to move towards racial equality, Verwoerd replied in a speech that,

There has to be justice not only for the black man in Africa but also for the white man.

This policy can be traced back to the National Party's Colour Policy of 1948. Whilst the party rejected 'any policy of oppression and exploitation of the non-Europeans by the Europeans as being in conflict with the Christian basis of our national life,' it went on to state that,

All non-Europeans [are] to be strongly encouraged to make the Christian religion the basis of their lives and will assist churches in this task in every possible way. Churches and societies which undermine the policy of apartheid and propagate doctrines foreign to the nation will be checked.<sup>41</sup>

In 1954 Prime Minister Malan of South Africa stated that,

Apartheid is based on what the Afrikaaner believes to be his divine calling and his privilege – to convert the heathen to Christianity without obliterating his national identity... The traditional fear of the Afrikaaner of racial equality (equalitarianism) between white and black derives from his aversion to miscegenation. The Afrikaaner has always believed very firmly that if he is to be true to his primary calling of bringing Christianity to the heathen, he must preserve his racial identity intact. The Church is, therefore, entirely opposed to inter-marriage between black and white and is committed to withstand everything that is calculated to facilitate it.<sup>42</sup>

It would be easy to point to extremists and therefore not fully understand the issues here, as in the terrorist attack on New York in 2001. In South African political history, the figure of Eugene Terreblanche has stood somewhere between being a joke and a fearsome activist. Leader of the neo-Nazi Afrikaaner Resistance Movement (AWB), he was ultimately sentenced to a six-year prison term for violence. His group had set off bombs that killed many South Africans, and his Nazi-style ideals were founded on some Christian principles. Ironically, he now claims that he has become a born-again Christian in prison.<sup>43</sup>

However, the religious issue is not confined to the realms of fanaticism. Throughout the years of apartheid in South Africa, the Christian Church was actively involved

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41 United Nations, General Assembly, *Official Records: Eighth Session*, Supplement No 16, 'Report of the United Nations Commission on the Racial Situation in the Union of South Africa', 139-140.

42 Letter sent to Rev. John Piersma of the Oakdale Christian Reformed Church of Grand Rapids, Michigan.

43 <http://news.bbc.co.uk/1/hi/world/africa/3799239.stm>.

in discussions concerning the relationship between Christianity and segregation. There were Christian theologians who were for and against the regime, as illustrated in *Christian Principles in Multi-Racial South Africa*.<sup>44</sup> B. B. Keet rejected apartheid as a Christian option, whereas others such as C. B. Brink and M. W. Retief did not. A subsequent volume, *Delayed Action*,<sup>45</sup> led to heresy trials against its authors and the foundation of the Christian Institute, an organisation that denounced apartheid as anti-Christian. Nevertheless, Christian theologians continued to attempt to justify the policies of the Nationalist Party, with titles such as *Apartheid – Racial Segregation – What Saith the Scripture?*, *Holy Scripture and Race Relations*, and *Principle and Practice in Race Relations*.<sup>46</sup>

There have been those at the forefront of resisting apartheid who have also done so on religious grounds. Archbishop Desmond Tutu is the most famous example. On numerous occasions he has stood up to the apartheid regime, daring to dream,

...of a new society that will be truly non-racial, truly democratic, in which people count because they are created in the image of God.<sup>47</sup>

But the fact remains that religion continued to be used to uphold a regime which infringed a basic human right, as defined in Article 2 of the United Nations Declaration of Human Rights:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Archbishop Tutu's Truth and Reconciliation Commission is an extremely impressive example of how to handle human rights, demonstrating the possibility of making peace with people in a different way. It neutralised potential hatred of white people after apartheid had been abolished.

### **The Holocaust**

Unique in human history, the Shoah<sup>48</sup> saw the deliberate attempt to exterminate a people. The facts and figures are well known. Will new generations remember what

44 Pretoria: Dutch Reformed Church Publisher, 1953.

45 Pretoria: NC Kerkboekhandel, 1960.

46 For a most helpful review of these and other works on Christianity and apartheid, see Irving Hexham, 'Christianity and Apartheid: An Introductory Bibliography', *The Journal of Theology for South Africa* No. 32 September 1980.

47 'The Question of South Africa', *Africa Report*, 30 January/February 1985, originally a statement to the United Nations Security Council, October 23 1984.

48 The term Shoah was used as early as 1940 by Polish Jews to describe their plight, but it has much earlier origins, carrying the connotations of catastrophic destruction.

happened and why it happened?<sup>49</sup> This is the *raison d'être* for Holocaust educational work, with its outstanding museums across different countries, which is so vital in re-emphasizing the dangers of a breakdown of human rights.

What is at issue here is the role that religion played in the development of anti-Semitism, and the extent to which Christianity allowed or even encouraged the Holocaust to take place.

In his recent work on Christianity and Judaism post-Holocaust, the Anglican Bishop Richard Harries describes the thinking of the Christian Church after the 1940s in the following way:

The situation might be compared to a man whose life began to fall apart. He overworked, drank too much, neglected his family. Then one day driving the car he was responsible for a crash which killed his wife and two children. In prison he reflected long and hard not only on the terrible destruction of the people dearest to him, for which he was responsible, but what had gone wrong in the years before which led up to the catastrophic event. A profound reappraisal of his life took place.<sup>50</sup>

For centuries the Christian Church developed and encouraged an anti-Semitism that made violence towards Jews not only permissible, but justified in religious terms. Throughout the Middle Ages, Jews would increasingly become known as the 'killers of Christ' and agents of the devil. Such accusations were themselves based on the New Testament text which, whilst not necessarily requiring an anti-Semitic interpretation, was often used in that way.<sup>51</sup>

In the Reformation period, Martin Luther's comments have already been noted and are now notorious for their anti-Semitism. The repugnant reaction they engender in a modern mind is obvious, and what is important is that his philosophy was the beginning of a long history of intolerance that permeated German and probably also Austrian society, although it spread elsewhere as well. After Luther's death, both the Roman Catholic church and the Lutheran denomination that followed him sadly continued with this anti-Semitism.

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49 For some of the most haunting accounts of suffering at the hands of the Nazis, see the works of Primo Levi, including *If This is a Man*, *The Truce*, and *Moments of Reprieve*. On December 2 2004, a survey taken for a BBC 2 television documentary revealed that almost half of Britons had never heard of the Auschwitz Nazi death camp. 45% of the 4,000 respondents claimed never to have heard of the Auschwitz-Birkenau camp.

50 *After The Evil* (Oxford: OUP, 2003), 8.

51 See Stephen Motyer's careful analysis of the various texts, their interpretations, and his attempt to exonerate the text – *Your Father the Devil* (Carlisle: Paternoster, 1997). Gareth Lloyd-Jones has also offered a careful analysis of the New Testament texts which appear anti-Semitic, and outlines various suggested solutions. His work is framed in the context of Jewish-Christian dialogue, and is most helpful – see *Hard Sayings: Difficult New Testament Texts for Jewish-Christian Dialogue* (Cambridge: CCJ, 2003).

Contemporary Russian Orthodoxy still maintains strong anti-Semitic overtones in its official pronouncements.<sup>52</sup> Perhaps, as the Church has been liberated from communism, in trying to find its feet it has returned to medieval attitudes. Russian Orthodoxy has therefore not been able to evolve in the spirit of tolerance that has now grown in the Vatican. Myths about Jews being the agents of Satan, and the revival of the blood libel, accusing Jews of sacrificing a Christian child, have reappeared.<sup>53</sup>

Luther's attitude stemmed from the fact that, according to his beliefs, although Jews believed in the same God and Scripture as Christians, they rejected the Messiah.<sup>54</sup> So they were destined to misfortune in all walks of life. The historians R. Rubenstein and J. Roth acknowledge that, had Luther known of the Holocaust, he would have seen it as evidence of God's total rejection of the Jews.<sup>55</sup> As R. Landau notes,

The cumulative effects of so strong a negative stereotype would have implications for the success, many centuries later, of Nazi anti-Jewish propaganda.<sup>56</sup>

Throughout the Holocaust itself, the German church hierarchy was notable for its inaction and those who had power and authority to do something chose to do little

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52 In Russian Orthodox churches, it seems that the liberation from one kind of oppressor has enabled another dark shadow to reappear. D. A. Bratkin writes that 'The Orthodox majority of Russia is totally indifferent to the Holocaust. The minority, which tries to contemplate on the subject, inevitably concludes that not a single dot of the tradition should be sacrificed, since the 'post-Holocaust theology' is just another Satanic trick played by the Jews in order to seduce the "faithful few". ... Instead of any serious theological discussion of the Holocaust, the tide of the worst anti-Semitism has arisen in the Russian Orthodox milieu.' – 'The New Face of an Ancient Beast (Orthodoxy and Anti-Semitism)' in *Barier* 7 (2002), 96, 111. See also the work of COBA, <http://sova-center.ru>.

53 I recently discussed these problems with a group of Russian experts from the Russian Helsinki Committee in London. The PLO has also republished in Russian *The Protocols of the Elders of Zion*, which are on sale in most Russian churches today. On the other hand, speaking with leaders of the Jewish community in Moscow, I am reassured that the church has a very good relationship with the Jewish community. There appears to be a split between the extreme right and the more liberal elements in the Russian church, and it remains to be seen whether the liberal element will ultimately find their place as the leaders of the church. This is an encouraging development. It seems that when the Russian Orthodox church sends the patriarch to America, he speaks about tolerance and understanding, but he has no influence within his own church in Russia. Perhaps this will gradually change. My main source of information here has been through my involvement with the German Jewish Centre at Sussex University, which held a conference at Chatham House in 2003 on 'National Myths and the Media'. See Brinks, Rock and Timms (eds.), *Nationalist Myths and Modern Media* (Tauris Academic, 2005), based on this conference.

54 On the subject of the Messiah, see Lucien Gubbay, *Quest for the Messiah* (Lewes: The Book Guild, 1990).

55 *Approaches to Auschwitz* (London: SCM, 1987), 56.

56 *The Nazi Holocaust*, 38. See also the section by Rubenstein and Roth in *Approaches to Auschwitz* on 'Their Brothers' Keepers? Christians, Churches, and Jews', 199-228.

– and even at times chose to involve themselves in the process of persecution. Whilst there were dissenting Christian voices across Europe (perhaps the most famous being that of the theologian Dietrich Bonhoeffer), many Christians were not active Nazi aggressors, and the majority chose to ignore terrible violations of human rights.

Of course, many issues played a part in the horror – nationalism, racism, anti-Semitism, self-interest and prudence – all of which were at one time baptized as Christian, even if not authentically Christian. Hitler himself was strongly anti-Christian, but he was cunning enough to use the rhetoric of Christians and Christianity to give credence to his plans.<sup>57</sup> The entrenched anti-Semitism he found in Christianity was ideal for him and helped to make him popular, especially in the earliest days of his political career.

The Church's struggle with the Holocaust after the Second World War is instructive, showing how religions cope with human rights abuses. At a broad level, the Church believes that it has a mission to engage the whole world, including Jews, with its message – what this mission entails is then up for discussion. Whilst some sections of the Church are still deeply committed to the conversion of all Jews to Christianity,<sup>58</sup> others are deeply embarrassed at the messages that this sends out, and shocked at the insensitivity of their fellow Christians. It is not only a case of human rights versus religion, but the rights of individual religious believers against the rights of the next religious believer (for example, conservative Christian versus Jewish Holocaust survivor).

In the post-war period the modern human rights movement developed relatively quickly, compared with preceding centuries, coming to be an internationally recognised concern.<sup>59</sup> This rapid expansion and intellectual development will be examined in Chapter 2. René Cassin, who drafted the text of the UDHR with Eleanor Roosevelt and Charles Malik, was a French Jew who had seen the unimaginable suffering of French citizens and Jews during both the First and Second World Wars. This was one of the motivations for his work, and together with many he shared the feeling that never again should such desperate infringements of human rights be allowed take place. And yet they still do; and religion is increasingly involved.

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57 See Harries, *After the Evil*, 14-15.

58 The World Council of Churches statement in 1948 that all Jews should be quickly converted to Christianity to avoid a second Holocaust has remained a very unpleasant memory for survivors of the Holocaust, like myself. A statement by the Protestant Commission on the Witness to Israel of the Protestant Federation of France, prepared for the WCC's First Assembly, summed it up: 'To the persecuted people, the church must say that their sufferings are not God's vengeance for the death of Jesus but an appeal to conversion and to turn from their unfaithfulness. It is obviously very hard to use this language to the survivors of the Nazi massacres. But Christians cannot attempt to proclaim the Gospel to the Jews unless they begin by affirming that Jesus really is the Christ, the Son of God, and that their unfaithfulness consists in their refusal to recognise him as the Messiah foretold in the prophets.' – WCC archives.

59 Although the UN is often criticised for being slow moving.



Throughout history, many of the major world religions have destroyed millions of human beings in the name of God, gods or 'the good'. 'Kill one million people and one hundred million will be saved' has been the justification of dictators and religious leaders alike. Whether or not the destruction is at the hands of a distorted interpretation of religion is, at least partially, a side-issue. Although Muslims will claim that al-Qaeda misinterprets the Qur'an, and Christians that the German and South African national churches were terribly negligent, it remains true that these power structures carry out their attacks on other human beings in the name of religion. This much-rehearsed complaint against religion is as much about power and politics as it is about religious belief. The discussion in this book is not intended to be an attack on religion, but rather an investigation into what religion does (or is manipulated to do for political or economic uses) to infringe human rights.

If religious people declare that it is their 'right' to profess faith, then ultimately this becomes a justification to act in a certain way. 'It is right' to perform this action because it is my right to profess this faith, and this faith implies that I should carry out this action in this way. Hence the actions of the al-Qaeda terrorists, the insistence on the right to wear headscarves, and the abuse of power in the apartheid regime. All religions seem to have something in them which can lead their adherents to abuse human rights, to attain power and then subsequently abuse it to achieve their own purposes in controlling assets and people. Where should we draw the line, especially in the case of dangerous cults and fringe religions? Each case must be studied on its own terms.





### Introduction

To understand something of the relationship between human rights and religion, we must first explore both concepts on their own terms. The following two chapters will look first at rights, and then at religion, so that we will be better placed to examine their interaction in subsequent chapters.

The concept of human rights is neither very old – the term only came into common currency during the twentieth century<sup>60</sup> – nor is it universal. Most would agree that the concept of rights is the product of European political thought from the seventeenth and eighteenth centuries, although there is significant debate between historians as to when the notion came to fruition.<sup>61</sup> Even today, the idea of rights is not something that is common to all civilizations across the world – hence the continued need to lobby governments and target organisations so that rights are upheld.

### Early History

Rights are a relatively modern phenomenon. Rules and legal codes are drawn up to control and prescribe behaviour. The majority of these ethical systems have at their core convictions about human behaviour – albeit beliefs which would often exclude some groups of people at the expense of others.

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60 There are numerous sources for a history of human rights. By far the best introduction is supplied by Michael Freeman, *Human Rights* (Cambridge: Polity, 2003), 14-54. There is also an excellent short summary in the introduction to Emma Haddad, 'Refugee Protection: A Clash of Values,' *International Journal of Human Rights* 7 (3) Autumn 2003, 1-6.

61 The influential political ethicist Alisdair MacIntyre doubts the existence of rights before 1400, and in his ensuing discussion dismisses much of contemporary rights language as a universal, concluding that, 'there are no such rights, and belief in them is one with belief in witches and unicorns.' – *After Virtue*, (London: Duckworth, 1981), 69. The debate about whether rights actually exists or not is obviously an important one; nevertheless it is a theoretical discussion which ultimately does not affect the discussion in this book which deals with the interrelationship between religion and human rights, as they are referred to and assumed to exist by a wide variety of international organisations and individuals. Human rights theory is discussed in Freeman, *ibid.*, 55ff, and summarised below.

For example, the Sumerian King Hammurabi created a tablet (c. 1780 BCE) that is one of the first examples of a codification of laws that contain references to individual rights.<sup>62</sup> The system of 282 laws created a precedent for a legal system that formed a legally binding document to protect the people from arbitrary persecution and punishment. Although these laws are specific to a time and culture, they are an early example of attempts to modify human interaction and behaviour.

In the ancient Greek tradition, debate about natural law led to discussion of natural rights. According to the Socratic tradition (after Socrates, 469-399 BCE), natural law reflects the order of the universe and the will of the gods who control nature. Plato's (427-347 BCE) concept of the Good is a changeless absolute, immaterial and transcendent, by which those who are wise order their lives. When Creon reproaches Antigone in Sophocles' play *Antigone* for defying his command not to bury her dead brother, she replies that she acted under the laws of the gods – however, as Freeman notes, this was a duty, rather than a right.<sup>63</sup>

The Roman jurist Ulpian (died 228 CE) believed that certain natural rights belonged to every person, whether they were a Roman citizen or not, but these were largely concerned with legal issues. Of the great lawmakers, the Roman, Justinian (527-565 CE), published his great codex of laws in the early sixth century thus attempting to establish cohesive schemes of rights and duties for the Roman citizen.<sup>64</sup>

The major monotheistic world religions have often sought to establish a comprehensive moral code, parts of which have been based on a 'revealed' divine law. Perhaps this was based on a necessity to bring order out of chaos in new situations (known as the 'revealed divine law'). The Mosaic laws, i.e. the Ten Commandments, and its enormous influence on Western society are an excellent example. For the purposes of the history of human rights, what is interesting about these belief structures is that they contain convictions about the dignity of human beings, and share a concern with the duties and obligations individuals have to each other, to nature and to the divine. The extent to which religions have been an influence is of fundamental concern to this project. Convictions about human beings drove the Magna Carta (1215 CE) and the various bills of rights. Such convictions stem from Judea-Christian tradition.

After King John of England (1164-1216 CE) violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna Carta, or Great Charter, which enumerated a number of principles for government. These included the right of the Church to be free from governmental interference, and the rights of all free citizens to own and inherit property and be free from

62 As discussed in Ninian Smart, *The Religious Experience of Mankind* (London: Collins, 1969), 301-2.

63 Op cit., 16.

64 However, care must be exercised when considering the Latin sources, as it is unclear whether 'ius' refers to objective or subjective rights. As R. Tuck clearly explains in *Natural Rights Theories: Their Origin and Development* (Cambridge: CUP, 1979), these rights were legal, rather than natural, and hence must be seen as distinct from contemporary debate.

excessive taxes. It also established the right of widows who owned property to choose not to re-marry, and established principles of due process and equality before the law. However, these 'rights' were applicable only to the gentry. As Freeman notes,

The concept of rights was, however, at that time embedded in customary law. The Magna Carta was, further, not a summary of English law, but a text produced by specific political circumstances, and its purpose was to provide legal remedies for specific grievances. It was, therefore, not a charter of the rights of Englishmen, still less of human rights. Yet its reputation as a precursor of modern human rights texts is not wholly unmerited. Article 39, for example, says that no free man shall be arrested, imprisoned, expropriated, exiled or in any way ruined, except by the lawful judgement of his peers or by the law of the land.<sup>65</sup>

### Seventeenth and Eighteenth Centuries

However, it was not until the seventeenth century that this thinking began to focus on the status of people, and the laws, codes, and duties which applied to them. Focus shifted to the needs of individuals and their participation in society – something which was crucial to the well-being of society. Philosophers such as Grotius (1583-1645), Hobbes (1588-1679) and Locke (1632-1704) influenced this development, so that 'natural' rights' and 'the rights of man' became part of the political agenda. As the international landscape changed, and as political and economic barriers were brought down, the idea of rights spread.

Hugo Grotius is often considered to be the father of international law. He concerned himself with many political issues of the day, arguing that law is chiefly concerned with the upholding of a person's rights, to the extent that these rights are the main subject of the law. Whilst being overtly religious himself, Grotius believed that the law is independent of God.

Significantly, Grotius would pave the way for a natural law (and hence natural rights) theory that could ultimately be independent of religion. He was a significant influence in separating ethics from theology, and thus providing the basis for a secular theory of natural rights.<sup>66</sup>

Thomas Hobbes (1588-1679) saw natural law as being vague and too open to vast differences of interpretation. Under his view of 'positive law', instead of human rights being absolutes sent down from on high, they can be given, taken away, and modified by a society to suit its needs. Positive law is the idea that law and human rights come from the state. Hobbes and Bentham (1748-1832) were positive law theorists who believed that human rights needed strong laws to protect them.

The key difference from previous views is that these rights can be given and taken away by the state, they are not universal. Bentham sums up the essence of the positivist view:

65 Ibid., 17.

66 For more detail, see A H Chroust, 'Hugo Grotius and the Scholastic Natural Law Tradition', *New Scholasticism* 17.4, 1943, 101-133.

Right is a child of law; from real laws come real rights, but from imaginary law, from “laws of nature”, come imaginary rights.... Natural rights is simple nonsense.<sup>67</sup>

So the state has a crucial role in advocating human rights, and the decision of the state has a priority over the existence and importance of any particular human right. Bentham believed in utilitarianism – that there should always be the greatest amount of good for the greatest number of people.

The essay by Thomas Paine (1737-1809), *The Rights of Man*, argued that rights had to be grounded in revealed divine law, mainly because there was no one point in history which could be pointed to as a source for natural rights – that is, no one historical period had priority over another. These abstract ideas, grounded in religious texts, were then transferred to various legal documents that specifically codified these rights in detail. Paine included in these social welfare and political issues. Although Paine was a deeply religious man, his work meant that later generations could accelerate the dualism between rights and religion. Although born in Thetford, England, after his emigration to America his work had world-wide influence, including on the French Revolution.

In seventeenth century England, the whole issue of a citizen’s subjection to the government became one of paramount importance. In 1640 the English Revolution was concerned with how a citizen could be protected against an oppressive government, especially when it came to political participation and the freedom of religious belief and observance. Oliver Cromwell won the day, and the King was executed.

The ‘Glorious Revolution’ of 1688 had similar concerns, ultimately leading to the English Bill of Rights in 1689. Although nothing like the modern-day Human Rights Act, when this became law on December 16, 1689, British monarchs would never again claim their power was derived directly from God. It ended the concept of the divine right of kings, one of the issues over which the English Civil War had been fought. The Bill made the new King subject to the rule of law, as any citizen would be, rather than being the divine source of the law. The Act also protected some basic rights to justice, under which cruel and unusual punishments and unfair trials were dispensed with and independent juries were guaranteed. Interestingly, it also reaffirmed some of the promises made by King John in the Magna Carta (although the Magna Carta had been intended to benefit the privileges of the aristocracy of the time, not the whole population).<sup>68</sup>

67 J Bentham, *Anarchichical Follies*, quoted in N Kinsella, ‘Tomorrow’s Rights in the Mirror of History’ in G Gall, ed., *Civil Liberties in Canada* (London: Butterworths, 1982), 17.

68 When I was President of the Anglo-Jewish Association in 1980, I invited Lord Mackay to address us on human rights. During the discussions, we asked his opinion on whether he thought Great Britain should have a bill of rights. He felt that our case law, going back for centuries, gave our citizens everything that was needed, and that it was not really necessary. However, since this time the European Human Rights Acts have come into force and been implemented on a large scale. This is another form of a bill of rights, which highlighted many issues in our law that were not satisfactory and now have been improved, including employment and discrimination laws.

John Locke's argument was that, according to natural law, no-one should harm anybody else's life, health, liberty or possessions, hence government had the right to do whatever was necessary to protect such rights. Importantly, this would actually limit the role of the government, as ultimately no-one could be subjected to another's rule unless they consented. It was the government's responsibility and duty to protect natural rights, limiting what it could legitimately do. Citizens would even have the right to rebel against a government if it was not fulfilling these duties.

It is this important thinking that underpinned the American Declaration of Independence in 1776. It states:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the pursuit of happiness – that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it.

Unfortunately, even at this time all human beings in America were not covered by this proud declaration – slavery still existed, and the rights of women were not recognised; infringements of human rights which were to persist into the twentieth century.

In such a key document, religion is still playing a major role. Numerous others have documented and explored the relationship between religion and the state in the USA, but in the Declaration of Independence the priority put on rights comes from a belief in the dignity of the human person that is grounded in a belief in a Creator.

Meanwhile, on the continent the French Revolution led to the Declaration of the Rights of Man and of Citizens in 1788, asserting the primacy of natural rights. That the idealism soon degenerated into terror is due to both theoretical and practical problems with the Declaration, but the radical nature of the document is still recognised today in French society.

The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognises and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen.<sup>69</sup>

69 [www.constitution.org/fr/fr\\_drm.htm](http://www.constitution.org/fr/fr_drm.htm).

Continental philosophy was hugely influenced by the earlier writings of the German philosopher Immanuel Kant (1724-1804) on reason and common sense, who proposed that everyone should act in such a way that all would be well if everyone else acted like them. Each individual freedom should not impinge on the freedom of others.

Significantly, Kant's ethics attempted to assert human reason as the ultimate authority in ethical decisions, proclaiming that each rational and free person could claim this moral law as his or her own. Although Kant's ethical position was not founded on religion, he postulated the existence of God to make sense of this moral law.

It is worth noting here that in the late nineteenth century, Friedrich Nietzsche would take Kant's notions to their extreme conclusions, abandoning God and postulating the freedom of the individual as a 'superman.' The nightmare of the Nazi theory of nationhood was partly founded on this ideology, and the impact on human rights need not be repeated here. However, as has been mentioned more than once, the irony is that it was this period of history which kick-started the modern-day human rights movement.

### **Nineteenth Century**

The reorganisation of the European states accepted the colonisation of non-European territories as part of the new world order. Human rights for indigenous people were not considered. The industrial revolution hastened the development of democracy, of capitalism, and of military budgets to protect national interests – with which came the protection of individual interests. As organised labour flourished, so did the organised labour movement. With other developments such as the invention of the internal combustion engine, increased transport and mobility (and the need for oil), as well as the invention of electricity, the social and political scene was ripe for some key developments in human rights.

At this time John Stuart Mill (1806-1873) entered into dispute with Bentham's utilitarianism (that there should always be the greatest amount of good for the greatest number of people). He strongly disagreed with utilitarianism, seeing it as a form of tyranny by the majority. Liberties such as freedom of expression and association should not be absolute; rather, he argued, they should exist in such a way as not to deprive others of their ability to achieve their own liberties. The co-existence of different liberties was more developed by Mill than by Bentham or Kant.

The other major development in political thought, communism, as developed by Karl Marx (1818-83) and Friedrich Engels (1820-95), saw rights in an entirely different light. The communists argued that rights, as they were currently conceived by the ruling classes, were unconnected to the reality of the exploitation of the working class. Marx, and others, used these ideologies to raise the concern for work and food as one of the most fundamental human rights. Unlike Mill, Marx had another definition for liberty – something to be gained through government, rather than a freedom from interference by government. Equality was more important than liberty, especially in the ownership of private property (a fundamental tenet of communism). Only one fundamental right existed under their system – that was the right of

revolution. As Marx saw it, this then avoided the mistake of rights being tied to the bourgeois class.

Yet it was not merely theoretical discussion that was to influence the progress of human rights in the nineteenth century. The beginning of the abolition of the slave trade was also a major step forward in dealing with human rights on a universal scale. Interestingly, religious voices were at the forefront of the call for the abolition of slavery. For example, William Wilberforce (1759-1833), who came from a wealthy merchant family and was a leading abolitionist, social campaigner and Member of Parliament, constantly called on the House of Commons to restrict the trade of slaves, eventually succeeding in 1807.<sup>70</sup>

Wilberforce's decision to campaign against slavery was undoubtedly influenced by contemporary Enlightenment thinking, for certainly not many of his Christian contemporaries were convinced that their religion led them in the same direction (illustrating the continual disagreement between religions and human rights, which continues to manifest itself today). However, the Enlightenment principles of individual freedom and universal justice for individuals based on reason found favour in the religious beliefs which underpinned Wilberforce's campaign.

At another practical level, Florence Nightingale (1820-1910) campaigned for improved military medical services, Henry Dunant published *Un souvenir de Solferino* after the Crimean War, and President Lincoln issued *Instructions for the Government of Armies of the United States in the Field*, the 'Lieber Code'.<sup>71</sup>

The concern for the protection of the victims of war then developed, as based on the Geneva Conventions for assistance of wounded soldiers. This in turn led to the establishment of the International Conference of the Red Cross (the first conference was held in 1867) and the International Federation of the Red Cross (and ultimately the Red Crescent).<sup>72</sup> On this subject, Shabtai Rosenne observes that,

Against this background, the Geneva Red Cross Conference of 1864 marks the onset of the transformation of international law. ... The body that it recognised – the International Committee of the Red Cross – is probably the most important and the most widely known

70 When Lord Mansfield was a judge, he was given a slave to judge. This slave had run away from his master and the master was suing the slave for stealing his property. Lord Mansfield stated that this was an abomination and refused to try the case. The result of his statement as a judge accelerated the change in the laws for the abolition of slavery, although it was not normal for a judge to make this sort of pronouncement.

71 Thus a selection is made as to which issues needed fighting, even then. Or rather, Nightingale saw an injustice she sought to remedy, rather than setting off on a human rights campaign.

72 See the extensive literature on the appropriateness of the symbol, and whether cross, crescent, etc. – F Bugnion, *Towards a Comprehensive Solution to the Question of the Emblem* (ICRC, 2000).



and respected competent body of international significance operating in the international sphere today – even more than the United Nations.<sup>73</sup>

Unfortunately, and perhaps understandably, the ICRC and associated bodies have become much politicised over time. Whilst Rosenne is surely right about the achievements of the ICRC, other bodies may have had similar success, although what they have achieved may be different in nature. For example, the modern Olympic Games could also claim to be a supreme example of international co-operation which, although also becoming politicised, has achieved much in international relations. The 2004 Games saw a standing ovation being given to the Iraqi contingent, able to send a delegation to the games after so much struggle and suffering, a key sign of the progress being made in international relations in this particular region.

After the Congress of Vienna, the Treaty of Berlin (1878) called for the protection of civil and religious liberties of individuals. Ultimately, these conventions and committees were to lead to the beginnings of ‘international humanitarian law’ and the adoption of the statute which has now led in the twentieth century to the formation of an International Criminal Court to try individuals.<sup>74</sup>

## Twentieth Century

The growth of human rights is inevitably linked to the development of the modern world, the changes in international relations, and of course the continuing evolution of international law. As Shabtai Rosenne comments,

The first half of the twentieth century was one of the bloodiest, one of the most horrendous, in the recorded history of mankind. With its two world wars and countless regional and local wars, civil wars and violent internal unrest throughout, and their millions of military and civilian casualties and holocausts, displaced persons and refugees, it saw the collapse of the regime based on the Peace of Westphalia of 1648.<sup>75</sup>

After the First World War, the League of Nations and its Covenant affirmed the duty of all member states to refrain from force against others, and raised the issue of human rights into a worldwide concern. The 1919 Versailles Conference was concerned

73 Shabtai Rosenne, *The Perplexities of Modern International Law: General Discourse on Public International Law* (The Hague: Martinus Nijhoff Publishers, 2002), 31–32.

74 The Consultative Council of Jewish Organisations looked at many of the clauses for the International Criminal Court when they were submitted to the UN sixth committee in New York. It felt that implementation and punishment was not adequately provided for, and also made a few other suggestions for amendments. We were pleased that some of our ideas did appear in the final covenant.

75 *Ibid.*, 25. The Peace of Westphalia was in fact a collection of treaties that helped to end the Thirty Years War. It gave rise to three main powers, and is often referred to as a marker for the beginning of the modern age.

with the protection of minorities, but it made no attempt at universality, nor did it concern itself with all minorities.

During the Second World War, the allies aimed 'to defend life, liberty and religious freedom and to preserve human rights.' Following the Holocaust, the sheer atrocities committed by the Nazis through the enslavement and annihilation of Jews and other groups in Europe and Asia caused the world to look in embarrassment at what had happened and how it had been possible.

The Holocaust changed the world's view on human rights. Prior to the war, human rights were initially considered a 'domestic concern'; they were to be enforced only by the governments of individual countries. This view shifted during the war, as human rights became considered a 'universal concern'; they were to be a concern for every person on Earth. By the end of the war, the world as a whole felt the need for the security of inalienable human rights.

The focus was now on protecting the individual's rights universally, rather than establishing specific laws for specific settings. So the term 'human rights' first appeared in the Washington Declaration of January 1, 1942,<sup>76</sup> and was included in the aims of the allied war effort.<sup>77</sup> For the development of rights in the twentieth century, this was significant as it emphasized the link between international peace, international humanitarian law, and the definition and protection of human rights.

It created the triad that has transformed the substance of international law from what it was at the beginning of the twentieth century, which deliberately refused to interfere in any way in the internal affairs of states whatever their form of government. The substance of international law of today, still groping towards its proper equilibrium, now gives to the individual human being a recognised place beside the state, with rights and duties that the international community of states undertakes to protect and develop. That is the law.<sup>78</sup>

This was followed in more detail in 1944 by the Dumbarton Oaks proposals for a General International Organisation, negotiated by the Big Four – China, the USSR, the United Kingdom and the United States of America.<sup>79</sup> It was the basis for the establishment of the Commission on Human Rights, set up in February 1946, the chief policy making body of the UN in protecting individuals.

On December 10, 1948 (Human Rights Day) the General Assembly of the Commission on Human Rights adopted and proclaimed the UDHR, which was drawn up by René Cassin,<sup>80</sup> Charles Malik, and Mrs Eleanor Roosevelt. Forty-eight of the

76 See Appendix.

77 See Appendix.

78 Ibid, 225.

79 These discussions were completed on October 7, 1944, proposing a structure for a world organization – this would include the General Assembly of all members, a Security Council of eleven members (five permanent and six with office for two years), an International Court of Justice, and a Secretariat.

80 I had the pleasure of working with Cassin. He had been General Charles de Gaulle's principal legal adviser during the Second World War, and was thankfully a master of

members were in favour, there was no opposition, and only eight abstentions – the Soviet Union and its allies (due to its widely different concept of human rights and how this then related to the state), South Africa (with its then current rule of apartheid), and Saudi Arabia (which viewed the declaration as too Western-orientated).

That remarkable vote indicates that the language of the Declaration was acceptable to different religious, philosophical, spiritual, political and secular trends prevalent in the United Nations in 1948. Nevertheless, the compromises embodied in it concealed the very fundamental differences of approach to the basic question of what are the human rights requiring promotion and protection, and how best that is secured. These differences of approach have found major expression in reservations that have been made in respect of many of the human rights conventions, and in objections to those reservations. Indeed, it was only by allowing reservations and by including some matters in optional protocols that it has been possible to conclude those instruments, something often overlooked. ... This Declaration has probably had more direct influence on the development of legal thinking, both international and national, than any other single instrument adopted by the United Nations or under its auspices.<sup>81</sup>

The overwhelming majority highlighted the need for the declaration. The Universal Declaration of Human Rights sets out a list of inalienable human rights. It is however much more than simply a treaty, and has become a worldwide benchmark. The Declaration describes how the rights in it are not to be enforced, but rather represent 'a common standard of achievement for all peoples and all nations.' Among these rights include the right to life, the right to not be tortured or enslaved, and not to be unfairly persecuted. The Declaration also grants freedom of thought, expression, and religion.

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drafting legal documents. In 1968 he received the Nobel Peace Prize for his work on behalf of human rights. See Marc Agi, *René Cassin* (Perrin, 1998). I was on the Board of the Consultative Council of Jewish Organisations when Cassin was Chairman, and spent many meetings under his chairmanship. He was then a very old man, and we looked on him with awe. His memory and precision for dealing with constitutional matters of the French legislature was impressive. At one committee meeting there were several former French Prime Ministers present, and he reproved each one for inaccurately quoting from the French Constitution. He was extremely kind to me, especially when I was introduced to an enormous meeting of the Committee for Human Rights in the Soviet Union, where, after presenting my paper, I concluded with a plea from Vladimir Bukowsky before he was sentenced to seven years' penal servitude in Russia for acting against the state. In this final plea, Bukowsky emphasized that he was a devoted communist and that his trial was a travesty of all that he and Russia stood for – his very moving speech had been smuggled out of Moscow during the trial, and was sent over to me by fax that very morning. It was a bombshell that we had received this speech which was then immediately broadcast with my speech by Liberty Radio throughout Russia and all Eastern European countries for one week in different languages; René Cassin was extremely pleased that this had taken place. Bukowsky was a Jew who was punished for the religion that as a communist he did not practice!

81 Rosenne, op. cit., 237-238.

The cultural rights laid out include the right to marriage, education, employment, food, and shelter. The Declaration was only a resolution adopted by the General Assembly, so in the legal sense, it is a non-binding document.<sup>82</sup>

In the period after the Second World War, two human rights courts were established – The European Court of Human Rights (set up July 21 1951), and the Inter-American Court of Human Rights (September 22 1969). These were established as mechanisms to protect individuals' human rights against the governing authorities. There is now also an African Court on Human and Peoples' Rights.

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (CESCR), and the International Covenant on Civil and Political Rights (CCPR).<sup>83</sup> The Commission on Human Rights drafted a preliminary international bill of human rights in 1947. Originally, the Commission on Human Rights wanted an International Covenant on Human Rights (CHR) to give life to the Universal Declaration of Human Rights, and to legally oblige states to fulfil certain duties. Between 1949 and 1966, many drafts of this document were created. Ultimately however the commission decided to use the two specialized treaties, the CESCR and the CCPR, instead of just the CHR.

### The Theory of Rights

One of the major concerns relating to the UDHR is the simple question, 'On what is it based?' As we have seen in surveying the history of human rights, various attempts have been made to provide justification for these rights, and although something of a consensus was reached in 1948 on the content of the UDHR, a variety of attempts to justify these rights still remains.

As a sign of positive hope regarding the UDHR, a recent document co-authored by Christians and Jews supports the Declaration and affirms it on the basis of specifically Judaeo-Christian beliefs. Nevertheless, the authors admit that there may be a variety of ways of justifying human rights.

While both biblical faith and philosophical tradition of natural law offer profound illuminations, we welcome diverse ways of affirming the universality of human rights. Every constructive analysis will aim at strengthening the Declaration as an instrument for the defence

82 In a meeting in Paris on the tenth anniversary of the death of René Cassin at the Sorbonne, I spoke to an audience which included Simone Weil on the dangers of the fact that many resolutions of international bodies are a compromise, being the lowest common denominator, and thus ineffective.

83 The two covenants were created in 1966, and have since been ratified by over 130 countries. The Universal Declaration of Human Rights and the two covenants form the International Bill of Rights.

of human rights by providing a coherent and integrated interpretation that protects the document from the distortions to which it has too often been subjected.<sup>84</sup>

In the twentieth century, Ronald Dworkin and John Rawls are two among many who have taken the debate about human rights and their basis forward. Dworkin's philosophy disagrees with Bentham's rejection of natural rights without real laws. He rejects the view that human rights are absolute and universal, and claims that they are a creation of political systems that try to treat all people equally. Therefore all members of society have the same voice, something which is not dependent on their social status. According to Dworkin (1931-), Bentham's utilitarianism, with its idea of ignoring the rights of minorities in the name of the greatest good for the majority, threatens to destroy the entire concept of individual human rights.

The American philosopher John Rawls (1921-2002) presents a more compassionate view of human rights, aiming to have the greatest degree of individual liberty and equality while maintaining these rights for all. The state, Rawls believed, should distribute everything, including benefits, equally, unless an unequal distribution would benefit the poorer classes most. He sees human rights as being constructed by reasonable people living together in society. The difficulty with this and many other views of human rights theory is that they lend themselves to cultural relativism,<sup>85</sup> because, for example, Western industrialized principles might not be appropriate in the Third World.

In the middle of the nineteenth century Marxism developed a different sense of human rights, based on class struggle, discussing the obligations of the individual to the state and vice versa. This difference of opinion on human rights theory and the basis for human rights is demonstrated by the fact that when the General Assembly adopted the Universal Declaration of Human Rights in 1948, the communist states abstained. In the UDHR the individual's human rights are linked to the state; the communists argued that in the Soviet Union the state and the individual were in harmony, and so their interests naturally coincided. The delegation of Saudi Arabia explained its abstention in the final vote on the Universal Declaration by the fact that in parts it could not be reconciled with the fundamental tenets of Islam.

### **Issues in Human Rights**

Some are concerned by the overly Western flavour of the UDHR. Not only does it protect Western ideals of property ownership (Article 17) and freedom of thought and religion (Article 18), it seems to promote a Western form of democracy ('the will of the people shall be the basis of the authority of the government; this will shall be expressed in periodic and genuine elections' – Article 21.3) and have a concern with affluence (Article 24 – 'everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay'). Is this a Utopian

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84 'On Human Rights. The Universal Declaration of Human Rights Fifty Years Later: A Statement of the Ramsey Colloquium', *First Things* 82 April 1998, 18-22.

85 See below for a short discussion of cultural relativism.

dream – how can one expect to have ‘holidays with pay’ in situations where there is widespread unemployment?

The second Iraq War was purportedly based on exporting a form of democracy to the Middle East, but this of course begs the question whether this democracy and its concept of human rights is universally valid, or only relevant to the West. Does the West have a right to destroy a cruel tyrannical regime?

It is understandable that the communist nations had objections to the UDHR in 1948. As one observer has put it,

The signing of the Declaration obscured the fundamental ideological rift between the Eastern and Western nations. To the West, human rights are inherent in the individual person; it is the duty of the state to sustain them, and only to impose such limitations as are necessary in order to safeguard the equal rights of others. To the communist East, that is fundamentally wrong, since it makes the individual supreme in significance, and the state secondary.<sup>86</sup>

It is interesting to note that in the drafting of the UDHR, the Soviets were most concerned that the Articles dealing with rights to work were not relegated to inferior status. In contrast to this, the British wanted social rights to be dealt with in a separate document. René Cassin’s brilliance was to draft a preamble<sup>87</sup> that indicated that these rights were vital and related to the defining issue of human dignity, which also pacified the British by indicating that these rights were of different (but not lesser) importance.<sup>88</sup>

In our contemporary setting, the East/West divide is seen in the attitude of China towards human rights. It seems that the Chinese desire human rights, but they are terrified that if they implement them, the state will lose control.<sup>89</sup> Some assume that the American strategy is to import aspects of capitalism (which the Chinese government is keen on in order to promote economic growth) allowing rights to follow. Similar arguments were used in support of holding the 2008 Olympic Games in China. Although many argued that, due to the Chinese government’s appalling human rights record, the Games should not have been held there at all, others countered this by maintaining that the Games themselves would act as a conduit for reform of human rights abuses.<sup>90</sup>

86 Richard Jones, *Groundwork of Christian Ethics* (Cambridge: Epworth Press, 1984), 190. On the impact of the Cold War on the UDHR, especially within the US, see Elliot Abrams, ‘Reflections on UDHR,’ *First Things* 82, April 1998, 23-27.

87 See Appendix for the full text.

88 See Glendon, ‘Reflections on the UDHR,’ *First Things* 82, April 1998, 23-27.

89 See the article by Robert Reich, ‘Logging Off on China,’ *American Prospect Online*, February 22, 2006, which discusses the relationship between China’s attitude to human rights and the use of the internet.

90 Although China’s human rights record is poor, the fact remains that there is virtually no starvation any more in China, people have food and clothing, and many today have work.

One of the most pertinent issues of the past twenty years, as mentioned previously, has been the conflict between two different ideologies of human rights – universalism and cultural relativism. Universalism holds that more ‘primitive’ cultures will eventually evolve to have the same system of law and rights as Western cultures. Cultural relativists hold an opposite, but similarly rigid viewpoint, that a traditional culture is unchangeable.

In universalism, an individual is a social unit, possessing inalienable rights, driven by the pursuit of self-interest. In the cultural relativist model, a community is the basic social unit. Concepts such as individualism, freedom of choice and equality are absent. It is recognised that the community always comes first. This doctrine has been exploited by many states which decry any impositions of Western rights as cultural imperialism – and as observed in the case of China, for example, they may choose to ignore the fact that they have adopted the Western nation state, and, more importantly, the goal of modernization and economic prosperity. The danger for China is that, having adopted Western economic policies, parts of China have become very affluent while other areas are still very much below the poverty line; such a contrast exists between Shanghai and areas near Tibet. Potentially, this could one day cause a terrible revolution, a danger of which the Chinese are well aware. However, they have great difficulty in knowing how to deal with this, a pressing example of the problems of cultural relativism within a single country.

Cultural relativism is in itself a very arbitrary idea; cultures are rarely unified in their viewpoints on different issues, and it is always those who hold the microphone who do not agree.<sup>91</sup> Whenever one group denies rights to another group within a culture, it is usually for their own benefit. Therefore, human rights cannot be truly universal unless they are free from cultural decisions, which are rarely made unanimously. If human rights are bound to such culturally-imprisoned decisions of the few, they cannot represent every individual to whom these same rights are meant to apply.

Even though cultural relativism gives rise to great problems and can potentially be abused, universalism in its current state is not the ideal solution either. Universalism is used by many Western states to negate the validity of more ‘traditional’ systems of law. For example, if a tribe in Africa is ruled by a chieftain and advised by the twelve most senior villagers, is this system any less representative than the supposedly more

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China has expanded and grown enormously compared to its past history – this must surely be a positive growth of human rights?

91 This raises the importance of the media in the current debate on human rights. The issues on which the media chooses to focus will be those issues that attract the most political and financial input. Numerous human rights abuses become ‘old news’ or are simply forgotten because they are not deemed news worthy or, for want of a better adjective, not considered ‘sexy’ enough. Despite the work of NGOs such as Amnesty and the Red Cross / Red Crescent, it seems that not only are some values about rights relevant to the culture in which they exist, but they are also relevant to the particular agenda of the news desk editor. Useful information can also be found on the website of the Council of Europe, [http://www.coe.int/t/e/human\\_rights/ecri/](http://www.coe.int/t/e/human_rights/ecri/). See the conclusion for further thoughts about the media.



liberal societies of the West? It is not possible to impose a universal system of human rights if the future effects of social change stemming from modernization are not understood or, worse still, ignored. In non-Western societies, industrialization, capitalism, and democracy might not have been the eventual outcome of the process of cultural evolution. These ideologies have been shaped and created by Western imperialism, the slave trade, colonialism, modernization, and consumerism. Hence the question raised above about the exportation of democracy into Iraq after the second Gulf War.

From the first drafting of the UDHR, its authors were well aware of the problems of universality. In reflecting on the surprising unanimity of the UDHR, Mary Ann Glendon reports the following story:

In 1946, UNESCO appointed a committee composed of many of the leading thinkers of the day to study the feasibility of framing a charter of rights for all peoples and all nations. The committee began by sending a detailed questionnaire to statesmen and scholars in every part of the world. To their surprise, they found that the lists of basic rights and values they received from their far-flung sources were essentially similar. But as Jacques Maritain (one of the most active members of that committee) famously remarked, “Yes, we agree about the rights, but on condition no one asks why.”<sup>92</sup>

Whilst the preceding analysis has demonstrated a religious basis to human rights, many today follow rights on a purely secular basis (and for modern human rights theory this was facilitated by the earlier decisions taken by Grotius, and his successors). As a mother protects her own children, so the family unit protects its own for the future of the clan and the tribe. Perhaps we are all engaged in a protection of the species that has no religious or ethical element to it at all.

The work of Richard Dawkins in *The Selfish Gene* argues in this direction, that human beings are merely carriers of the gene, and all we do is ultimately motivated by the protection of that gene. Desmond Morris has popularised this view in his television programmes on animal and human development. From this viewpoint, human rights simply protect the next generation – they are nothing more grand or philosophical than that.

Whilst this may be attractive, there are flaws in the purely secular and materialistic thesis. Dawkins’ language itself is highly problematic, as he describes genes in a way which ascribes intention and desire to them, thus humanising a non-sentient substance. Moreover, the fact that people fight for rights of *other* tribes, *other* nations, and *other* people who may be considered alien, demonstrates a sense of sacrifice that would not advance the selfish gene thesis – in fact, it would contradict it. Why should I give up my life for the rights of someone else halfway around the world, as it serves no purpose for my particular gene pool? In addition, the Nazi scheme could easily

92 Mary Ann Glendon, ‘Reflections on the UDHR’, op. cit., 23. We need also to reflect on the people filling in these forms – how many of them were Western-educated, and how many of them really represented the majority view of people within their own countries objectively. It also omitted the views of migratory peoples such as the Roma.



be paralleled to a selfish gene project – the survival of a race by the extermination of other ones. No justification for human rights could base itself on such a Nietzschean concept.

Today's world shows signs of positive progress towards the universal system of human rights. Through a forum such as the United Nations,<sup>93</sup> cultural differences are better able to be resolved, thereby paving the way for universalism while at the same time recognizing and compromising on the needs of certain cultures. The adoption of the International Criminal Court in June 1998 is an important step towards enforcing, protecting and promoting the values agreed upon by the member nations.

As the world becomes a smaller place with the advent of globalisation, universalism makes more sense as a philosophy of human rights. In a world where many people might not be governed by national borders, having fundamental human rights instead of ones bound by certain cultures, probably provides the best solution for peace.<sup>94</sup>

Another prominent issue in human rights is the conflict between collective rights and individual rights. Collective rights protect a group of people, while individual rights protect the individual. It is especially important to take into account both collective and individual rights when condemning certain violations of human rights.

The case of child labour effectively demonstrates the clash between the two concepts. It is possible for one to vehemently advocate higher pay and safer work conditions for the children in a third world country as a group, yet how can one argue that this single option represents a solution for each individual?

It would be preposterous to dismiss simply the sometimes brutal exploitation of children as innocuous. Child labour is a very serious problem in many third world countries. In general, they are used for unskilled and labour intensive jobs in areas such as agriculture, mining, food processing, and manufacturing goods such as carpets, garments and furniture. Employers prefer children as they are more obedient than their adult counterparts, and less likely to complain about their treatment. A wide range of opinions exist among those who condemn child labour. Some support putting a halt to the more abusive forms of child labour such as prostitution and working in hazardous conditions, while others call for immediately abolishing child labour altogether.

Yet one must also take into consideration the viewpoints of the affected individuals. In 1992, Senator Tom Harkin of the United States introduced a congressional bill that would disallow the importing of goods produced by child labour. Factories in Bangladesh, a major producer of garments for the United States, were shut down as child labour was discovered on the premises. The ramifications of the bill were

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93 Really the UN is no more than an umbrella organization for all kinds of nations and institutions, and it is therefore often not realistic to blame the umbrella – the different strands should take responsibility.

94 UNESCO is also very important in highlighting different cultural developments and promoting these. Since 1949 the Council of Europe has also done enormous work in integrating 47 countries (covering 800 million people) and making them aware of their common cultural heritage.

almost instantaneous, as 50,000 children lost their jobs. The little the children were earning did at least allow them to support their families financially. Many of the child workers were satisfied with their payment, and enjoyed the special working status that they held. Following lay-offs, alternative employment was not easily found, and many children were left in dire situations. Naïve reactions of this kind based on the values of other cultural backgrounds can have catastrophic consequences, and yet progress can still be made for better lives.

The Western world is becoming more involved with human rights violations in poorer countries. As a result, the decisions and actions of the powerful nations are having an impact on the people affected. To the individual, protecting the rights of a group may very well lead to short-term hardships. At the same time however, such radical action may be necessary to ameliorate the collective situation. Regardless, it remains important to consider both individual and collective rights. Only then can one fairly pass judgement on an issue without jeopardizing the well-being of an individual or an entire group.<sup>95</sup>

## Conclusion

The agenda of human rights is one that is now well established across the world in the twenty-first century. Whilst there may be debates about the origins and theoretical bases for human rights, the active promotion of them across the planet means that, whatever their status or origin, they continually come into contact with religious groups and individuals.

The next chapter provides a complementary discussion on what we mean by 'religion' and 'spirituality', so that we can begin to explore the inter-relationship between the two.

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95 It is well to remember that everything must be done to encourage developing countries to earn more – the more they earn, then the more the children can slowly be taken out of 'slave work' and sent to school – this has been the strategy of many major organisations. As their earnings increase, they can then slowly build up schools, their health service, etc.



### Overview

What is religion? What does it mean to be a spiritual human being, and is it something beyond just being part of a 'religion'? In this chapter, an introduction first examines some basic issues concerning spirituality and the interchange with the religious behaviour of humanity.

The main part of this chapter will then explore current expressions of spirituality and the religious sense that falls outside 'approved religion.' This focuses on the individual's emotional experience as an expression of a religious sense. How far is individual spirituality divorced from religion? As representatives of something that is not part of organised religion, what part of human existence can be referred to as spiritual?

Due to my own personal background, this section will also explore some of these issues as they apply within Judaism. There are examples of how spirituality can be experienced outside organised religion in terms of creativity and imagination – but how are these perceived within Judaism? Feminism and sexuality can be a focus for spirituality – but how does Judaism view women, and how does Judaism regard sexuality? Mysticism has become increasingly popular, but how is mysticism viewed within Judaism? And if people today invest their spiritual energies in the market-place, what does Judaism make of materialism?

Finally, this chapter will explore whether individual spirituality can be divorced from religion as expressed and experienced in communal settings. The discipline of religious studies has been busy for over a century researching all types of manifestations of this spiritual life. Religion itself has been part of human existence from time immemorial. So what can this tell us about spiritual human beings, the origin of religion and the role it has to play in society? Examples have been taken mainly from this century with a focus on the Judaeo-Christian traditions. However, numerous outstanding examples could also be taken from other eras and other world faiths, such as Buddhism, Hinduism, and Shinto.

### Introduction: The Religious Sense of Humankind

The study of religions has a strong tradition among many disciplines. The near universality of spiritual human experience, impacting on every part of our individual and corporate lives, has begged investigation, explanation, and interpretation.<sup>96</sup> Ninian Smart begins his classic work on religious experience with the claim ‘to understand human history and human life it is necessary to understand religion.’<sup>97</sup> Yet to label something as a religion is now recognised to be a task fraught with difficulty,<sup>98</sup> and any definition of what we mean by religion sooner or later omits one class of what we would *wish* to call religion.

Durkheim related religions to the sense of the sacred and transcendent (‘A unified system of beliefs and practices relative to sacred things’<sup>99</sup>), yet eventually reduced religion to a sociological phenomenon. Tillich defined religion in terms of commitment to an ultimate concern (‘Religion is the state of being grasped by an ultimate concern, a concern which qualifies all other concerns as preliminary and which itself contains the answer to the question of the meaning of our life’<sup>100</sup>), and yet there may be many religious people who lack this sense. Similarly, Schleiermacher worked on the premise of ultimate dependence (‘the feeling of absolute dependence being so universal an element of our self-consciousness’<sup>101</sup>), putting himself in danger of ignoring those religious people who may depend on no such absolute. Nevertheless, there may be in Schleiermacher an expression of what we would observe throughout various spiritualities.

And what of Marxism, and perhaps other alternatives, that some may call religion? A Marxist’s ultimate concern may in fact fit into Tillich’s categories, yet offers a world-view that many would hesitate to label religious. Is there anything ‘spiritual’ about a commitment to Marxist principles? Perhaps the Marxist commitment to equality, fair play, etc. is a spiritual concern. The ‘opium of the people’ was Marx’s definition of religion. Did Marxism itself become a form of religion?<sup>102</sup> (We will allude to Freud and Jung later.)

Others like the anthropologist William James concentrate on personal experience of what people may call the divine (‘the feelings, acts and experiences of individual

96 On methodology, see Ian Markham, *A World Religions Reader* (Oxford: Blackwell, 1996), 10, who advocates the ‘empathetic’ approach along the lines of John Dunne’s ‘process of “passing over”’ advocated in Dunne, *The Way of All Earth* (Notre Dame: University of Notre Dame Press, 1972), ix.

97 Ninian Smart, *The World’s Religions* (Cambridge: CUP, 1969), 11.

98 See helpful discussion in Markham, *op. cit.*, 3ff.

99 Emile Durkheim, *The Elementary Forms of Religious Life* (1912), 47.

100 Paul Tillich, *Dynamics of Faith* (1963), 6.

101 Schleiermacher, *On Religion: Speeches to Its Cultured Despisers* (1928), 142.

102 The development of the kibbutzim is fascinating in this respect – as they grew, there were those that were founded on religious principles, and those that were not, but both believed in a form of human rights and the principle of sharing everything, with an ideal form of communism in the background.

men in their solitude, so far as they apprehend themselves to stand in relation to whatever they consider the divine'<sup>103</sup>). Yet some may still have experiences of something they may never wish to label as divine. Hick suggests a route following the thought of Wittgenstein,<sup>104</sup> using religion as a term that embraces many different forms of life. We know what sort of thing a religion is, yet the essence of that thing cannot be strictly defined, for it will manifest itself in many different forms and practices. We may attempt a strict definition, but at best we will only be highlighting some main strands within a selection of major religions. Is religion therefore a family-resemblance concept, especially when applied to its communal expression? Such an approach is also useful when considering the more general term 'spirituality'. It is perhaps part of the feeling and need for expressing security. Fear of exclusion and limitation of life must surely be an important element.

Tied in with the question of definition is the issue of content. That is, what are you studying when you study a religion? The preoccupation has often been with *either* beliefs *or* actions. John Bowker takes on board some of the insights – also from Wittgenstein – and with this apparatus examines religions as a means whereby human beings explore *limitations*, such as death. This approach has the advantage of examining *both* beliefs *and* actions, and avoids any false dichotomies. (In fact, religions are impossible to break down into such simple categories – see below for Ninian Smart's analysis of at least seven elements of religious life.)

John Bowker discusses death as such a limitation, but he is not suggesting some development of the analysis of religion presented by Feuerbach (1804-1872), which would suppose that all ideas of God are merely our own experiences and ideas about ourselves written large. Rather, Bowker acknowledges the difficulty of defining what a religion is in relation to one of the most spiritually evocative experiences of a human being, that is the limitation of death.

Worth noting is Wilfred Cantwell Smith's rejection of the label 'religion' as it de-personalises the basically pietistic nature of religious experience.<sup>105</sup> His desire is to replace the terms 'religion' and 'religions' with 'faith' and 'traditions'.

Religions, in Ninian Smart's view, can be interpreted and understood in the way that seven dimensions inter-relate: doctrinal, mythological, ethical, ritual, experiential, social and symbolic. Such a model is helpful as it avoids false categories which have already been mentioned (belief/action) and encompasses many aspects which form part of a religious life. Additionally, different religions can be compared by using the framework this model provides. Can the spiritual side of humankind be defined by such models? Certainly not, for these models only attempt to provide just that – a model which interprets the spiritual dimension of human experience which the religions are relating to, leaving aside the question of the reality of religion. However, there is danger here of splitting religion and the spiritual life into its constituent

103 William James, *The Varieties of Religious Experience* (1902), 31.

104 John Hick, *An Interpretation of Religion* (London: Macmillan, 1989), 3-5; see also Markham, *op. cit.*, 5. Wittgenstein talks of 'language games' where thoughts and ideas are grouped together due to their familial resemblances.

105 William Cantwell Smith, *The Meaning and End of Religion* (London: SCM, 1964), 48.

elements, breaking the parts from the whole. As will shortly be observed, some of the protests of contemporary spirituality are that the totality of life has often been ignored by both traditional religion, and traditional analysis, although this would be disputed by some religions that claim to be all-encompassing.. Analysis often makes spirituality and religion seem sterile.

Smart himself attempts to isolate what would be the focus of each religious pattern, whilst acknowledging that we cannot understand religion and the spiritual by describing either what this focus is, or what it is doing. At the end of the day, Smart appears to fall into many of the traps which beset the phenomenologist, most notably 'objectivism', the desire to stand back and make a reasoned judgement from outside all religious traditions and preconceptions – a position which is, in fact, untenable.

Other models have been used to examine and compare religions, picking out key reference points that the religions share. John Hick's *An Interpretation of Religion* concentrates on the way in which religion aims for salvation/liberation as the fulfilment of human transformation. Building on some aspects of the historical-comparative approach, he points out how religions and their many facets fit into such a model after what may be called the 'axial' period.<sup>106</sup> Religious commitment moved from accepting life as it was, while post-axial religion aimed for 'the disturbing and yet uplifting thought of a limitlessly better possibility.'<sup>107</sup> At the very least, Hick's concentration on the desire of post-axial religions to 'transform' is extremely illuminating.

Keith Ward has examined five major world religions and highlighted how the 'images of eternity' presented within them converge in what he calls the 'dual aspect doctrine of God.'<sup>108</sup> Picking out major philosophers and thinkers from world religions, Ward identifies a polarity in descriptions of the ultimate – a timeless, infinite, self-existent being, which at the same time can be experienced in the finite world, and can become temporal.

Dual aspect theism is the classical view; it is present in every major religious tradition. To see the temporal as the image of eternity and to pursue the path of self-transcendence in relation to it is perhaps the central clue to understanding the religious form of life.<sup>109</sup>

Such an approach therefore concentrates on belief, and once again, the need for self-transcendence.

In contrast to Christianity, Judaism is not so much centred on belief or theological discourse. Jewish tradition teaches that upon receipt of the Torah on Mount Sinai,

106 Hick here follows Jaspers' identification of the Achenzeit from approximately 800-200 BCE – Hick, 1989, 31: 'Thus the axial age was a uniquely significant band of time. With certain qualifications, we can say that within this period all the major religious options, constituting the major possible ways of conceiving the ultimate, were identified and established and that nothing of comparably novel significance has happened in the religious life of humanity since.'

107 Ibid, 32.

108 Keith Ward, *Images of Eternity* (London: DLT, 1987).

109 Ibid., 156; also Keith Ward *Religion and Revelation* (Oxford: OUP, 1994), 282-4.

the Israelites responded ‘Na’aseh veNishma’ – ‘we will do and we will obey’ might be an accurate translation. Judaism places great emphasis on religious action, i.e. the practical fulfilment of God’s commandments such as the observance of the Sabbath or the observance of kosher diet. A deeper and theological discourse might follow, but only in this context and as a consequence of a life embedded in the divine commandments.

This Jewish orthopraxy does not mean that Judaism values a mechanical implementation in a religiously isolated context without understanding the meaning of the actions required by it. On the contrary, the Jewish maxim ‘*Talmud torah keneged kulam*’ (and the study of Torah outweighs all [commandments]) encourages study and understanding of the Torah and the divine commandments. Many of the practical commandments also beautifully illustrate the inherently Jewish capacity to translate historical spiritual experiences into contemporary actions. On Passover, for instance, Jews celebrate their liberation from Egyptian slavery by holding seder evenings, recounting the Exodus.

The message of liberation that permeates the Passover story has been a powerful inspiration not only for the Jewish community to maintain the memory of the biblical Exodus, but also to place this experience in a modern context. As a result, many Jews have been inspired by the Passover story to become involved in the civil rights movements in their respective countries, becoming activists against modern-day slavery and apartheid. A famous example of this perhaps is Abraham Joshua Heschel who walked arm-in-arm with Martin Luther King on many of the civil rights marches in 1960s America. Today, organisations such as Rabbis for Human Rights carry on this tradition in Israel, Europe and the USA.<sup>110</sup>

Ward’s model for comparing religions is more limited than either Hick’s or Smart’s, and Smart has at least the advantage of being able to take account of many different elements. Neither Ward nor Hick fit the traditional model of a phenomenologist in the objectivist sense defined above, yet the approach is similar – i.e. attempting to isolate themes or elements of what it means to be religious, and therefore in some way providing a universal picture. Such models have limits and do not really work. This said, we must recognise that many human beings who may not be attached to a particular religion still have deep spiritual concerns. For example, one may find a person who is convinced that ultimate spiritual meaning is to be found in one’s unity with nature, or in relationship with others, yet avoids identifying themselves with any one particular communal religious grouping. This brings us to the present-day New Age movement.

### Contemporary Spirituality

One prominent and well-known example of contemporary spirituality is the New Age movement, of which many competent studies exist.<sup>111</sup> Yet New Age thought is no

110 See Chapter 7 for more discussion of organisations using religion for human rights.

111 For but one study see Rashke, ‘New Age Spirituality’, in Van Ness, *Spirituality and the Secular Quest* (London: SCM, 1996), 205. Pantheism describes some forms of New Ageism, but by no means all.



longer the sole preserve of fringe groups and hippies; it appears in business, education, cinema, music, psychology and elsewhere. For a current expression of spirituality we need look no further. John Tusa, reflecting on an extensive BBC Radio 4 series which attempted to analyse the twentieth century, commented that one of his biggest surprises was how much spirituality featured in this history – ‘spirituality is alive and well’. Expecting a radical decline in religious observance, he noted that interest in spirituality had actually been on the increase, and so played a significant role in recent years.

Within the Western world this may be a surprise. Whilst attendance at a place of worship may have been on a downward slope, spiritual interest appears to remain strong. The phenomenon of religion, and the belief that there is a spiritual side, still plays a major role in modern life. It is possible that this owes something to a growing disenchantment with new technology and consumerism. Politicians are forced to consider these issues in order to win votes in democracies. It is often extremely difficult to measure and define this.

### **Imagination**

The human imagination has certainly reflected this spiritual aspect of life. Is our ability to dream a sign of this transcendence? Is imagination one of the unique attributes of what it means to be created in the image of God? The desire to see and know the transcendent is certainly a significant element of ‘religious spirituality’, if not also of secular spirituality. As Blake romantically remarked, ‘This world of imagination is the world of Eternity.’<sup>112</sup> Imagination comes in many forms, and so also finds expression in many ways. Traditionally, the imagination has played a major role in religion. For example, in private Christian devotion, the use of imagination conjures up images of God, heaven, peace, justice – those parts of religion that are expressed in dogma but never seen. Imagination has also played a part in religious liturgy. Religious sacraments presuppose the imagination. In the Christian tradition, the Eucharist enables the believer not only to imagine the scene of the cross itself, but also the impact that event has on daily life and piety. The act of baptism imagines oneself as dying and being raised to life with Jesus Christ.

In Judaism, there are many symbols. For example, for some Jews the opening of the ark is a symbol that we are nearer to God in our prayers. For others it is purely the mechanical opening of a door to take out the Law or Torah given by Moses. When the Torah is shown to the congregation in a synagogue, as it is carried around with its beautiful cover, the community often bows towards or kisses the covering of the Torah as a symbol of respect they hold for the divine laws. In the Amidah, Jews bow when the word ‘baruch’ (‘blessed’) is recited as a symbol of deference to God. When Jews turn towards Jerusalem in their prayers, this is yet another symbol, a symbol for the centrality of Jerusalem in Judaism, just as it is in the prayer upon taking the Torah scroll out of the ark in synagogues: ‘*Ki miZion tetse Torah udvar Adonai miYerushalayim*’ (‘From Zion the Torah comes forth and from Jerusalem the word of God’).

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112 Blake, quoted in Van Ness, 160.

This is not to say that symbols are merely in the person's imagination. This would underestimate the power imagination can have on the individual and the community. Spirituality has certainly been served well by the great abilities of human imagination, throughout human experience and the world religions. Keith Ward uses the bear cult of the Japanese Ainu, the manitu power in animals seen through the eyes of the Algonquins in the sub-Arctic, and the Sedna half-woman/half-fish goddess myths of the Arctic Inuit, as examples of the role of imagination in religions.<sup>113</sup> It is these images which represent the spirits and which have an abiding effect on the spiritual community to which they belong.

The great symbolic elements of all the world religions, delineated and described by so many religious phenomenologists, play on this ability to imagine. Images are used not only to describe, but have a performative effect on the person or the community, too. As Neville comments, 'Religions behave imaginatively so as to shape social and personal life by the images involved.'<sup>114</sup> He pinpoints two aspects of religious imagination: the 'network meaning,' whereby the imaginative element is examined in the ways it relates to other parts of that experience; and the 'content meaning,' that is what the imaginative event is actually doing or intending to do. For example, a Christian can take part in communion, describe what it is supposed to do, but never feel the sense that they are participating in the life and death of Jesus Christ, and so miss the content meaning altogether.<sup>115</sup> They are just not tuned in to spirituality.

It would seem plausible to argue that something of human imagination is representative of our spiritual nature. Samuel Coleridge romantically defined imagination in the following way, ascribing to it an almost divine status:

The imagination then, I consider either as primary, or secondary. The primary imagination I hold to be the living Power and prime Agent of all human Perception, as a repetition in the finite mind of the eternal act of creation in the infinite I AM. The secondary imagination I consider as an echo of the former, co-existing with the conscious will...<sup>116</sup>

Yet religious traditions have often felt ill at ease with imagination, not least because of the association of imagination with image, and image with idol. The historical implications of the prohibition against making an image of God have been felt in ages past

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113 Ward, *Religion and Revelation*, 63-5 – also 71, 'Human imagination may well give insight into objective reality.'

114 Neville, 'The Emergence of Historical Consciousness', in Van Ness, 138.

115 He relates this to the question of the study of religion – the non-religious scholar often focuses on the network meaning, whereas the religious adherent can be too involved in the content meaning to achieve any survey of the field – 'The scholar's imagination, then, requires vast erudition to acquire sensitivity to the many issues involved in attaining proper distance and participation so as to make study of this or that problem vulnerable to correction' – *ibid.*, 149.

116 Samuel Taylor Coleridge, *Biographia Literaria; or Biographical Sketches of My Literary Life and Opinions*, ed. J Shawcross, two vols (Oxford: OUP, 1968), I:202, quoted in Dor-mandy, 'The Flowering of the Romantic Spirit', in Van Ness, 160.

among the people of Israel, the early Christian Church (where in Ephesus they stood opposed to the worship of Diana), and subsequent Jewish and Christian history. In Christianity physical images have often been accepted as aids to worship rather than objects of worship, and have proved helpful in spirituality, not least in the bringing together of physical and spiritual. A simple example of this is the use of flowers in churches. The Byzantine mosaics in Turkey, Florence and elsewhere were used by Jews as well before images were forbidden – they are all deeply moving and were not always abstract. We can still find many examples of ancient synagogues in the Middle East with some of these designs intact. Poets, writers, composers and artists all try and often succeed in stimulating this complex yearning we all have for imagination. Many psychologists attempt to measure and explain it.

Judaism forbids the making of images of God and regards these as idols. The spiritual journey of Abraham starts with an act of iconoclasm: before leaving his parental home, Abraham slashes and destroys the icons that his own father sold for a living. Throughout the ages, Jews have been strict adherents to the commandment: ‘Thou shalt not make an image of God.’ In antiquity, Jews decorated their synagogues chiefly with asymmetrical mosaics, although this changed radically in the third century when Jewish symbols, pictures with human and animal figures, and even pagan symbols appear<sup>117</sup>; in the Middle Ages the prohibition against physical representations or images of God was taken a step further: as Judaism teaches that all human beings are created in the image of God (*beZelem Elokim*),<sup>118</sup> mediaeval rabbis decreed that human beings should not be depicted. Instead, an artistic tradition arose in which human figures were depicted as human bodies with heads of (kosher) animals, e.g. bird heads.<sup>119</sup>

In his book *The Way into Encountering God in Judaism*,<sup>120</sup> Neil Gillman asserts that ‘Nothing that we human beings say about God or God’s activities in the world is literally true.’ Given that, Gillman asserts, ‘To think and talk of God... is to think and talk metaphorically. We must make our peace with that conclusion and then trace its implications.’ For Gillman, the image of God as presented in the Bible and in Jewish tradition is ‘a complex metaphorical system’ whose main characteristics are plurality and fluidity. He makes clear that the image he is alluding to is not in fact a physical or printed image, but a metaphorical one.

On the other hand, whilst some people have felt that Judaism may be lacking in metaphorical ways to imagine the divine, when we open a traditional prayer book we quickly find God called King, Father, Lord. Other metaphors or images are rarer, with perhaps one exception. In Jewish traditional literature, the Zohar, widely considered to be the most important work of Kabbalah, stands out as perhaps the richest collec-

117 See S Fine, *Art and Judaism in the Greco-Roman World* (Cambridge: CUP, 2005).

118 Genesis 1:27.

119 Although note that the zodiac was a feature of synagogues in late antiquity – see Edward Kessler, *Bound by the Bible* (Cambridge: CUP, 2004).

120 Gilman, Neil, *The Way into Encountering God in Judaism* (Jewish Lights Publishing, 2000).

tion of metaphorical images and stories of God. It is a mystical commentary on the Torah, written in mediaeval Aramaic and mediaeval Hebrew.

The Midrash is filled with wonderful images and stories, many of which the Zohar includes or adapts. Often, though, images that are folkloric in the Midrash have become mythical in the Zohar. The Hassidic stories are also important. The small Hassidic sect of Jews in Russia was remarkable for its metaphorical stories which were beautifully translated in part by Martin Buber and which were relevant also to other religions.

Various teachers today are working to find appropriate metaphors that speak to the modern Jewish community. Recent contributions include Marcia Falk's *Book of Blessings*<sup>121</sup> and the reconstructionist prayer book, *Kol HaNeshamah* (for the use of Reform and Progressive Judaism).

The Christian attitude towards icons and the use of images as aids in worship would be regarded as idolatry if applied to Judaism. That strict ruling does not however mean that beauty and art do not have a rightful place within Judaism: *hiddur mitzvah* is the visual glorification of God. Its roots are found in Exodus 15:2, which exclaims: 'This is my God and I will glorify God.'

Over time, this developed into the adornment of our sacred objects:<sup>122</sup> Many Jewish families have a beautiful silver goblet set aside for the Sabbath wine. To fulfil the commandment of drinking the wine during the kiddush ceremony, Jews need only to pronounce the appropriate blessing and drink the wine. However, to show additional honour to God, many families use this, ostensibly saying, 'Don't just drink the wine, let the entire act of drinking the wine be surrounded by beauty.' There is a delightful symbolism at the end of the Sabbath when the spice box for *Havdalla* with its sweet smell is a symbol of the hope of a sweet life in the coming week.

This extends to all Jewish ritual objects – beautifully illuminated *haggadoth* (the book read at the Seder service), candlesticks, Torah covers, colourful Chanukah candles, and tablecloths for the Sabbath and the festivals. When the first and second temples were built, the Jews created edifices that were unsurpassed. When Jews build synagogues, they want to express their commitment to God, their unending connection with God's covenant, not only through prayer and study, but through their physical statements as well. Many Jewish artists and architects have used their creativity for *hiddur mitzvah*, including such famous painters as Marc Chagall who contributed beautiful stained glass windows to the synagogue in the Hadassah Hospital of Jerusalem. Synagogues such as the synagogue in Oranienburger Strasse in Berlin or Bevis Marks (a copy of the old Amsterdam synagogue) in London testify not only to their architects' creativity but also to the concept of *hiddur mitzvah* (visual glorification).

121 Harper Collins, 1996.

122 The Talmud provides a list of occasions on which the use of beautiful items for the purpose of fulfilling a commandment is particularly praiseworthy, some of which include: beautifying temple offerings (Menachot 69a), circumcision (Shabbat 133b), Pesach offering (Shabbat 133b), the Hut for Succot (Shabbat 133b; Succah 28b), writing a beautiful Torah Scroll (Shabbat 133b).

When you go to a museum like the Israel Museum, and see the superb craftsmanship of the menorahs, the candlesticks which Jews use for Hanukkah (the feast of lights), and other symbols of Judaism, these items lose their magic or spirituality because they are being viewed out of context. In the museum setting they are fascinating but sterile. Perhaps the ability to imagine is a gift of God that resides in all of us and allows us to transcend limits and think beyond the knowable. Here we can witness one aspect of the religious sense of humankind.

### **Creativity**

Whether human imagination today is more active than in previous generations is one question, but its scope for expression has certainly been enhanced throughout the last century, through the arts, and particularly through the electronic media that have so revolutionised communication. Whole worlds that were once thought 'unimaginable' have been created and made real, if only 'virtually real'. With great imagination, therefore, has often come great creativity in art, in music, in writing, in dance, etc.<sup>123</sup>

The ability to imagine and then create has constantly been associated with the spiritual. Either as an expression of the spiritual aspect of life, as a pointer to the spiritual, or as a means of evoking a spiritual experience.

Films that have no obvious religious content can be described as 'spiritual'.<sup>124</sup> The pathos of Charlie Chaplin's films could be said to have brought a spirituality to the silver screen which was many years ahead of its time. Films have played an enormous role in highlighting, rightly or wrongly, spiritual values of life. In addition to many other functions, film has had an enormous influence and, of course, today, television extends influence to a wider audience. A recent *New York Times* article observes that 'Mainstream Hollywood, after decades of ignoring the pious – or occasionally defying them with the likes of Martin Scorsese's revisionist *Last Temptation of Christ* and Kevin Smith's profane parody *Dogma* – is adjusting to what it perceives to be a rising religiosity in American culture'. Mel Gibson's *Passion of the Christ* in 2004 was the most obvious example in which a film that was untouched by the mainstream studios grossed \$370 million in the American box office alone.<sup>125</sup>

Other forms of art are also described as spiritual, similarly having no or little religious theme. Stephen Happel examines *The Three Soldiers*, a war memorial in Washington for those lost in the Vietnam conflict. His conclusion is that, although

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123 One major area that has not been discussed is that of music. Music has played an enormous role in most religions in raising spirituality, and many other compositions, whilst not overtly religious, can seem spiritual in their own way.

124 Philip Seddon examines three films which have been described as spiritual – *Tous les matins du monde*, 'a kind of mysticism of music'; *Bad Lieutenant*, a violent film which examines forgiveness; and *The Rapture*, an examination of conversion and last days – see P Seddon & H Marshall, *Spirituality: Contemporary and Biblical* (Leicester: RTSE, 1994), 2.

125 *New York Times*, Monday, July 18, 2005. This film was perceived to be anti-Semitic by members of the Jewish community.

the piece of art is neither idealistic (about the war or about the future) nor unnecessarily negative, 'It mediates imaginative possibilities that, under certain conditions, can become true... It is willing to commit itself to resist amnesia and to announce a prospective future, however tentative. Such a promise is not undertaken casually; instead of the resignation of constant mourning, it offers humanity a spiritual advent.'<sup>126</sup> The realism of the piece, together with the hope it offers, evokes a spiritual reaction in human observers. Contemporary art often experiments to arouse new emotions, but can this in any way be as spiritual as religion?

What is it about art that would make it spiritual? Traditional religious art may have lost some of this quality, if perhaps the elements of the art form have become associated for the participant with antiquated, traditional ideas. Happel suggests that a painting by Rembrandt would not now be considered spiritual, unless it was done without an overtly religious theme. That is, spirituality to him must be relevant to the times and experiences of those involved, fresh to the moment (although of course this does not imply that spirituality must be anti-historical in any way, and Happel's views are controversial). The artists in the seventeenth century knew how to highlight spirituality for their clients, through different perspectives, juxtapositions of colours and shapes, different layers of pigments – this was their skill, similar to earlier painters such as Michelangelo and even earlier, Duccio and Cimabue in Italy. Gold behind portraits glowed by candlelight and lent these portraits a special illumination that is rather mystical.

The expression of the imagination in the arts involves many parts of the human form, yet the spiritual element is awakened when the depths of human experience are touched upon. Whether it is the boundaries of this life, the limits to which we are put, or something of the ability and/or desire to transcend these limits, art can become spiritual when it addresses these areas. In a picture, a play, a story, what is it that is told and experienced? The existence of something beyond the everyday, allowing us to move from the limits of the physical body to experience something 'more' uplifting and life-enhancing.<sup>127</sup>

Perhaps creativity itself lies at the core of what it means to be made in the divine image, even if the human creator is unaware of the divine. It is not merely the independent act of a human will, but, 'in so far as it is orientated towards the good, [creativity] is empowered by the self-realising Divine energy which human freedom permits to operate in and through human lives.'<sup>128</sup>

### **Superstition Today**

Imagination has been taken in many directions – the most recent trend is once again with themes of space, other worlds, alien creatures, and alternative existence. That the modern world has for many years been exploiting the possibilities of science fiction for its stories is undeniable. In the past, the burning and torture of witches was

126 'Arts', in Van Ness, op. cit., 493.

127 See the cover of this book for a fine example.

128 Keith Ward, *Religion and Revelation*, 201.



a good example. Yet recently the obsession with alien worlds, mixed with elements of the paranormal, has reached a new height. The *X Files*, perhaps at one time correctly described as a 'cult' television series, is now very much mainstream. It is the 'X' which is of course in question – whether stories of alien abduction, government secrecy to hide the truth about other worlds, etc. – all these stories are shrouded in a mist of mysticism which perpetuates the possibility that there is something out there. The question, however, is what 'out there' means. In this expression, the 'out' does not pertain solely to physically other planets, but other modes of being, of communication, etc.

Superstition works well in this atmosphere. When the resurgence of the space and science fiction genre came about, advertisers could not believe their fortune when NASA scientists announced the possibility that a fragment of rock from Mars contained evidence of life.<sup>129</sup> It is not only popular imagination running riot, but also that of professional scientists. Expeditions are at the moment being planned and the hope that Mars is but one of many planets that will provide evidence of extra-terrestrial life is fuelling much of this research, despite contrary evidence thus far. Of course, much New Age thought has tapped into this interest with alien beings. A 'spiritual Woodstock' that took place in 1987 was, according to one guru, organised exactly forty years after the first flying saucers appeared over Mt Rainier in 1947. In another thirty years, in 2017, 'human beings and extra terrestrials would be as close and familiar to each other as Texans and Oklahomans.' Other interpretations of UFOs are that they are encounters with spirits that, in another age, would have been described as fairies or elves.<sup>130</sup> Is this any different to H. G. Wells' description of the first men on the moon?

The superstitious mind, the mind open to possibilities of there being more than we know (in terms of what there is and how things work), is then let loose. Superstition is nothing new, but expresses itself in many ways. Astrology is the most obvious evidence of the superstitious at work. Daily columns given over to it, all manner of media covering it, astrology provides 'ordinary human lives' with a larger picture. Popular astrology, whereby the whole human population is divided into twelve classes, as purveyed in daily newspapers, is to some extent disowned by the 'professional' astrologer. If given precise birth information, astrology can appear 'scientific' due to the unique arrangement of the planets at that given time. From these arrangements, interpretations and predictions are made.

Jung was one amongst many who have used astrology in the help of patients. Despite the temptation to put astrology down to superstition, some empirical evidence supposedly suggests at the very least that 'professional' practitioners are achieving some measure of success. A survey of over two million British people which examined the relationships between time of birth and professional career, corresponded with predictions made by professional astrologers when asked, even though they

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129 The coincidence that this evidence was reported at the same time as the release of the film *Independence Day* was not missed by many.

130 Campbell & Brennan, 1994, 280-283, and Van Ness, op. cit. 208-209.

were unaware of the results.<sup>131</sup> Is astrology an art, an intuitive science, or is there something psychic about the practice?<sup>132</sup>

Leaving aside these questions, the extent to which people will believe in the very popular forms of astrology is at times surprising. Within this is the hope that there is some order and purpose to the world, the dream that things are working together for a greater good, and the inspiration that all of us are involved in the life of our family, our friends, the world, even the entire planets and the solar system.

Superstition is often mingled with other attitudes. One of the aspects of popular spirituality appears to be 'looking back', reviving old traditions for the needs of today. In medicine this has been happening in the use of herbal and alternative remedies, with varying degrees of success. Suspicion of these methods seems to be related to the amount of confidence accorded to the success of science. Prior to the Enlightenment, medicine was full of religious explanations of physical maladies and their solutions. With the secularisation of medicine, although medical practitioners may have professed some religious belief themselves, medicine was no longer a spiritual exercise. Yet alternative medicines, and the obsession with holistic health, point backwards. Beliefs which are non-scientific and which perhaps do not come from the developed theologies of our cultures, creep into the practice of medicine. 'Alternative medicines' may often be perceived as something that those who are less educated or less rational follow. Yet evidence suggests that those who use alternative medicines are well educated and financially well off.<sup>133</sup> The ancient traditions of Chinese medicine, including acupuncture, are of course more than fringe medicine.

At the other end of the spectrum, some allow not only traditional remedies that might make sense (if only we got the science right), but also alternative medicines that appear to lack explanation. These range from the observable (for example, acupuncture) to spiritual healings, whether using 'mind techniques' or appealing to spiritual forces and powers.<sup>134</sup>

Concerning alternative medicines, Robert Fuller observes that perhaps the most significant reason 'for their sustained presence in American culture is their ability to articulate a spiritually significant way of viewing the world.'<sup>135</sup> Metaphysics is clearly involved in many techniques and systems. The philosophy of chiropractic medicine, descending from the thought of Daniel Palmer, originally posited a divine force, present in the human individual, which flows from the brain, through the vertebrae, to the rest of the body. The attraction is that the lay person is given an explanation for what happens in their bodies. Although many, if not most, practitioners today ignore

131 Campbell & Brennan, 28.

132 The Rudolf Steiner educational system, based on the cycle of the moon, attempts to benefit from scientific knowledge about how magnetic force can influence the brain and cause mood swings. The popularity of such a system of anthroposophy shows the appeal of the mix of science and popular superstition.

133 Fuller, 'Holistic Health Practices', in Van Ness, *op. cit.*, 229.

134 That part of this is also a search for direction, rather than just a supposed secular search for spirituality, must be acknowledged – Long, 1984, 4.

135 *Op cit*, 229.



this metaphysical underpinning, the ideas are present in other systems. In the holistic health movement, it is the recognition of the spirit alongside body, mind and emotions that is significant. Although the definition of this 'spirit' is either obscure or completely lacking, the attention to the spiritual aspect is a common thread through many different practices. Crystal healing, which attempts to illuminate the human spirit from the astral body of white light, is one attempt to touch the spiritual in order to heal the physical. We should not forget that it is rare in other types of medicine to have the very sensitive, deep one-for-one caring that other cultures express. Half the treatment revolves around fostering this feeling that someone does actually care, to the extent that people overcome illness through suggestion and encouragement.

Maimonides (1135-1204) composed a prayer for Jewish doctors which beautifully describes not only the doctor's medical calling as a holy task but also sets out the Jewish belief in the oneness of the body and soul:

O God, Thou hast formed the body of man with infinite goodness; thou hast united in him innumerable forces incessantly at work like so many instruments, so as to preserve in its entirety this beautiful house containing his immortal soul, and these forces act with all the order, concord and harmony imaginable.... O, God, Thou hast appointed me to watch o'er the life and death of Thy creatures; here am I, ready for my vocation.

As Michael Nevins notes in his book *The Jewish Doctor: A Narrative History*,<sup>136</sup> Jewish physicians were often called upon to serve powerful secular as well as religious leaders, and the profession was seen as a way to improve one's social position. However, whilst such a position was at times richly rewarded (e.g. Toviah Cohen, the court physician for five different sultans in Constantinople), a Jewish doctor could just as easily be hanged, drawn and quartered as was Rodrigo Lopez after thirty-five years of caring for Queen Elizabeth of England.<sup>137</sup>

Perhaps the most well-known and popular expression of spiritual encouragement is in the original expression of the aims of the Alcoholics Anonymous (AA) group. That is, those involved are encouraged so that they will achieve an 'overwhelming "God-consciousness" followed at once by vast changes in feeling and outlook.'<sup>138</sup> The twelve-step programme has a definite religious theme, and taps into the spiritual in order to change the physical and psychological condition. The steps talk of 'conscious contact with God as we understood Him', of 'having had a spiritual awakening', and 'believe that a Power greater than ourselves could restore us to sanity'. The writings of William James and Carl Jung fed into the original formulations, a programme which is presented as 'spiritual rather than religious'.<sup>139</sup> Yet perhaps the greatest point is that the step programme asserts itself as spiritual rather than material, indicting other approaches that ascribe too much to the material causes of alcoholism, and thus ignore

136 Nevins, Michael, *The Jewish Doctor: A Narrative History* (Jason Aronson 1996).

137 *Ibid.*, 46.

138 *Ibid.*, 241.

139 Kurtz, 'Twelve Step Programmes', in Van Ness, *op. cit.* 285.

the spiritual element. The benefit of the twelve-step programme of the AA was that it brought medicinal and spiritual together, recognising that people could be both alcoholic and sober.

The traditional spirituality of the Western world, from which the insight of the twelve-step programmes derives, recognised materialism – the fixation on quantity, on *more* – as the ultimate expression of the core sin of self-centredness. Related to this sin is the claim that one is the centre of the universe or God. Perhaps only a culture capable of questioning its own materialism can produce and sustain individuals who find in twelve step programs a vehicle of spirituality.<sup>140</sup>

In some alternative medicines, superstition is not necessarily something that is opposed to success. It may be argued that, amidst the range of holistic healings and alternative medicines, the fact that they articulate and present the idea that there is more, that there is a spiritual alternative, goes some way to making them popular. However, pragmatism and comfort probably play a large role in their popularity. Some seem to work, and if they fail, at least they do offer some comfort. Even groups such as Weight Watchers provide a community for individuals who are struggling together.

Those able to heal are viewed with varying degrees of esteem. Some realise a certain level of respectability, and although their methods are unscientific, they at least achieve results. Yet in some cultures, these people achieve the status of a shaman-like figure, or perhaps of a practitioner of witchcraft. The witch, or wicca priestess, taps into a spiritual realm in order to put the world to rights. Yet the mention of witchcraft does not necessarily take us to the extreme of spiritualities. One common desire among people today is for prediction. What is going to happen to the weather, to the economy, to the planets, and to me? Whether the witch, the occultist, the palm-reader, the tarot-card reader – or the weather presenter, the economist – or the astrologer, the desire to know the future is strong. Religious traditions enable prayers to be made for what people hope for, by asking God to direct the future. It would be wrong to lump all these ideas into one. Yet there is a clear desire to know what is coming and what is going to happen in life. The guidance of a providential sovereign (although not necessarily a personal God) is sought. Faith is put in the whole system itself, i.e. the process employed to forecast.<sup>141</sup>

### **Search for Self**

In recent years, the accusation has been made that psychology and the cult of the self has become a religion.<sup>142</sup> Perhaps it may be fairer to say that the search for self-fulfilment, for the vague notion of 'self-esteem', has become a search that has been

140 Ibid., 299.

141 Links to the ideas of process theology, which are close to pantheism, are not far off here.

142 See the criticisms made by Paul C Vitz, *Psychology as Religion* (Grand Rapids: Eerdmans, 1994).

idolised.<sup>143</sup> The continual attempt to assess one's state of fulfilment, at least in some forms, in the United States and elsewhere, has become so concentrated that observers see this as a modern spirituality, a religion that has many of the marks of other religions, whilst being completely void of 'spiritual' content in most instances. In the psychotherapy of Carl Jung, the religious dimension is certainly acknowledged. But in other forms, counselling, psychotherapy and the use of a spiritual director (the therapist) have for many assumed a spiritual role. In an analysis of the history and development of this role, Bregman acknowledges that psychotherapy 'is not a religion, certainly not medicine – but perhaps in its in-betweenness lies its promise and appeal'.<sup>144</sup>

Although such a worship of the self, or more specifically a search for self-fulfilment, may come under the broader label of humanism in its rejection of God and enthronement of the individual, the extent to which it seeks its goal and becomes an overriding philosophy of life leads some authors to label it 'religion.'

Historically, selfism derives from an explicitly anti-Christian humanism, and its hostility to Christianity is a logical expression of its very different assumptions about the nature of the self, of creativity, of the family, of love, and of suffering. In short, humanistic selfism is not a science but a popular substitute religion, which has nourished and spread today's widespread cult of self-worship.<sup>145</sup>

The picture is confused by the way in which such search for self-esteem has infiltrated religious thought and practices. The valid search for a healthy view of self in an attempt to heal disfigured perceptions can easily be confused with egocentricity. Although it may be disputed whether we can call psychology a religion (and Vitz's critique is of a particular strain and development of psychology), the emphasis that counselling and self-fulfilment is given in some settings may indicate that here we see a grasping at something to fill a gap that perhaps is more properly the domain of some form of spirituality. In that sense some forms of psychology may present a modern spirituality, although not to the exclusion of religion, so one can be for instance a practising Jew and a psychologist.

### **Gender, Sexuality and Nature**

Spirituality could never ignore one key element of what it is to be a human being, that is sexuality. However, there are those – and many of them – who claim that in one sense, the authorised promoters of spirituality have ignored the female sex. Feminism is a strong and popular element of spirituality today. While this may always have been the case, the 'authorities' or religion have not always recognised it.

143 For one attempt to fill the notion of self-esteem with some valuable content, and a theological critique, see McGrath and McGrath, *The Dilemma of Self-Esteem* (Leicester: Crossway, 1992).

144 Lucy Bregman, 'Psychotherapies', in Van Ness, op. cit. 274.

145 Paul Vitz, 1994, 141.

The green theology concerned with environmental care clings to female images and language: earth goddess, mother nature, etc. and such is true of New Age thought with the language of the wicca priests, etc. Certain forms of Western rationality and in particular Christian tradition following Augustine have seemed to be against the body and against women. Expressions of spirituality today are concerned with these two elements: that to be spiritual is to recognise the many sides of human sexuality and also to recognise that humanity demands of its members that they take care of their planet, their cosmos.

In Judaism, previously the role of women was to care for the house and to oversee the education of the children. In Judaism, the mother is still the first to light the candles on a Friday night, before the husband, who then blesses the wine and bread. The symbolism of this is that the woman is the leader of the house and the husband has to follow her, whilst the synagogue is the man's domain. This was and still is important in Judaism.<sup>146</sup>

It seems that the central focus of women's rights in Judaism seeking changes in Orthodox communities has to be on access to higher Torah and Talmud learning. Women must be allowed not only to 'find the right question',<sup>147</sup> but also to engage in the search for the right answers thereby bringing about an equal intellectual balance with their spouses.

Within Christianity, there has been much public debate in the UK over the role of women in the priesthood. Whilst women are now accepted as ministers within the Anglican church, after a historic vote in General Synod on November 11 1992, there is still a faction which cannot accept women in leadership. The next challenge to face the Church of England on this particular matter will be whether a woman can be appointed as a bishop.<sup>148</sup> Other Protestant denominations have become more tolerant of the role of women in the church, although some conservative evangelical groups still remain hesitant. Of course, the Roman Catholic Church maintained a strong traditional position under the previous Pope, John Paul II, and there is little reason for supposing that Pope Benedict XVI will change this position.<sup>149</sup>

Whilst this discussion progresses under the heading of 'sexuality and nature', it is not intended to claim that they are inextricably linked. There are those concerned with nature and with the care of the planet who have no concern for feminist agendas. In addition, they may also have no concern for spirituality. Conversely, feminist spiritualities do not necessarily go hand in hand with an ecological concern, as feminist agendas do not always go hand in hand with spirituality. Yet it is not hard to find

146 There are many other aspects of sexuality in Judaism not discussed here.

147 Cynthia Ozick: 'Notes toward Finding the Right Question', in Heschel, Susannah, *On Being a Jewish Feminist* (New York 1983, new edition Schocken New York 1995), 120ff.

148 For discussion of these matters, see Monica Furlong (ed.), *Act of Synod – Act of Folly?* (SCM Press, 1998) and Christina Rees, (ed.), *Voices of This Calling – Experiences of First Generation Women Priests* (SCM/Canterbury Press, 1992).

149 Whilst the issue of feminism and the role of women in other religions could be discussed at length, I have focused here on Judaism as it is my specific background. The approach of Islam to women is of course touched on in our discussion of headscarves.

them linked. Both agendas are fighting for a forgotten or oppressed part of humanity: women wish to be equal to men, while environmentalists insist that until the Earth is acknowledged as being part of the human project, ecological disasters will persist.<sup>150</sup>

We should not forget that despite all these manifestations, the human race's first priority is to survive by reproducing. This has sometimes given rise to a fear of homosexuality. Despite this, the equality of the sexes is extremely important, provided it strengthens the family and the community and is not centred on the interests of feminism alone.

Gay spirituality, the acknowledgement that there are experiences of being gay, of being part of a gay community and culture, that can give rise to spirituality, deserves mention in this context. The often fraught relationship which homosexuals have had with institutional religion and the exclusion they have encountered left many feeling alienated by 'religion'.<sup>151</sup> Spirituality therefore emerged elsewhere. It is claimed that this experience may in fact enhance the ability to be spiritual:

Something in our gay/lesbian being as an all-encompassing existential standpoint – something about our particular sensibility or mode of being-in-the-world, however idiosyncratically varied it may be – appears to heighten our spiritual capacities even as we find ourselves excluded from the citadels of theological and spiritual endeavour.<sup>152</sup>

To try to speak of gay spirituality, as to speak of feminist spirituality, would be to make a crass over-simplification. Yet what are the common elements? They are perhaps the position of being disenfranchised, of being oppressed, and therefore of coming together; the ability to form strong friendships within that community, and hence the stress on relationships. And the acknowledgement of sexuality as something which religion touches on, even as an expression of the spiritual. The expression of this sexuality can be an attempt at transcendence, even self-transcendence. The 'coming-out' of a gay person is an enormously difficult and emotional event, which allows them to see themselves as they really are. And in the gay community, the experiences of the plague, the advent of AIDS and its implications for homosexuals and heterosexuals, forces human beings to face issues of life and death, and likewise how to transcend these limits.

We may soon want to ask questions about this spirituality, and to what extent the experience of a minority group should be allowed to set the agenda for spirituality.<sup>153</sup> Nevertheless, this area of sexuality expresses for some that which they call their

150 See, for example, Rosemary Ruether, *Sexism and God-talk* (London: SCM, 1992) and Sally McFague, *The Body of God* (London: SCM, 1987).

151 The current very public debate within the Church of England regarding homosexuality is an obvious example of this. Of course, it is an issue facing many other Christian denominations and other religions.

152 J Michael Clark, 'Gay Spirituality', in Van Ness, op. cit. 337.

153 For a helpful discussion of homosexuality and the hope for immortality, see Michael Vasey *Strangers and Friends: New Exploration of Homosexuality and the Bible* (London: Hodder and Stoughton, 1995), 244-249.

spiritual side, a side which the majority may prefer to express in other ways. However, is it necessary to be sexual in order to be spiritual? Christian ascetic practice would certainly deny this claim, and debate surrounds the issue of whether Jesus, as the 'true human', affirmed his sexuality.<sup>154</sup>

Judaism believes that sexuality is a very important part of human relationships. For Jews, sexuality is not for the sole purpose of procreation. Sex is a permissible act. Indeed, the Torah teaches 'be fruitful and multiply'.<sup>155</sup> This commandment is echoed in the prophecy given to Abraham: 'Look up at the heavens and count the stars – if indeed you can count them... so shall your offspring be.'<sup>156</sup> This commandment elevates sex within marriage to a holy act, a *mitzvah*. The expression of sexuality is seen as part of the human experience of love and desire and indeed of godly teachings.

The primary purpose of sex is to reinforce the loving marital bond between husband and wife. Jewish teaching recognises this by stating 'the mating of animals is a temporary and purely physical act'. *Chazal* (the collective body of classical Jewish teachings) teaches that in marriage a husband and wife become the closest of relatives. The primary purpose of marriage is companionship and sexual relations play an important role. Procreation is also a reason for sex, but not its only reason. Sex between husband and wife is permitted (even recommended) at times when conception is impossible, such as when the woman is pregnant, after menopause, or when the woman is using a permissible form of contraception (such as the pill).

The word employed by the Torah for sexual intercourse between husband and wife comes from the root *דעת*, meaning 'to know' which vividly illustrates that proper Jewish sexuality involves both the heart and mind, not merely the body.

At the same time, Judaism does not see sex merely as a way of experiencing physical pleasure. The requirement of marriage before sex ensures a sense of commitment and responsibility. Traditional Jewish law also forbids sexual contact short of intercourse outside of the context of marriage, recognising that such contact will inevitably lead to intercourse. Judaism does not consider it natural for people to choose to remain celibate as marriage and the family are such important elements of Jewish teaching and central to Jewish life.

For some, a concern for nature has increasingly become a concern for the whole. We are not merely individuals, but all are related to the whole, and have a responsibility to this whole if we ourselves are to survive, and to see our society survive too. Nature is something worth fighting for – in the late 1990s, the English environmental protestor nicknamed 'Swampy' became a *cause célèbre* by camping out in trees in an attempt to protect nature. Instead of being alienated from God, human beings are now becoming alienated from their planet. The Gaia hypothesis – that the world is a living organism, a collective identity in which all human beings live and participate – is one stage in a whole range of ideas.

154 See Daphne Hampson, *Theology and Feminism* (Oxford: Blackwell, 1990), ch.5.

155 Genesis 1:28.

156 Genesis 15:5.

### **Play, Sport, Games and Adventure**

Spirituality, in its religious expression, has often given itself heroes – saints and spiritual giants. The equivalents are lacking today. Heroes exist in the media, in the worlds of film and music, and also in sport. Perhaps the expression of sport taps into another element of what it means to be spiritual. Both the acts of participating in sport, and being spectators, can import spiritual values into our lives. Physical activity and care for our bodies is encouraged – image has much to do with this, yet the less cynical would also agree that many people have now caught onto the medical wisdom of such a concern. Care for our bodies is a good goal. In addition, however, sport provides the drive, the desire to achieve, to mark oneself out. To win, the rush of adrenaline, pain and pleasure, can be uplifting. Taking part in a team can also be positive. And sport provides those spiritual heroes, those people we aspire to be. Sporting success has perhaps the appearance of delaying death for many, and provides immortality for some. Football is a good example of all these ideas. To many, the support and devotion for their team appears almost religious; the football stadium is a modern cathedral, songs of adulation are chanted at each game and stars are the saints, some of whom achieve immortality – for example, Pelé, the South American footballer.

Carolyn Thomas examines what she calls the ‘world-for-the-moment’ experience of sport by which participants, knowingly or unknowingly, explore their limits and the questions of who they can become and why. In the Pan-Hellenic Games the sport was an expression of the relationship between the human competitor and the gods, in terms of being victorious for certain gods, and offering competition as a sacrifice dedicated to a god. Although the modern following of sport is widely different in terms of this model (with spectators, media, money, etc.), the competition and activity of sport remains similar. It may even be that the church building has become the stadium, the congregation the crowd, and the ritual the competition.<sup>157</sup>

Achievement, or the aspiration to achieve, can be perceived as something that requires more than the merely physical. Roger Bannister remarked that, ‘Whether as athletes we liked it or not, the four-minute mile had become like an Everest – a challenge to the human spirit.’ Commitment and individual excellence are two values central to the sporting world. Such commitment and striving often seek to mark the individual out, either in comparison with others in their achievements, or at least in their striving. The competitor can transcend his or her own perceived limits, and progress to answer questions about individual identity. Whether this transcendence is only in terms of minor achievements, the sports world provides a sphere in which human beings can at least feel that they have made a contribution; a place where they may be remembered; a place where they can play a part in the whole. The integration of mind, body and spirit is a goal for which the successful participant aims. Perhaps

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<sup>157</sup> The satellite television coverage of the 1998 World Cup tournament even used overtly religious themes in its advertising. For a fascinating study of the relationship between physical fitness, body builders and religious identity, see the thesis by Daniel Wildmann, *Nationaljüdische Turner: Zugehörigkeit, Körperlichkeit, Männlichkeit* (University of Basel, 2007).



this aim to be the best is only a substitute for spirituality – nevertheless, in this scenario, a substitute exists in place of something else.

Such an achievement, when the ordinary physical processes of body and mind appear to be harmonious with the spirit, and which can also be experienced in love, sex, creativity, etc, can give sport this element of transcendence, of reaching the limits of human experience. As Abraham Maslow reflects on these experiences, they cannot be arranged or forced, they do not occur by merely taking part in a sport. Altered states of consciousness may perhaps reflect the same feelings:

These peak experiences are characterised by a disorientation in space and time during which the sport participant becomes oblivious to the surroundings and the passage of time. There is an intense sense of wholeness and completeness as if one small part of the world is perceived for the moment as everything. There is a sense of nowness, a freedom from the past and future, and a here-and-now character that makes the experience very immediate. Individuals, more integrated with themselves and their total environment, feel at the peak of their powers.<sup>158</sup>

Where the physical and the mental become truly one (reminiscent of religious asceticism), a true mystical and spiritual union occurs.<sup>159</sup> Such highs and experiences come not only through sport, but also games. Games can have an aesthetic quality (chess, for example), they can momentarily transcend one's horizons (fantasy games); most if not all produce varied levels of enjoyment and pleasure, and many require deep commitment similar to that of a sports person. Games have been employed in religious circles: casting the lots of the gods developed into playing dice and tarot cards too are widely used.

Judaism has its own tradition of gambling and games. Among the ancient Israelites no mention is made of games of chance, and no provision was made against them until the period of the Mishnah. With the introduction of foreign customs and amusements in the latter period of the Second Temple, playing with dice, the popular game of antiquity, was adopted by the Jews. The Rabbis were bitterly opposed to these imported fashions, and looked upon them with intense aversion.<sup>160</sup> Furthermore, a gambler is disqualified from testifying before a court of justice.<sup>161</sup> Since robbery was defined in Jewish law as the act of violently appropriating something belonging to another against his will, the Rabbis could not make gambling a capital crime. They did, however, forbid gambling of any kind, and considered it a form of robbery; but since it was not actual robbery, money lost in games of chance could not be recovered through the courts of justice.<sup>162</sup> This attitude has not substantially changed through-

158 Carolyn Thomas, 'Sports', in Van Ness, op. cit., 512-3.

159 For sport in the New Testament, see Charles Sherlock, *The Doctrine of Humanity* (Leicester: IVP, 1996), 230-231.

160 Cf. Midrash on Psalms which states on Psalm 26: 'those that play at dice, who calculate with their left hand, and press with their right, and rob and wrong one another.'

161 Babylonian Talmud, Sanhedrin 24b.

162 See also: Babylonian Talmud, Gittin 61b; Maimonides, 'Yad', Gezeleh, vi. 7-11, 16.



out history and gambling remains widely regarded as a negative influence that is frowned upon.<sup>163</sup>

There are two exceptions in the Jewish calendar on which gambling is allowed and encouraged. The first exception is the festival of Purim. In the Purim story, the drawing of lots initially condemned the Jews of Persia to death but ultimately saved their lives through the able interventions of Queen Esther and Mordecai. For this reason, in addition to dressing up for Purim, Iraqi Jews have a tradition of playing traditional games on the holiday – *naqshehud* and *dosa* – which draw on the theme of chance. This custom has become widespread in the Jewish community and many Jews engage in gambling games at Purim.

The second exception concerns the festival of Chanukkah, when Jews often play the traditional *dreidel* game. Some people maintain that the *dreidel* game goes back to the time of the Greek-Syrians, and thus is integrally connected to the Hanukkah holiday. Since the Greek-Syrians prohibited the Jews from studying Torah, the Jews needed a way to hide their Torah learning. They used the *dreidel* as a decoy. When they saw the Greek-Syrians coming, the Jews would hide their books, take out their *dreidels*, and trick the Syrians into thinking they were just playing a game. The Yiddish word *dreidel* derived from the German word *drehen*, which means ‘to spin.’ In an effort to link the game to the celebration of Hanukkah, the Hebrew letters *nun*, *gimel*, *hay* and *shin* were said to stand for the phrase *Nes Gadol Haya Sham*, which means ‘a great miracle happened there.’ Despite this there has surprisingly been a Jewish tradition of involvement in games of risk, such as horse and greyhound racing, card and other gambling sports. Perhaps this originated with the lots drawn on the fate of Jonah and the sea!

Perhaps games of skill and chance give us metaphors for the nature of human life, and in these we attempt to represent and work through fears and aspirations. Mexicans have an ancient ball game which was a ritual of pride where the stakes were extremely high – the opposition was often an enemy vanquished in war who would be allowed to die in the games as a way of preserving his honour.

The ball game was one of the complex rituals in the religious lives of pre-Columbian peoples. This ancient tradition was popular throughout what is now the region of Central America, Mexico and the southern United States. But *Tlachtli*, the name for the game, was not played for mere sport.

The court, shaped like a Roman numeral ‘I’, represented the universe with its high walls and markers through which the ball was thrown. The whole playing field consisted of a central court of about 40m by 12m and end courts of about 35m by 12m. The courts were aligned with the stars (the older ones point north-south while later ones face east-west) and the players stood at either end of the field and threw a small, hard rubber ball about the size of a man’s head. The ball could be hit with a mallet or stick, or with various parts of the body including the hands, feet, hips and shoulders. *Ullamalitzli*, the technique of using hips and shoulders, was the most commonly

163 See for instance, the response of Rabbi Leon di Modena (1571-1648) and his autobiography in *Vita di Jehuda* (most recently published in English by Princeton University Press in 1988) in which he quotes his own gambling as a bad example.

used. The aim of players was to get the ball through a hoop or stone rings high on the sides of the court, a difficult feat that often took some time.

The *ollamani*, or player, was supposed to train to perfection, become highly specialised and acquire a following and popularity which brought him recognition within the group. The stands were filled with expectant spectators, anxious to see the result of the contest, which was consummated with an offering of human blood and death to the gods. This represented the sacrifice of life to perpetuate life. Dying in the games was considered more honourable than the shame of being beaten in war.

In present times, we have games that offer us alternative worlds, even virtual realities, where transcendence seems almost real.

Perhaps the activities that most often lend themselves to descriptions of the spiritual are adventurous pursuits (often pursuits which are linked with nature, with a desire to be intimate with nature). Mountaineering, 'one of the most spiritually orientated naturalistic recreations',<sup>164</sup> skiing and snowboarding, surfing, rafting – all of these combine nature with exhilaration, fear, awesome feelings of responsibility, and then achievement. A rush, a high, which forces the participant to seek greater peaks and highs, living for the rush. Travel has also become something of a pursuit, a dream to follow, to explore the limits of one's life.<sup>165</sup>

Other spheres of life may seek the same desire. Drugs and the culture that surrounds them look for the feelings and experience of transcendence. Perhaps most basically, the sexual act and sexual longing taps into similar experiences of being on a 'high', being at one with yourself and with another, transcending the limits of your body alone. The drug expansion of the 1960s and 1970s can be traced to many different social and economic causes. Yet within this stream, certain 'pre-New Age' ideas exerted their influence. The theosophist Alice Bailey promoted quasi-Christian ideas, where the kingdom of God would be ushered in by a raising of human consciousness. One way to alter consciousness is by the use of drugs, and as a result, mind expansion could take on religious overtones.

### **Market-place**

In a helpful review of the work *Spirituality and the Secular Quest*, Lawrence Osborne makes several critiques of a vast book that attempts to describe the spirituality of the secular world. Yet, along with a concentration on the individual at the expense of community, Osborne is surprised that the work omits discussion of perhaps one of the most influential and forceful realms of the spirit in our present world, that of the market-place. The power of money, industrialisation and market economics undoubtedly underlines most of our current life more than any other topic. Not only do individuals seek to express themselves and move beyond their boundaries through material acquisition, but whole economic enterprises seem to achieve the status of a

<sup>164</sup> Joseph Price, 'Naturalistic Recreations', in Van Ness, op. cit. 423.

<sup>165</sup> Note especially Baedeker in Germany, today one of the largest travel book publishers, and series like Lonely Planet and Rough Guide.

quasi-religion, with belief systems, rituals, and a priesthood.<sup>166</sup> Money is not only a powerful symbol, but has come to be viewed as real in itself; since everything can be reduced to this 'ground of being'; money is ultimate reality. As Osborne notes, within the Christian tradition this has commonly been labelled Mammon.

In describing this concept as 'Mammon', Osborne refers to the English translation of Matthew 6:19, which states, if translated literally 'You cannot serve God and property.' It is unfortunate that modern Bible translations into English and other languages have maintained the Hebrew word 'Mammon' for property in the above context, thereby implying a link between Hebrew, Jews, Judaism and the service of property over God – a link which until modern times had helped foster anti-Semitic stereotypes. In classical Hebrew, Mammon (מַמּוֹן) designates property or possessions (although money is the primary meaning). In Modern Hebrew, it means simply funding or financial valuation.

In Ecclesiastes 5:19, it is written, 'If God gives a man wealth and property and lets him enjoy them, he should be grateful and enjoy what he has worked for. It is a gift from God.' It is interesting to note that this passage follows just a few lines after the statement: 'We leave this world just as we entered it – with nothing. In spite of all our work there is nothing we can take with us.'<sup>167</sup> These statements show the dichotomy in the attitudes which Judaism displays towards wealth and justice. On the one hand, Judaism does not condemn wealth or the wealthy, but it provides for a strict framework of obligations which accompany fortuitous personal enrichment and frowns on the ostentatious display of wealth. Halachah obligates Jews to give one tenth of their income to the poor. This is generally interpreted as one tenth of the net income after payment of taxes.<sup>168</sup> Those who are dependent on public assistance or living on the edge of subsistence should give ten per cent but may give less; no person should give so much that he would as a result become a burden on public funds. The obligation to perform *tzedakah* (charity) can be fulfilled by giving money to the poor, to health care foundations, to synagogues or to educational institutions. The obligation includes giving to both Jews and Gentiles; contrary to popular belief, Jews do not just 'take care of our own'. Many Jewish organisations assist throughout the world in times of natural disasters, war or famine, to fulfil the Jewish tenet of *tikkun olam*, the moral responsibility to repair the world and alleviate suffering wherever it exists.

166 Lord Simon Marks, who cultivated the elegance of *Marks & Spencer* (the chain-store his father founded), claimed that he could make even the poorest English girl look equal to a duchess, as with the right materials there would be no contrast between them in outward appearances – he was driven by a spiritual concern, to give value for money to his poorer customers.

167 Ecclesiastes 5:15.

168 The legal source is Deut. 14:22, and the Bible is filled with examples: Abraham gave Malki-Tzedek one-tenth of all his possessions (Genesis 14:20); Jacob vowed to give one tenth of all his future acquisitions to the Almighty (Genesis 29:22); there are mandated tithes to support the Levites (Numbers 18:21, 24) and the poor (Deut. 26:12).

Certain kinds of *tzedakah* are considered more meritorious than others. They are described in the Talmud,<sup>169</sup> and Maimonides<sup>170</sup> organised these into a list. The levels of charity, from the least to the most meritorious, are:

1. Giving begrudgingly.
2. Giving less that you should, but giving it cheerfully.
3. Giving after being asked.
4. Giving before being asked.
5. Giving when you do not know the recipient's identity, but the recipient knows your identity.
6. Giving when you know the recipient's identity, but the recipient doesn't know your identity.
7. Giving when neither party knows the other's identity.
8. Enabling the recipient to become self-reliant.

Jewish law states that *tzedaka* also has a spiritual dimension to it which will benefit the donor of the *tzedaka*. In the Babylonian Talmud, Rabbi Judah bar Ilai in Bava Batra 10a states: 'Iron is strong, but fire melts it. Fire is strong, but water extinguishes it. Water is strong, but the clouds carry it. The clouds are strong, but the wind drives them. The wind is strong, but man withstands it. Man is strong, but fear weakens him. Fear is strong, but wine removes it. Wine is strong, but sleep overcomes it. Sleep is strong, but death stands over it. What is stronger than death? Acts of generosity, for it is written: "*Tzedaka* delivers from death."<sup>171</sup>

From a public policy argument, charity through corporate foundations can be seen in two ways:

- 1 Multi-million pound international companies, or wealthy individuals giving money for *tzedaka* purposes may try to position themselves in the 'marketplace' but by giving *tzedaka* to e.g. a museum, school or hospital they are also fulfilling the *mitzvah* of *tzedaka*.
- 2 On the other hand, critics of corporate foundations<sup>172</sup> have pointed out that money donated in most jurisdictions receives favourable tax treatment. By giving money to its foundation, a corporation avoids tax payments on the given sums. As such, less money is made available to the public treasury for public spending. The criticism addresses the argument that whilst the corporate foundations may give money to worthy causes, the decision on where to spend such funds is taken away from democratically elected and publicly accountable bodies and transferred to the hands of private companies.

Yet the desire of multinational corporations and executives to build schools, museums, hospitals, and churches to bring immortality, is a real spiritual concern. Rock-

169 A selection of relevant sources: BT Ketubot 50a, Gittin 5b, Sukkah 49b.

170 Laws of Gifts to the Poor 10:7.

171 Proverbs 10:2.

172 See, for instance, Draffan, George, *The Elite Consensus: When Corporations Wield the Constitution* (POCLAD, 2003).

efeller and Getty constructed buildings and bought art as a form of immortality for their families, whilst wishing to help society after making so much money. Perhaps there is an analogy between this and the huge pyramids of the Pharaohs. The Pompidou Centre in Paris is another example of a prominent building achievement, although one funded by the state and which perpetuates the name of a leading French politician.

A photographer<sup>173</sup> and an art historian for the Rockefeller family and their museum observed that the wonderful thing about very wealthy American families was that they would focus their enthusiasm on some basic art project, study it in depth, call in the experts, and then build up a large collection. They would then build a museum in their family's name, a record would be made of the collection, and the result would be displayed for the world.

### ***Mysticism: Religious and Secular***

The quest for the 'essence' of spiritual experience has dominated many religious studies. Rudolf Otto concentrated on the numinous, the method of attaining knowledge which occurs through religious experience, drawing the individual out of himself. Others have identified those experiences that are 'mystical' as central to religious experience. Mysticism is certainly one aspect of religious life that spans the religions, and the non-religious spiritualities we have examined.

Losing a sense of individual identity, unity with the whole and with the spiritual realm – these are the aims and experiences of the mystics, often considered to be the core of religious experience. These are propounded as fundamental events that give rise to a contemplative quest. Brief surveys of mystical experiences suggest 'that the capacity for mystical experience of some kind is widespread and not limited to any particular activity. In other words it is a general capacity of the human spirit, not confined to "religion"'.<sup>174</sup> 'That's one small step for man – one giant leap for mankind' – Neil Armstrong's unforgettable words as he stepped off the Apollo 11 capsule and onto the moon in 1969 could be one of those events.

Throughout human history, there have been endless examples of people dreaming, and of dreams being interpreted within a moral and religious dimension. The philosopher Spinoza was excommunicated from the Jewish community of Holland in the seventeenth century for his unorthodox and controversial views on the Almighty. These views were especially upsetting for those Jews and *marranos* (Jews who had superficially taken on the Catholic faith) who felt that his writings undermined the suffering of the Jews from Spain and Portugal; if his views were accepted their suffering would be rendered meaningless. This is why the 'cherem' (excommunication) was so extreme.<sup>175</sup> In the eighteenth century, Baal Shem Tov was known for his mystical

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173 Otto Nelson, a relation of the author.

174 Jones, Wainwright & Yarnold, 1986, 23.

175 If Benedict Spinoza was right, then a huge amount of suffering by the Jewish people at the hands of the Inquisition would have been for no purpose whatsoever.

experiences, and the reports he gave of visions he had seen. Writing to his brother-in-law, he describes how,

On the day of the New Year of the year 5507 (1746 CE), I engaged in an ascent of the soul, as you know I do, and I saw wondrous things in that vision that I had never before seen since the day I had attained to maturity. That which I saw and learned in my ascent it is impossible to describe or to relate even from mouth to mouth.<sup>176</sup>

On August 29 2004 *The Observer* carried a report about how the Kabbalah movement, popularised by its influence on media figures such as Madonna and Demi Moore, was aiming to begin student programmes for children in the UK. Kabbalah, which simply means ‘that which is received,’ is the study and practice of Jewish mysticism. However, it has become something that is practised and interpreted by a wide range of groups and individuals, from self-help books to New Age mystics. The celebrity ‘pop-Kabbalah’ has to be distinguished from the proper study of Kabbalah. Also, traditional Judaism is uneasy with the mysticism it promotes and has imposed a number of safeguards to ensure its proper study. As Warren Kenton observes,

Kabbalah is the inner and mystical aspect of Judaism. It is the perennial Teaching about the Attributes of the Divine, the nature of the universe and the destiny of man in Judaic terms. Imparted by revelation, it has been handed down over the centuries by a discreet tradition that has periodically changed the mythological and metaphysical format to meet the spiritual and cultural needs of different places and epochs. This long and broadly-spread history has given Kabbalah a remarkably rich and wide variety of images of reality which appear to the unversed eye as strange, obscure, and even at times contradictory or corrupt.<sup>177</sup>

Yet difficulties arise for the ‘religious’ adherent when it is realised that mysticism crosses not only barriers between different religions, but between sacred and secular pursuits. Can the mystic experiences of someone high on drugs be similar? Aldous Huxley, who has in fact had so much impact on the New Age movement, experimented with hallucinogenic drugs and induced mystic states that he supposed to be at the heart of all religions. Others have criticised Huxley’s approach (for example, Zaehner, who provides a taxonomy of mystical experiences), and in turn been criticised in their own analysis (Zaehner has been criticised for his system, and for ignoring the account of the person undergoing the experience itself). Yet mysticism has, without a doubt, been key to much study of religion.

Can mysticism be heralded as the pinnacle of spiritual humanity and the point where all experiences converge? The Christian mystical union with the Godhead of the Trinity, the Buddhist *nirvana*, and an atheist’s experience of the true nature of reality on a transcendental level, all these may be examples. As with all attempts to find a ‘core’, the difficulty consists of making sense of the experience without the data in

176 Quoted in D Cohn-Sherbok, *Fifty Key Jewish Thinkers* (London: Routledge, 1997), 12. See also the account of Moses Hayyim Luzzatto in the same volume, 82-4.

177 Kabbalah: Tradition of Hidden Knowledge (London: Thames and Hudson), 4.

which it is represented. Mystics retell their experiences within a certain tradition. If their language points to a reality beyond their experiences, how are we to make sense of this reality, let alone suppose that all mystical experiences are similar? Yet, to deny a common core for the content of a mystical experience is not necessarily to deny a common core in the search for transcendence and unity with the whole.

### **Death**

We all know we have to die. The study of religion has spent much time examining the way humans cope with death and what lies beyond it. One common subject for our superstitious minds today is the area of near-death experiences, where hints of transcendence and life after death are given. Similar too is interest in reincarnation, and also the business of freezing dead bodies in the hope that future science will be able to bring them back to life. John Bowker has explored the limitation of death as expressed among religious people.

Death is a limitation on the continuity of life itself in present circumstances and in the present body. It seems that religions in the manifest form they have assumed are the consequence of projected 'ways through' the limitations that circumscribe human activity and they are focused at points of particular intransigence. This means that 'religion' need not, indeed should not, be regarded as always having been a separable phenomenon, open to uniform definition. What we now define (or attempt to define) as 'religious' represents the consequences of the ways in which men have scanned the limitations (*all* the limitations) that surround them.<sup>178</sup>

The desire to seek a way beyond death, perhaps *the* limiting experience of human life, comes close to the heart of spirituality. Presumably the practice of freezing sperm and preserving eggs for future insemination is on the frontier of extending life. Whilst judgements remain to be made about the ethics of such practices, it is clear that immortality is open to some men in this way, even if in practice it is currently undertaken in the face of fear for premature death due to terminal illness, for example.

### **Trends**

Are there common trends in all this talk of spirituality, in the New Age, in imagination, creativity, superstition, sexuality, sport and games, nature, the marketplace? Any of the following observations could in no way claim to be comprehensive, especially since what has gone before could never lay claim to cover all modern expressions of spirituality. Similarly, we would not wish to fall into the trap of objectivism, claiming a neutral vantage point. Yet it would be fair to say that much of the discourse, experience and expression of spirituality does share common themes.

Within these spiritualities there is a looking back, a romantic vision of what the past was like, which at the same time may reject the traditional interpretations of religion. The spiritual person is looking both to transcend his experience (whether it be

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<sup>178</sup> John Bowker, *Problems of Suffering in Religions of the World* (Cambridge: CUP, 1973), 64; developed in John Bowker, *The Meanings of Death* (Cambridge: CUP, 1991).



limited by ability to imagine, ability to create and express, sexuality, etc.), and experience some form of intimacy with whatever transcendence there may be. This may come from a mystical or ecstatic experience. In some, there may be explicit reasons for this search, or emotions associated with it – angst, guilt, a feeling of distance and alienation. Others may experience the ‘dark night of the soul’ and progress through a mystical experience, involving such activities as prayer, meditation, or exercises, in an attempt for self-development. There is a search for something more, or often an attempt to make that ‘something more’ happen.

A textbook on secular spiritualities which discusses many of the themes given above describes the spiritual dimension of life as,

The embodied task of realising one’s truest self in the context of reality apprehended as a cosmic totality. It is the quest for attaining an optimal relationship between what one truly is and everything that is; it is a quest that can be furthered by adopting appropriate spiritual practices and by participating in relevant communal rituals.<sup>179</sup>

This book itself is one part of a series on world spirituality, defining the spiritual core as ‘the deepest centre of the person. It is here that the individual is open to the transcendent dimension; it is here that the person experiences ultimate reality.’<sup>180</sup> Whilst these definitions may ignore the communal and public nature of much spirituality, they point to common trends – the attempt to move beyond the normal experience of everyday life, to transcend limits, and the hope and realisation that there is something more. Human rights is of course just one manifestation of this, as is religion.

To what extent is this search for spirituality commonplace? Despite the many disparate examples given, the predominant model that governs most peoples’ lives in the West today appears to be secularism. Although many may buy into or are born into a particular spirituality, many remain purely materialistic. God, the divine, the spiritual, the process – none of these are totally removed or different from the world. Rather, the spiritual is part of this mechanistic and materialistic world we inhabit. In fact, many New Age spiritualities appear to deny any real freedom or chance to change the lot into which one is born. The substitutes for the religious year are now the pattern of week to weekend, the chance to have a break, then a holiday, and then back to work. By contrast, religions offer perspectives that hover between the materialist and non-materialist world. The everyday world is affirmed by God, yet God is wholly other and hence apart.

Arguably, secularism has produced a void. The disillusionment with the technological progress of the world has to a certain extent created a vacuum which is being filled by many new notions. Very recently, the development of the microchip and computer technology, together with mobile phones, can be described as a new form of communication and ritual.<sup>181</sup> People seem incapable of being without these tools

179 Van Ness, *op. cit.*, 5.

180 Cousins, in Van Ness, *op. cit.*, xii.

181 For example, carrying mobile phones can give children and their parents a sense of security.



of communication that in many ways are changing our whole society. Such a vacuum has largely encouraged humans to ignore, or perhaps ‘switch off’ their spiritual capacities. Some modern spiritualities have attempted to fill this vacuum, seeking a transcendence of their limits, looking for something more. Is this what it means to be spiritual? Is this what religions attempt to express? What can the traditional religious communities have to say about the human spirit, and what has the study of religions contributed to our understanding, as we already know so much?

### **Traditional Religions**

The study of the communal nature of traditional religion, and its expression within culture, has provided much of interest.<sup>182</sup> It has acknowledged the pervasiveness of religion throughout humanity, and the very fundamental yet complex role it plays in any society. In many cases, religion is all-encompassing and still holds communities and tribes together.

Cultural anthropologists have examined the role of religion in primitive societies,<sup>183</sup> psychologists have made links between religion and all manner of human intellectual activity,<sup>184</sup> and sociologists have demonstrated the role religion plays within communities across the globe.<sup>185</sup>

### **The Question of Origins**

One pressing question within this whole matrix of study concerns the origin of the religious sense and its communal expression. Successive theories have been discarded and replaced as the relatively young human sciences have developed, and although many of the theories may have had something relevant to contribute, none ever managed to tell the whole story. Evolutionary theories played heavily with the idea that polytheism progressed through several stages until it finally reached the advanced monotheism we know today. Many other elements were introduced into this framework, from Max Muller’s nature myths to William James’ insistence on personal experience, and from J G Frazer’s magic to Durkheim’s totemism. Other accounts took the lead from evolutionary theory and the likes of Durkheim, Feuerbach, Freud and Marx helped erode the religious sense of humankind.

The impact of reductionist approaches – those that reduce religion to a non-supernatural experience ignoring that which religion purports to be – must not be underestimated. It is their influence that has led people to be surprised at the degree

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182 For comprehensive surveys of the history of religious studies (and the various labels given to the discipline, such as ‘Comparative Religion’ and ‘History of Religion’ or ‘History of Religions’), see Sharpe, *Understanding Religion* (London: Macmillan, 1986), and Dewi Hughes, *Has God Many Names?* (Leicester: Apollon, 1996).

183 James Frazer is perhaps one of the most famous and earliest of these, with the publication of *The Golden Bough*.

184 In this we could include William James, Sigmund Freud and Carl Jung.

185 For example, Max Weber and Peter Berger.

religious expression still permeates Western society. Being convinced by these theories, many had expected religion would ultimately disappear and be eclipsed. The most common failing of all these explanations of religion is that although they may describe particular occurrences in religious life, they repeatedly reduce the whole experience to something which religion claims it is not. In addition, although they may describe the origin of particular experiences, they fail to comment on the content and reality of what is experienced by the believer.

John Bowker's attempt to analyse 'sociological, anthropological and psychological approaches to the origin of the sense of God'<sup>186</sup> sweeps through most of the disciplines associated with the study of religion (as discussed throughout this section). His tentative conclusion from all of these avenues of discovery states that,

What has emerged quite separately in each of the various disciplines surveyed is an entirely new concern with the differentiating consequences of the responsive objects of encounter. It is this which represents so important a revolution in recent years, because it implies a reversal of the nineteenth century ambition. It now becomes clear that we are not studying massive mechanisms of social process, or of individuation alone, in which it is virtually irrelevant what objects are or are not encountered – as though the mechanism will in any case run on. It is the contributory effect of the actual objects of encounter which is returning into the analysis of behaviour in all these different disciplines.<sup>187</sup>

This is not a covert argument to persuade people to become religious, but a recognition that all our searches for the origin of the spiritual sense of humankind fail in their comprehensiveness, and require us to ask real questions about what may in fact be the object of religious encounter. The discipline of religious studies has attempted to do this in two different ways: either to study the object of worship or encounter, or to study the subjects and their religion.<sup>188</sup> Whatever their uses, anthropology, sociology, and psychology do not tell the whole story any more than one religion. Even phenomenology (literally, the observance of the phenomenon of religion, following Edmund Husserl at the end of the nineteenth century) – perhaps the most influential approach to religions seen today – is limited.<sup>189</sup>

Those approaches which have attempted to stem the tide of reductionism by filling the 'objective' with some content have also proved extremely popular. Even though many academics may have viewed Jung with suspicion for his religious involvement, his theories have become widely influential. Beginning from the concerns of a psychiatrist, Jung was struck by the similarities between the dream sequences of his patients, and the mystical elements of many ancient philosophies and religions. He

186 Title page, Bowker, 1973.

187 *Ibid.*, 181.

188 Perhaps it was Schleiermacher who had most influence on the shift from 'objective' approaches to 'subjective' approaches, thus opening up the road which the likes of Tillich and Malinowski would follow.

189 Originally a reaction against some reductionist theories, it attempts to evaluate, classify and compare religions. Hence the model of Smart illustrated above.

developed a theory of the unconscious and conscious, whereby the two need to be in balance. The myths of the religious worlds are the archetypes by which the collective unconscious of humankind can be drawn out of itself into this balance, so that individuals can become a 'self'. Jung was ultimately agnostic about the spiritual realm of this world, but adamant that the spiritual nature of humans pointed to important underlying principles. Professionals in all the circles he touched on have criticised his lack of expertise and his imprecise articulation, yet his influence has been great.

Within the field of religions, Jung moved in the same circles as the anthropologist Eliade, both breathing 'the same intellectual air'.<sup>190</sup> Eliade made a distinction between archaic man – the religious person who is able to transcend history by reaching out to a realm larger than the historical process – and modern man, the person who ignores anything transcendental in his effort to progress. As such, the history of religions can be interpreted as a battle between these two approaches. Eliade's attitude lacks detail in its depth, but its broad interface with religious belief has made him something of a guru in some New Age circles, as Jung himself has also become. Eliade's interest in the expression of religion has often earned him the title of 'phenomenologist', yet it is his interest in archaic man's attempt to transcend history, and his attempt to fill the supernatural element of religion with some 'content' (as Jung) that has put him into a different niche, and so appears attractive to those interested in the New Age.

The fact of such widespread religious manifestation points to something spiritual, something that is beyond, and something which is essential to human nature yet which is not merely material. Any attempt at anthropology cannot afford to ignore the impact that this spiritual dimension has had on the history of the human race – in fact the description and attempt to understand spirituality must surely be part of anthropology. Not only does the religious dimension affect peoples' lives; it has influenced the whole way in which peoples have existed. Cultures across the globe have been transformed by the religious dimension. Whole families, groups, clans, tribes, communities, peoples, and countries have been affected by their interpretation of this dimension of what it is to be a human being. Stock examples are easy – political situations in Ireland and the Middle East, financial decisions in England concerning Sunday trading – yet these will only be a mere inkling of the role that religion has played and continues to play. The link between religion and culture is not merely negative. Imagine whole societies without religion, without particular expressions of the spiritual. The role of religion in forming cultures and peoples is vital. We are not talking merely of religion as a functional organisation that reduces spirituality to sociology (and hence follows Durkheim and Levi-Strauss). Rather, it is impossible to talk of spirituality without thinking of the role that religion has had to play within corporate life, within families, tribes, communities, and societies. What it has meant to be a human being living in a human society has been influenced heavily by what it means to be a spiritual person, and ritual forms part of this.

The issue of morality here is key. If we are to understand religions as at least sets of beliefs, then religions not only ask questions concerning the nature of reality and the role of the human individual. They also ask questions about how that individual

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190 Hughes, *op. cit.*, 165.

should live within society. Nietzsche perhaps above all others realised the connection between morality and religion, and it was this link that caused him so much offence.<sup>191</sup> A Christian religious anthropology that speaks in terms of right and wrong, of sin, guilt, and forgiveness, was more than Nietzsche could tolerate.

The Christian understanding of humanity, needing God and needing redemption, is what makes [Christianity] obnoxious, so that Nietzsche seeks to ravish its tenets and expose its psychology. The root of its trouble is its production of a wretched doctrine of the human being.<sup>192</sup>

To be human means, at least in part, to make ethical decisions concerning actions, and this of course involves discussion of rights. The role of the spiritual in making these decisions is immeasurable. Yet, to go a step further, it may be argued that religion not only moulds our moral character, but is also the foundation and origin of any morality we may choose to live by.

### ***The Challenge of Religious Pluralism***

Do Christianity and Judaism share the same sense of the unique God, the same awareness of the one infinite? In Christian theology, responses to this theological question have been traditionally broken down into a three-fold paradigm.<sup>193</sup> That is, pluralism (that all religions are equally valid paths to the same ultimate reality, Christ being one amongst many revelations), inclusivism (although Christ is the definitive revelation of God, salvation is possible through other religions) and exclusivism (only those who confess Christ are saved, and Christianity is the one true religion). Although several commentators now question the usefulness of this paradigm,<sup>194</sup> it does helpfully serve to show the varying responses to the issue and to map out where people stand on the issue of religions.

Whilst Judaism is not a proselytising religion and it does not define itself in relation to other religions, the mere fact that Jews have lived among non-Jews throughout the ages has led to contact with and interest in the culture, faith and practices of other communities. Jews do not seek to explore other religions to grow spiritually, perhaps a by-product of centuries of persecution at the hands of the Christian churches. Yet, early modern rabbis such as Rabbi Jacob Emden (1698-1776) did seek dialogue with other faiths. He wrote at great length about his view on Christianity and Confucius,

191 Seen most vividly in *Thus Spoke Zarathustra* and *The Antichrist*.

192 Williams, *Revelation and Reconciliation: Windows on Modernity* (Cambridge: CUP, 1996), 93.

193 See the various classifications offered in Alan Race, *Christians and Religious Pluralism* (London: SCM, 1983), Paul Knitter, *No Other Name?* (New York: Orbis, 1985), and Gavin D'Costa, *Theology and Religious Pluralism* (Oxford: Blackwell, 1986). There is also helpful material in Ramachandra, *Gods That Fail* (Leicester: IVP, 1996), which offers a fresh analysis of non-Western accounts.

194 Markham, 1993, and D'Costa, 1996.

and, although he opposed both religions as paths for Jews, his extensive response bears eloquent testimony to his engagement with other religions and cultures.

The question of whether other religions have a share in God's revelation to the world has been hotly debated within Jewish communities, most recently in the controversy surrounding Chief Rabbi Sir Jonathan Sack's book *The Dignity of Difference*.<sup>195</sup> In his book, Rabbi Sacks wrote:

In the course of history, God has spoken to mankind in many languages: through Judaism to Jews, Christianity to Christians, Islam to Muslims. Only such a God is truly transcendental – greater not only than the natural universe but also than the spiritual universe articulated in any single faith, any specific language of human sensibility. ...Only such a narrative would lead us to see the presence of God in people of other faiths. Only such a world-view could reconcile the particularity of cultures with the universality of the human condition.<sup>196</sup>

Whilst community politics and heated debates with the London Beth Din moved Rabbi Sacks to revise this particular quote for subsequent editions of his book, it is a beautiful example of a universalistic inspired Jewish world-view that encompasses interest and respect for other religions and cultures.

The acknowledgement that cultures and religions other than Judaism do have a share in the world to come is in fact a conviction that is deeply rooted within *Torah* (the Law, Prophets and Writings) itself through the idea of the Noachide laws. Judaism does not require people to convert to Judaism and to adopt its particular practices. Instead, Judaism proposes that every human being is a child of Noah and that anyone following the seven Noachide laws<sup>197</sup> will have a share in the world to come.<sup>198</sup>

The topic of religions as a legal code was taken up by Moses Mendelssohn (1729-1786) who interpreted it to argue that Judaism and its commandments were in fact nothing but the legal constitution of the Jewish people. He held views similar to many Jews – that all human beings are capable of discovering religious truth, but that the Jewish religion is different in the fact that it contains a revealed legal code.

The voice that was heard at Sinai on the great day did not proclaim, 'I am the eternal, your God, the necessary autonomous being, omnipotent and omniscient, who rewards men in a future life according to their deeds.' This is the universal religion of mankind, not Judaism, and this kind of universal religion – without which man can become neither virtuous nor

195 Jonathan Sacks, *The Dignity of Difference: How to Avoid the Clash of Civilizations* (London: Continuum: 2002).

196 *Ibid.*, 55; of course this leaves untouched the vast numbers of humanity who have believed in a religion other than monotheism in the Abrahamic faiths.

197 The prohibition of blasphemy, idolatry, bloodshed, sexual sins, theft, eating from a living animal as well as the duty to establish a legal system, cf. Babylonian Talmud Sanhedrin 56a.

198 Moses ben Maimon, *Yad Melakhim* 8:10.

happy – was not and, in fact, could not have been revealed at Sinai. For who could have needed the sound of thunder and the blast of trumpets to become convinced of the validity of these eternal verities?<sup>199</sup>

Whilst Reform and Liberal Jews have been quicker to embrace interfaith dialogue, about which some segments of Orthodoxy harbour certain misgivings concerning its helpfulness for spiritual development, Orthodox Jews have always been involved in some dialogue with other faith communities. Rabbi David Rosen, the former Chief Rabbi of Ireland who is now working in Israel, used to be President of the International Council of Christians and Jews. In London, Rabbi Herschel Gluck is undertaking important work within the Muslim-Jewish forum of Stamford Hill, bringing together practising Muslims and members of the ultra-orthodox Jewish community to discuss common issues and problems affecting both communities in Hackney.

Rabbi Michael Melchior was, as a Deputy Minister of the Israel Government, encouraging Orthodox Jews and orthodox Muslims to learn about tolerance in their schools through an organisation called Mosaica.

The study of religions continues at an accelerated pace, certainly in Western education. We cannot begin to answer the question, ‘What does it mean to be a spiritual human being?’, without attempting some cursory glance at the religious experiences of humankind.

The major aim of religious studies has been the quest for universal criteria by which to define and delineate religions. Is it the ‘idea of the holy’? Is it certain phenomenological characteristics? Various attempts fail due to a number of obstacles. The incommensurability of particular experiences and descriptions of religious life, the removal of religious life from its historical context, the existential reading of history and the ever-present threat of reductionism. This account of the study of religions is given to highlight the past hundred years or more of study. Much has been learnt through phenomenology and other approaches. But what is the universal cornerstone which we find in all religion? What makes men and women religious?

If it is the ‘spiritual’, it not only begs the question, but the concept of the ‘spiritual’ encompasses all disciplines, as true spirituality encompasses all of life. Religious people have no wish to draw sharp distinctions between the spiritual and the physical, between the soul and the body, for in a very real sense everything we are and do is spiritual. So what particular aspects of life make us spiritual, and what is it that is common to all human beings which gives rise to religion? Being created in the ‘image of God’ may refer to our rational capacities, morality, conscience, the ability to relate, and probably many other concepts.

### ***Coping with Meaninglessness***

When exploring what it means to be religious, there is a temptation to focus on one element. Yet, to say with Hick for example, that all are searching for salvation or liberation is at once to frame all spirituality in a positive light. Even the idea that there

199 Quoted in Cohn-Sherbok, *op. cit.*, 93-4.

is a universal search for God, or for the real, says things which may not be true of all religions.

What about the search for meaning? Is this what all religions are about? Religion is the struggle with meaninglessness, the distance that exists between creature and creator and with the finitudes that we experience. This is how Peter Cotterell uses the category of meaninglessness to define the project of religion:

It is the common experience of humanity that between the two apparent boundaries of human existence, birth and death, life is characterised by 'unsatisfactoriness', by *dukkha*. Life appears to be without ultimate meaning.... Religion has been understood here as a systematic response to the fundamental questions of life, offering both answers to the questions, and so constructing a specific world-view, and a more or less systematic lifestyle appropriate to the answers and the world-view. Religions, then, serve to enable their adherents to cope with *dukkha*.<sup>200</sup>

Modern New Age spirituality is one expression of this. And all that has come under the spotlight of religious studies is an expression of this too. One of the significant trends we have noted throughout different aspects of spirituality is the desire to transcend this distance. This need and desire – the hunger to be something different – can surely be judged as a positive. Religion is something that encompasses all of life, and yet each form of religion and spirituality has a tendency to separate its adherents from the rest of society. This is probably why human rights need to be emphasised and developed to protect everyone, irrespective of their ideology, although even human rights can in itself become an ideology. This will be discussed later, as human rights can paradoxically also divide people and nations!

This beautiful Song of Degrees from the Book of Psalms illustrates the spiritual quest admirably:

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200 Peter Cotterell, *Mission and Meaninglessness* (London: SPCK, 1990), 261. The category of meaninglessness is primarily used as a context for mission, but with the background of suffering and *dukkha* he provides an analysis of religion as well. Whilst not necessarily agreeing with the inclusivist stance he adopts, the idea of meaninglessness proves very helpful in analysing what is going on in religion. See also the discussion in Andrew Sung Park, *The Wounded Heart of God* (New York: Abingdon Press, 1993), which follows similar paths with the Asian concept of 'han'.

### A Song of Degrees

I will lift up mine eyes unto the mountains;  
From whence shall my help come?  
My help cometh from the Lord,  
Who made heaven and earth.  
He will not suffer thy foot to be moved;  
He that keepeth thee will not slumber.  
Behold, He that keepeth Israel  
Doth neither slumber nor sleep.  
The Lord is thy keeper;  
The Lord is thy shade upon thy right hand.<sup>201</sup>

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<sup>201</sup> Psalm 121.





## 4 Delineating the Interplay between Rights and Religion

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Having looked at rights and religion in some detail, how do they interact? We have seen that the rights movement has been heavily influenced by religion. Also, that religion is to be found in all walks of life and is, of course, relevant to rights discourse, in the form of ethics and morality.<sup>202</sup> Of relevance also are the demands and impact of religion on both communities and individuals. But what of this clash between rights and religion, and how do they relate to one another? The following chapter attempts to explore this relationship with the use of a typology.

### A Typology

Fundamentalists appeared in a number of our examples and they are an obvious subject when discussing the relationship between religion and human rights. Simple categorization, unfortunately, has the danger of dividing people, rather than uniting them. Once we label people, we make less of an attempt to understand them, and are more prone to caricature them. This vicious circle leads nowhere.

Reactions to 9/11 illustrate this all too vividly. On September 13 2003 the *New York Times* reported the case of Hassan Awday, a gasoline attendant, who was shot at 21 times because he was a Muslim and therefore, for the assassin, a fundamentalist and a terrorist. It also reported the case of a Sikh man who tried to flee Lower Manhattan on the evening of the terrorist attacks on the World Trade Centre, 'running not only from flames, but also from a trio of men yelling invective about his turban.'<sup>203</sup>

In addition, the term 'fundamentalist' has become so multi-faceted that it is at risk of becoming meaningless. Originally used by conservative American Protestants in the late nineteenth and early twentieth centuries as a self-description (as they were going back to the fundamentals of the faith), it has now been extended to become a term which can be applied to any religious believer, or those with no faith at all (for example, Richard Dawkins being described as a fundamentalist secularist!).

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202 Any attempt to define the difference between ethics and morality is fraught with danger. Morality refers to the concept of human ethics which pertains to matters of good and evil - also referred to as 'right or wrong'.

203 *A Nation Challenged* (London: Jonathan Cape, 1986).

The Fundamentalism Project – a six-year comparative examination of religious fundamentalism – gave the term a temporary definition whilst the project set about observing religious behaviour. The definitive work on the Project has been published in six volumes by the University of Chicago Press. The series editors were Martin E. Marty and R. Scott Appleby. During the 1990s the Project set about countering misinformation and misperception of the term via detailed analysis of fundamentalisms around the world, bringing together an international team of scholars to look at movements within all the world's major religions. The Project concluded that there were those with fundamentalist convictions, those who were fundamentalist-like, and those without any fundamentalist characters. Nine of these character traits were observed:

1. Reactivity to the marginalisation of religion, especially to secularisation, both in opposing and exploiting it.
2. Selectivity, both in selecting and shaping particular aspects of their religious tradition, and in selecting some aspects of modernity to affirm and others to oppose.
3. Moral dualism, dividing the world into light and darkness, good and evil.
4. Absolutism and inerrancy (without error), affirming the absolute validity of the 'fundamentals' of the tradition and, in the case of the Abrahamic religions and Sikhism, treating sacred text as inerrant.
5. Millennialism and messianism. Promising victory to the believer in the culmination of history.
6. Elect membership, viewed often as the faithful remnant.
7. Sharp boundaries, separating the saved from the sinful.
8. Authoritarian organisation, with a charismatic leader and no possibility of loyal opposition.
9. Behavioural requirements, treating the member's time, space and activity as a group resource.<sup>204</sup>

These characteristics help us identify what may or may not be subsumed under the label 'fundamentalist'. They enable application of the term across different religious traditions, and more importantly, they help us understand what it is to be fundamentalist. Thus, as we discussed in the introductory chapter, the perpetrators of 9/11 had grievances against the United States which they deemed to be rational and entirely legitimate.<sup>205</sup>

Harriet Harris criticizes this project for attempting to define the essence of fundamentalism rather than its limits, and for forcing a false dichotomy between religious and politically motivated fundamentalisms. She prefers an analysis that concentrates

204 Harriet Harris, *Fundamentalism and Evangelicals* (Oxford: OUP, 1998), 10.

205 This is reminiscent of a statement made by the former-hostage, Terry Waite, to me when I met him at Heathrow airport. Prior to his capture, he spent many hours attempting dialogue with terrorists. He argued that every terrorist claimed that what they were doing was 'in the name of humanity', and of course, they could provide what they saw as justification to further the cause of humanity by what they were doing.

on the justification of fundamentalist activity, that is, their epistemology. Fundamentalists by nature tend to be ‘foundationalists’.

It [foundationalism] holds that we have some basic beliefs, from which we develop non-basic beliefs, and the basic beliefs are immediate and therefore not justified by any other beliefs. Fundamentalists appeal to a foundation that must be true absolutely (in a totally unconditional way).<sup>206</sup>

Harris’ approach is perhaps the most helpful, as it gets to the core of what motivates fundamentalists. The Fundamentalism Project aids description, whereas Harris’ approach clarifies motivation. Such an approach is especially important in a post-9/11 world, where understanding religious fundamentalism and the way it impacts on human rights is essential.

In the light of the World Trade Center attacks, Bruce Lincoln examines how we approach the inter-relationship of religion and culture. The term ‘fundamentalism’ is hopelessly loaded, and addresses only part of the problem. So he offers a heuristic device to distinguish between two models of culture – minimalist and maximalist.<sup>207</sup> The differences are located in the following table:

in	Minimalist
Religion = the central domain of culture, deeply involved in ethical and aesthetic practices constitutive of the community	Economy = the central domain of culture; religion restricted to private sphere and metaphysical concerns
Cultural preferences constituted largely as morality and stabilized by religion	Cultural preferences constituted largely as fashion and opened to market fluctuation
Religious authority secures coherent, ongoing order	Capitalist dynamism effects rapid expansion of wealth and power
Minimalist system experienced as powerful and intrusive; a serious temptation for would-be elites and a dangerous threat to all	Maximalist system experienced in two ways: a quaint, seductive diversion for some, and a resentful atavism, capable of reactionary counter-attacks

This clash between two views of culture and religion is expertly highlighted in Lincoln’s analysis of the final instructions left to the hijackers of September 11 – as found in the luggage of Mohammed Atta – and also by the speech made by George W Bush, President of the United States, on October 7, 2001. This is most helpful for those who are tempted to characterise the hijackers as ‘fundamentalists’, as it makes clear why they perceived their cause to be just, and locates their motivation in the epistemo-

<sup>206</sup> Harris, 14.

<sup>207</sup> Bruce Lincoln, *Holy Terrors: Thinking About Religion After September 11* (Chicago: University of Chicago Press, 2002), 59.

logical foundationalism which Harris argues for. That is, they had reasons for believing and acting as they did and were not mere fundamentalists.<sup>208</sup>

This maximalist-minimalist approach to culture is one way of understanding religion and its involvement with culture. It will also serve as an extremely helpful tool for analysing the record of religion vis-à-vis human rights. This model illustrates how both approaches can have a negative impact on human rights, illustrated by the following examples.

## **Maximalist**

### ***Judaism***

Yigal Amir is a Jewish criminal who is serving a life sentence for the murder of Israeli Prime Minister, Yitzhak Rabin on November 4 1995. Amir was a law student and a right-wing extremist who strenuously opposed Rabin's signing of the Oslo Accords – part of the peace process attempting to resolve the Israeli-Palestinian conflict. As before, there could be many examples, but one will suffice at this juncture.

### ***Islam***

The 9/11 atrocities do not have the support of most Muslims; this needs to be said. Both President Bush and former Prime Minister Tony Blair attempted to keep Muslims on their side by distancing the terrorists from the majority of Islam's adherents. However, such distinctions do little to help the rhetoric of the war on terror if they come from those waging the war. More helpful are the growing number of Muslim clerics who distance themselves and their followers from al-Qaeda. In a report in *The Observer* in June 2004, Jason Burke drew attention to such Muslims, signalling an optimism about how this may help to bring to an end the current 'war'.

Though this may not be the beginning of the end of Islamic militancy, it may be the end of the beginning. We are now entering the darkest and most dangerous time, that of indiscriminate, brutal attacks with little central control or direction.

The main reason for the failure of the Islamic revolutions in Algeria and Egypt was that most people wanted nothing to do with men who mutilated and maimed innocent people. In the global context, that holds true too. It is the moderation and humanity of the vast proportion of the world's 1.3 billion Muslims ... that will see us through the darkness that lies ahead and take us towards an end to both terror and the war on it.<sup>209</sup>

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208 In *The End of Faith: Religion, Terror and the Future of Reason* (Free Press, 2005), Sam Harris argues that Osama Bin Laden and George Bush are two sides of the same coin of fundamentalism – however, Harris attacks all who would hold any sort of religious belief, even if not fundamentalist, and in so doing takes a leaf from the fundamentalist's own book.

209 *The Observer*, June 20, 2004, 16.

Unfortunately, the actions of al-Qaeda reflect those who interpret Islam in a strict and violent maximalist fashion. Such an interpretation believes that religion should be the central domain of culture and that it is necessary to take violent action to oust the intruding minimalist politics which tempts believers away from the true path.<sup>210</sup>

Yet al-Qaeda is only one example of the maximalist approach to society taken by a religion. A later discussion on the application of Shari'ah law in Nigeria, and the case of Amina Lawal, illustrates some of the life-threatening issues at the heart of this debate.<sup>211</sup> Nigeria's political background reveals similar problems in other parts of the world

### **Christianity**

We would be wrong to conclude that the only examples of a maximalist approach to culture by religious adherents are the terrorists or extremists of the Islamic world. In the introduction, we mentioned the role that religion had to play in the apartheid system of South Africa. As some of the references made clear, there were many who were convinced that apartheid was the right and correct expression of Christianity within colonial South Africa. Apartheid was the influence of religion exerted on society, and a properly ordered society, with white Afrikaaners in charge, could be achieved only by the religious approach to life. Similarly, the response of some of

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210 Islam is now portrayed in a variety of ways by the media, and by those involved in human rights issues that relate to Islam. On the one hand is an extreme Islamaphobia, which portrays all expressions of Islam as the work of violent misogynist oppressors. On the other hand there is the politically correct picture which becomes blind to human rights violations performed in the name of Islam. At a recent NGO conference held at the United Nations in April 2005, I listened to presentations which, for example, highlighted the oppression of women and the persecution of Muslims who deny their faith (so-called 'apostates'). Perhaps most moving was a paper given by Simon Deng, a former Sudanese slave who was treated as a commodity by 'jihad Islamism.' There were also general papers on 'The Fate of Infidels and Apostates under Islam.' Worth noting is the fact that the same conference explored human rights violations against Dalits in the Indian population, and hence the concerns do not relate exclusively to Islam. See also 'Islamaphobia Myth', Kenan Malik, *Prospect*, February 2005, 28-31.

211 I was asked by the Yoruba to address the African Forum television programme on a Sunday night in New York. It was on the secession of the Yoruba from Nigeria, looking at it from a human rights angle due to my involvement with the Human Rights Commission at the UN. Professor Tom Kuttner from the University of New Brunswick, Canada came over and spoke about the problems from the point of view of international law, and two Yoruba chieftains also took part. This was a half-hour discussion and very stimulating. I am always amazed at the enormous diversity within Nigeria, and the tragedy of corruption which has destroyed much of this civilization. Why this is the case I really do not understand, although many Nigerian friends tell me the power of leaders is a tradition which goes back long before Nigeria became united under British rule and finally independent.

those from the Bible Belt in the USA to the events of 9/11 indicate the strong presence here too of a maximalist schema.<sup>212</sup>

### **Sikhism**

Sikh fundamentalism also adopts a maximalist approach to society, and in the 1980s there was a marked growth in certain forms of Sikh militancy, culminating in the more extreme demand for a separate Sikh state in the Punjab, to be known as Khalistan. In June 1984 the holy Sikh shrines, the Harmandir and Akal Takhat, were attacked by the Indian armed forces, leading to loss of life and the ultimate assassination of Indira Gandhi. In a survey of contemporary Sikh fundamentalism, Ron Geaves concludes that,

More militant forms of Sikhism have claimed authority over a scriptural tradition reinstated as the solution for socio-political problems affecting contemporary Sikh life in the Punjab and the diaspora. It can be argued that religion is being used as a means of corporate public action by religiously motivated individuals to change the social system through the application of firmly held spiritual loyalties.<sup>213</sup>

The figure of Sant Jarneil Singh Bhindranwale became central to the Khalistan action in the Punjab, as he called on Sikhs to return to the old forms of the faith and become *Shastradhari* Sikhs, weapon-bearers. In line with this, the Sikh Youth Federation was formed in 1984 and by 1985 had 16,000 members in the UK and over 20,000 in Canada.

### **Buddhism**

Within Sri Lanka, the Tamil group in a largely Buddhist nation are pressing for self-rule, against the government, feeling resentment against what has been perceived as discrimination against them throughout the country's history. The Tamil Tiger rebels carried out suicide bombings in the 1990s, and the violence had claimed thousands of lives before a ceasefire was negotiated in 2002.

### **Hinduism**

Perhaps the best known individual example of Hindu fundamentalism is the assassination of Mahatma Gandhi by Nathuram, a staunch Hindu (like Gandhi) devoted to Ram, the seventh incarnation of Vishnu, whom Nathuram (named after him) worshiped as a warrior god. Nathuram believed that Ram blessed and encouraged the fight of the downtrodden Hindus as they sought to defend themselves against their enemies – the British and the Muslims.

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212 See Chapter 6 on capital punishment for more discussion of conservative Christians.

213 In Chris Partridge (ed), *Fundamentalisms* (Carlisle: Paternoster, 2002), 121.

We may conclude therefore that the typology of maximalist involvement in society provides us with many examples of 'fundamentalist religions' that, one way or another, end up infringing the very human rights they seek to assert.

### Minimalist

Ironically, our previous discussion of apartheid also highlighted those who have a minimalist understanding of the inter-relationship between religion and society. The large sections of the Christian Church that did not stand up and protest against the human rights abuses suffered under the apartheid regime are evidence of this minimalist approach where religion is confined to the private sphere, and is concerned only with metaphysical issues.

Perhaps the supreme example of minimalist involvement when it comes to religion vis-à-vis human rights is provided by the failings of the Church during the Second World War. The well-documented lack of action by the Roman Catholic and Protestant churches as religious institutions, as well as the negligence of individual Roman Catholics and Protestants in the face of the Nazi persecution and genocide of Jews and others, is glaring and truly horrific.

Our typology of minimalist, maximalist and traditionalist is only that – a typology. Theologians and philosophers may argue whether sins of omission are as great as sins of commission, or as culpable. However, during the twentieth century, no group had more opportunity to intervene in the atrocities affecting Europe, and by the same token no group was more conspicuous by its inaction.<sup>214</sup>

Daniel Jonah Goldhagen is one of the more recent (and more controversial) authors to research and illustrate the issue. In *A Moral Reckoning: The Role of the Catholic Church in the Holocaust and Its Unfulfilled Duty of Repair*, Goldhagen continues the work he commenced in *Hitler's Willing Executioners*. The latter may well be one of the most widely read American books on twentieth century European history, causing controversy from the moment of its publication. Whilst charges of sensationalism, partisanship and anti-German racism have been levelled against Goldhagen, there is no denying the wealth of research that he has brought together in both books.<sup>215</sup> Pertinent to this discussion are his conclusions on the lack of action by the Roman Catholic Church in face of the Holocaust.

214 In Henry Pross, *German Art in the Twentieth Century* (Prestel Verlag), he describes the evolution of youth movements in Germany. Ellen Kay published *The Century of the Child* with a preface by Nietzsche which urged the readers 'to love the country of your children... I call upon you to set sail and seek this land; make amends in your children for the fact that you are your father's children and redeem what is past. I commit you to this commandment'. This book had worldwide success and the century that followed was one of the worst for world wars. The dazzling Ziegfried (blond blue-eyed German) was in such marked contrast to dark clandestine figure of the Jew which nurtured anti-Semitism.

215 See the useful reviews of the two books in the *New York Review of Books*, 43.7, 1996, and 49.20, 2002. Goldhagen mounts an impressive defence of his project in the introduction to *A Moral Reckoning*. One of the more measured critiques of Goldhagen can be found at



Goldhagen distinguishes between a variety of Catholic approaches to the Jews. There were those who took part in a widespread but simple indifference to what they knew was going on. Secondly, there were many priests and officials who passed on what they were taught, keeping alive the prejudice they had inherited – that Jews were the Christ-killers, and hence were to be viewed as sub-human. And of course, there were those Catholics who took part in murder and active persecution in a variety of ways.

As one example among many, Bishop Ivan Saric of Sarajevo illustrates the middle ground: he was neither an indifferent observer nor a murderer, but a representative of the Catholic Church nevertheless:

The descendants of those who hated Jesus, persecuted him to death, crucified him and persecuted his disciples, are guilty of greater sins than their forbears. The Jews have led Europe and the world towards disaster. Their appetite grows till only domination of the whole world will satisfy it... Satan aided them in the invention of Socialism and Communism. There is a limit to love. The movement of liberation of the world from the Jews is a movement for the renewal of human dignity. Omniscient and omnipotent God stands behind this movement.<sup>216</sup>

Published in May 1941, the bishop's statements clearly indicate the nature of this problem. Pope Pius XII himself held anti-Semitic views, and Goldhagen concludes that 'It cannot reasonably be held that Pius XII did everything he could to help the Jews. Yet many cling to this fiction, and continue to spread it.'<sup>217</sup>

But we need not rely on the controversial scholarship of Goldhagen to establish the point.<sup>218</sup> Numerous theologians, Christian, Jewish, and secular, have wrestled

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the pen of Richard John Neuhaus, 'Daniel Goldhagen's Holocaust', *First Things* 65, 1966, 36-41.

216 Goldhagen, 105; of course, this attitude was nothing new. In 1904, Pope Pius X (1903-14) rejected Theodor Herzl's plea for support unequivocally: 'The Jews have not recognised our Lord, therefore we cannot recognise the Jewish people.' – Edward Kessler, writing in *The Tablet* November 13 2004, 5. In 1936 a pastoral letter read: 'So long as Jews remain Jews, a Jewish problem exists and will continue to exist... It is a fact that Jews are waging war against the Catholic Church and that they are steeped in free-thinking, and constitute the vanguard of atheism, the Bolshevik movement, and revolutionary activity. It is a fact that Jews have a corruptive influence on morals and that their publishing houses are spreading pornography. It is true that Jews are perpetrating fraud, practising usury, and dealing with prostitution. It is true that from a religious and ethical point of view, Jewish youth are having a negative influence on the Catholic youth in our schools.' – in Ronald Modras, *The Catholic Church and Anti-Semitism: Poland, 1933-1939* (Maine: Harwood, 1994), 315, 345-6. For a recent discussion of contemporary anti-semitism, see Iganski and Kosmin, (eds.), *A New Anti-Semitism? Debating Judeophobia in 21<sup>st</sup>-Century Britain* (Profile Books: 2003).

217 Goldhagen, 44-5.

218 It seems that all such attempts at writing this history attract a range of reactions. See the review of James Carroll's *Constantine's Sword: The Church and the Jews* by Eamon Duffy

with the implications of the Holocaust for religion and society. In particular, many have been faced by the abhorrent silence of religious people in the face of what was probably history's greatest inhumanity.

In a recent work on the issue, the Anglican Bishop, Richard Harries, retells the story of a German Catholic boy, George Neuber, called up for military service during the war. His mother recalled,

I warned my boy at Christmas in 39 never to protest, always to obey his superiors no matter what and to pray to God that he would never be forced to do anything wrong. George duly kept quiet when he witnessed the mass murder of 80 Jews. He was an unprotesting observer at the execution of 100 Polish prisoners. His unit found the bodies of at least 50 Polish children shot in the back of their head in their school house and nobody rebelled.<sup>219</sup>

Catholicism was not alone in its silence, or even in taking part. As National Socialism grew, German Protestantism saw this as the route of salvation for a weak and failing nation. In September 1939, with the onset of the Second World War, all but a handful of German Protestants were in support of their government, fighting for what it saw as values in which to take pride.<sup>220</sup>

To onlookers from today, it may seem incredible that a religion of love should pass over, or even partake in, such atrocities.<sup>221</sup> For those members of the Christian Church, it is a huge sin to be faced and to come to terms with, and one which few seem prepared to attempt. As Goldhagen observes,

The question for Christians... is, What must a religion of love and goodness do to confront its history of hatred and harm, to make amends with its victims, and to right itself so that

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in *New York Review of Books* 2001 48.11.

219 Harries, 14, from Bernt Engelmann, *In Hitler's Germany* (London: Methuen, 1988).

220 I discovered recently that all children of the same age as myself who had not left Hamburg in Germany, as I had the good fortune to do with my parents, were removed by the local police, taken to Latvia, and when they came out of the train they had a bullet put in the back of the head. Their parents and grandparents who were with them at the time were forced to dig their graves. Subsequently they were machine-gunned and thrown in the grave. Unfortunately this was standard practice. When I went to Riga with the Memorial Foundation, the details of these monstrous brutalities were explained to us. What upset me particularly were the interviews of certain Hamburg policemen, now in their 80s, who admitted that they first found it very unpleasant. They were told by their officers to go back to their barracks in Riga, have a good meal, and then they would get used to it. Not one of them asked why this was to be done. They only felt sorry for themselves that they had been confronted with something like this. This has shaken me very much, but shows how people can be desensitised very quickly.

221 One should never forget that on a micro level many nuns and monks in their monasteries hid children and protected them, putting themselves at great danger. Had the Pope condemned Hitler, would he have started another holocaust against Catholics in different parts of Europe, or even destroyed many of the Catholics in Germany?

it is no longer the source of a hatred and harm that, whatever its past, it would no longer endorse?<sup>222</sup>

Richard Harries' book is one attempt to look at 'Christianity and Judaism in the Shadow of the Holocaust'. Historical research and analysis will help to some extent to lay bare the facts of what did and did not happen, and it will keep the issue ever-present before generations that may be tempted to forget. Similar research may also give some clues as to why the Holocaust happened, at least at the social, anthropological and political level.

It will involve a discussion of the history of ideas, examining how racist attitudes came to pervade German nationalism, and to what extent the Church and its antecedents are culpable for encouraging such attitudes. Historical research will also describe the social and political situation which led thousands upon thousands of Christians to fight for a regime which, whilst anti-Christian and anti-religious at many levels, seemed to them to be upholding their values and their interests. Work such as this is already being carried out at the Leo Baeck Institute and at Sussex University.

As well as historical research, contemporary attempts to bring people together to discuss the current implications of the Holocaust will also be positive. Political public apologies have made great steps forward,<sup>223</sup> as does the work of the Claims Conference.<sup>224</sup>

However, despite all this work, history will always be seen as being interrupted by the Holocaust. For our discussion, the culpability of religion in this instance seems insurmountable. Even today, as Wistrich observes, problems remain:

The Vatican and the Catholic Church as a whole, despite considerable progress in recent decades, has yet to fully acknowledge this painful truth and the true scale of their complicity in the Nazi genocide.<sup>225</sup>

222 *A Moral Reckoning: The Role of the Catholic Church in the Holocaust and Its Unfulfilled Duty of Repair* (London: Abacus, 1997), 3.

223 In contrast to the response to the World Council of Churches in 1948, that suggested that all Jews should be baptized in order to avoid another Holocaust.

224 For a fascinating discussion of this work, see Stuart E Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II* (New York: Public Affairs, 2003). I have been on the board on the Claims Conference dealing with restitution and gross violation of human rights and the indemnification by Germany and Austria. Stuart Eizenstat's work which is from the World Jewish Restitution Organisation dealing with other countries has been remarkable and his book highlights the incredible tensions between victims and perpetrators on the stealing of assets, the conflicts in coping with those who have suffered, who in many cases represent only a small percentage of those who were massacred, but make very high demands that are not easily fulfilled. In any case, these are material settlements and not spiritual – this is well portrayed in this book. Stuart Eizenstat was the remarkably level-headed Secretary of State under President Clinton who dealt with this.

225 Robert Wistrich, *Antisemitism: The Longest Hatred* (London: Pantheon, 1992), 27.

Dare we even ask now whether religion can have a positive role to play in human rights? It is of course ironic that the Second World War and the reaction to the Holocaust is largely responsible for the growth of the modern human rights movement. Perhaps it is this irony that helps in discussing the future of religion and rights, the issue to which we shall return later.

Returning to our typology, those parts of the Roman Catholic Church that stood by passively during the Holocaust exemplify the minimalist approach that religion can take towards society and human rights. Martin Luther maintained that the state and theology should be kept separate – the princes should look after the running of their states, and the clergyman should run their churches. The danger of this was seen in how much of German culture developed in ways that were inexcusable, with the two totally unrelated.<sup>226</sup>

How will this typology aid our discussion of human rights? From our discussion of religion in Chapter 3, it is clear that religion is not merely something private and distinct from the rest of life. It cannot merely be ‘my private belief’, for it impacts on the whole of life and society, whether in communal forms, or in other means of expression. On the other hand, the proliferation of belief and spirituality makes it increasingly more difficult to claim that one version of religion is true, that one alone has the final authority and can be the final authority on truth and falsehood, life and death.

It would seem, therefore, that the most constructive approach that religion can have to society, and so to human rights, is somewhere between the maximalist and minimalist typologies. As we shall consider below, Gandhi and others exhibit this approach – they engage with the world, but they do not do so at the expense of all. In our case study of headscarves, we will examine how vital to religion is engagement with the world of everyday reality.

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226 See *The Jews and Their Lies*, *The Babylonian Captivity of the Church*, *Appeal to the German Nobility* and *On Secular Authority*.



### Introduction

As an example of the relationship between human rights and religion, this chapter outlines how several European countries have tried to integrate headscarf-wearing women into the education and work sector by taking various approaches to Muslim religious practices.<sup>227</sup>

In a number of countries, the regulations affecting wearing of the hijab are formulated in a way that will also affect turban-wearing Sikh men, or Jews wearing the traditional skullcap, the kippah. Consequently, this chapter should not be seen as dealing exclusively with hijab-related issues, since in some instances a clash between a hijab-wearing woman and state regulations on clothing in the public service domain has initiated a wider debate about the relation between religious precepts and their effect on public life.

It ought to be pointed out that this discussion does not engage with the debate whether or not and in what form Muslim law and custom prescribe the hijab.<sup>228</sup> We accept the wearing of the hijab by a significant percentage of Muslim females as a societal given. The aim is to analyse if and how various countries try to regulate the wearing of religious clothing in situations such as state schools, public service employment, legislatures, etc.

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227 Of course, the issue of the hijab is not unique. In the 1960s campaigns were mounted in Manchester and other UK cities to allow Sikhs to wear their turbans in the workplace, and only in 1982 did the House of Lords rule that Sikhs were a distinct ethnic group protected under the Race Relations Act. Today all Sikhs in Britain can wear turbans. However, this was not a major issue elsewhere in Europe, since the majority of Sikh immigrants settled in the UK.

228 For the purposes of this discussion, the term hijab is defined as consisting of the veil with and without face-covering known from countries of the Arabian peninsula as well as Asia, besides the short headscarf favoured by many observant Islamic Turkish women in Turkey and in Germany. Where there is a specific case involving the Afghanistan-style burqha, this is indicated.

### Motivations for Regulating Religious Clothing

Many religions have laws and traditions prescribing a certain dress code. Sikh men are required to wear a turban; sometimes orthodox Jewish men wear fur hats and black robes; many married Jewish women cover their head with a hat, a wig or a snood; Buddhist monks shave their heads; followers of Krishna wear orange sari-style clothing; Roman Catholic monks and nuns wear habits in either brown, black, blue, white or grey. Many of these items of clothing have become symbols of a particular religion or sect, serving both as a tool for the observation of a religious commandment, and as a means for the wearer to demonstrate adherence to a particular group or culture. Items of clothing carry different messages. For example, if a married Orthodox Jewish woman covers her head, she is signalling, 'I am an observant Jew and I am married to those who can decipher the code transmitted by the head covering.' For people familiar with this cultural code, it will imply certain standards of behaviour. For example, it would be out of the question for a religious Jewish man encountering a Jewish woman who has covered her hair to engage in flirting with that woman, or even to offer to shake her hand.

In addition to the most obvious, almost symbolic items of clothing that identify their wearers as belonging to a certain group, many faiths and cultures have additional, more subtle dress codes that may be a little more difficult to decode. For example, both traditional religious Muslim and Jewish women will never be seen in tight-fitting jeans and sleeveless T-shirts, as this clashes with their inherent concept of modesty.

There is also the related but distinct issue of how dress codes become distinctive for non-religious people, forming identity badges that almost become religious in the way that they function. The street clothes of the skaters, for instance, with their baggy jeans, baseball caps and other additions, mark them out as a distinct and separate group. Fashion labels of the latest trendy designers mark out another group, and a plethora of sub-groups can similarly be marked out via different fashions and styles. Perhaps this highlights the common human desire to identify with one another and belong to a group or community. While this might be of interest to sociologists of religion, fashion rarely impacts on issues of human rights, unless, for example, the designer labels are being produced in the sweatshops of the world, so the more affluent can follow a trend at the cost of the plight of thousands elsewhere. Fashion can and does, of course, highlight differences, making those unable to afford the expense envious. Then again, the fashion-conscious buy imitations in order to identify with their wealthier contemporaries. The launching in 2005 of the hijab as a fashion accessory, which could neutralise the hijab as an exclusively religious item of clothing, was a fascinating phenomenon.<sup>229</sup>

The issue at the heart of the dispute concerning the wearing of religious clothing in state schools in France and other European countries really had little to do with

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229 Fashions also change incredibly quickly, in comparison with religious dress codes. But perhaps this is partly due to the fact that it is a market driven by economic forces, whereas religion has economics only as one part of its make-up.

the state's concern with a piece of cloth that is publicly worn, but – as the debate has shown – with the coded messages certain items of clothing broadcast to the wider public and the compatibility of those messages with the state's own image and self-understanding.

National sensitivity or indifference to this highlights the feeling of insecurity or the degree of confidence of the population and its leaders vis-à-vis the new element living within its frontiers.

The current situation demonstrates that there is often a discrepancy between the understanding of the state, perception of the image, and the self-image and individual interpretation of the believer.

## The European Situation

### **France: French Secularism**

As of 2004/2005, the French position regarding the hijab in state schools is brief and clear: the hijab, along with the Sikh turban and the Jewish kippah (skull cap) became a forbidden item of clothing in any French state school for both teachers and pupils.<sup>230</sup> The debate that took France into a storm of contention ranging from modern cultural relativism to the secular essence of the Fifth Republic centred mainly on the secularism and the neutrality of the French Republic in matters of religion. Often quoted was the 1905 Act separating the Catholic Church and the state.

It is important to recall briefly the historical context in which this law became enacted to fully appreciate its impact on the make-up of modern French society,<sup>231</sup> as '*laïcité*' or secularism have become key words in the hijab debate and not only in France. Belgium, Norway and Germany, in their debate on the presence of the hijab in public institutions such as schools and the civil service, have adopted the French approach of public secularism.

The years 1870/71 were rather eventful in French politics: the Empire of Napoleon III had collapsed, a war against Germany had been lost, the Paris Commune had been suppressed. Towards the end of the 1870s, after several failed attempts to reintroduce the monarchy, a republican majority emerged in 1879. Under this republican majority in the *Assemblée Nationale*, the French Parliament, a series of acts<sup>232</sup> was introduced aimed at liberating French public life from the all-encompassing grip of the Catholic Church. That year saw the abolition of the obligatory Sunday rest, in 1881 cemeteries

230 Bylaw no. 2004-228 of March 15, 2004, any quotations from this Act in this chapter as in: *Journal Officiel* du 17 mars 2004, art. L-141-5-1.

231 For a brief introduction to the original debate on the separation of the Church and the State from 1879 onwards, see the article by Alain Gresh in *Le Monde Diplomatique*, August 2003, 18f, <http://www.monde-diplomatique.fr/2003/08/GRESH/10342wh>.

232 The Commission of the French Parliament charged with the elaboration of the Loi 2004-228 gave an excellent recall and analysis of the laws which made French state schools secular institutions: Document N° 1382 of the *Assemblée Nationale* of January 28, 2004, report by Jean-Michel Dubernard, member of the French Parliament.



were largely secularised, and divorce was legalised in 1884. Most importantly, with the secularisation of the state came the secularisation and expansion of the education system. From 1882, primary school education became obligatory and free for all, while religious teaching was prohibited as a subject in primary schools. However, priests still taught in primary state schools. Only in 1886 did teaching become confined to exclusively secular staff.<sup>233</sup> It should be kept in mind that in secularising French public life step by step, the Assemblée Nationale also tried to keep the political power of the French Catholic Church in check, as it had been a keen ally of the royalists, who in turn might have tried to overthrow the French Republic and re-establish the monarchy. The separation of state and Church was legally completed by the adoption of the Act dated December 9, 1905.<sup>234</sup>

The particular wording of the 1905 Act had a number of political consequences. The French Republic meant that the Catholic Church lost a significant amount of power and influence, since it implied that Catholic bishops should lose their ex-officio seats in the Sénat, the Upper House of the French Parliament. At the same time, the French Republic made a vast amount of real estate available to the Catholic and Protestant churches in order to enable them to carry out their activities. In fact, the 1920 state aid for building the Paris mosque was justified on the grounds that it would put Muslims in Paris on an equal footing with the Christian churches in terms of real estate subsidies.

A hundred years after the introduction of the 1905 Act, secularism is enshrined in the French Constitution<sup>235</sup> as well as the public psyche of both secular and reli-

233 Alain Gresh, *ibid.*, points out that until well beyond the end of WWI, crucifixes could still be found hanging on walls of supposedly secular school classrooms.

234 The first two articles of the 1905 Act set the tone: '*La République assure la liberté de conscience. Elle garantit le libre exercice des cultes, sous les seules restrictions édictées ci-après dans l'intérêt de l'ordre public.*' Article 2: '*La République ne reconnaît, ni salarie ni ne subventionne aucun culte. (...) Pourrant toutefois être inscrites auxdits budgets [de l'Etat, des départements et des communes] les dépenses relatives à des exercices d'aumônerie et destinées à assurer le libre exercice des cultes dans les établissements publics tels que lycées, collèges, écoles, hospices, asiles et prisons.*' ('The Republic ensures the liberty of conscience. It guarantees the free exercise of religion, with only those restrictions named hereafter in the interest of public order.' Article 2: 'The Republic does not recognise or financially aid any religion. (...) However, public budgets may contain provisions used for the purposes of chaplaincy and for the ensurance of the free exercise of religions in public institutions such as lycées, colleges, schools, hospices, asylums and prisons.')

235 Article 2 of the French Constitution of 1958 reads: '*La France est une république indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans discrimination d'origine, de race ou de religion. Elle respecte toutes les croyances.*' (France is an indivisible, secular, democratic and social republic. It ensures the equality before the law of its citizens without discrimination as to origin, race or religion. It respects all beliefs.) For a legal analysis of the interplay between the various French provisions as the relation between the State and the religions of its citizens, see Ingvill Thorson Plesner, 'Erfaringer fra Tyskland og Frankrike', in: Høstmølingen, Njaal (ed.), *Hijab I Norge*, Abstrakt Forlag May 2004, and 'Etat, laïcité, religions', in *Regards sur l'actualité* no. 298, February 2004, La Documentation Française.

gious people. Secularism finds itself in the headlines of the French press and at the forefront of a tough political debate. However, as has been shown above and as Alain Gresh in his article points out, it is important to 'lift the veil' on those arguments which masquerade as secularism and in reality witness how certain politicians have tried to twist the entire concept of secularism:

When the [former] Minister for Home Affairs, M Nicolas Sarkozy, insists that women have to be bareheaded on their ID card photos, he addresses an issue of public order, and not an issue of secularism. When co-education in schools is discussed, this is an issue of equality between boys and girls, and not an issue of secularism. The secular school consisted until the 1960s of single-sex schools; for decades the secular republic lived with the refusal to let women vote.<sup>236</sup>

Pierre Tevanian<sup>237</sup> points out that the French law against religious symbols really came about in a climate of general anti-Muslim feeling and Islamophobia.<sup>238</sup> By a quantitative analysis of newspaper headlines, he was able to show that the debate about religious symbols has become a debate about Islam and its position in French society.

Whilst the law does indeed ban all conspicuous signs of religious affiliation, it is really aimed at the hijab.

In contrast with Islam and Judaism, Christianity is not a religion determined by orthopraxy, i.e. its practice does not depend on the strict observance of commandments and laws handed down to its followers in a set of holy scriptures. Furthermore, mainstream Christianity (with the exception of some Protestant sects) does not embrace any traditions or prescriptions as to specific items of clothing for its lay followers. Christians wishing to wear, for example, a cross on a necklace, do therefore not follow a commandment but make a public demonstration of their belief. Conversely, the essence of Islam and Judaism is the observance of laws and rituals that encompass the entirety of an observant Muslim or Jew's life. The French approach to secularism suits a generally Christian context in which it can help to overcome denominational divisions and sectarianism.

Whilst Judaism prescribes the wearing of a head covering for boys, men and married women, both teachers<sup>239</sup> and the Chief Rabbi of France<sup>240</sup> have noted that there are few boys wearing a kippah in French state schools. The reason for this is

236 Alain Gresh, *ibid.* Note that this predates Sarkozy becoming President.

237 'Kopftuch in der Schule: Das falsche Verbot' ('The Headscarf at School: The Wrong Prohibition'), German edition of *Le Monde diplomatique* Nr. 7283 of 13.2.2004, pages 1 and 6).

238 Cf. Françoise Gaspard and Farhad Khosrokhavar, 'Le Foulard et la république', Paris (La Découverte) 1995 and Vincent Geisser, 'La nouvelle islamophobie', Paris (La Découverte) 2003.

239 See the article by Pierre Tevanian above.

240 In his evidence to the French Parliament in the consultation process that took place before introduction of the act banning conspicuous religious symbols.

simple and points to yet another iniquity in the French concept of secularism: Jewish boys who wear the kippah will, by and large, come from devout Jewish families who observe not only the commandments in regard to head coverings, but also the commandment to keep the Jewish Sabbath, which falls on Saturdays. However, as Saturday is a regular school day in French state schools with a full programme of instruction and occasionally examinations, attendance of state schools by observant Jewish pupils is effectively impossible. In Paris, Lyon, Marseille and other big Jewish centres, most observant Jewish children therefore attend private Jewish schools.

There are few other minorities in France who would notice the ban on wearing conspicuous symbols, although it does affect Hare Krishnas and Sikhs.

In a rather bizarre take on religious and community symbols, the French Parliament includes in its list of communal and religious symbols the kefiyeh as a symbol of community affiliation.<sup>241</sup> The kefiyeh, however, is not a symbol of Arab or Palestinian origin worn by people of this ethnicity but, by and large, it is a symbol of support for the Palestinian cause, worn by Arabs and non-Arabs alike, regardless of their own ethnic and religious affiliation. Inclusion of the kefiyeh in the list of examples is aimed at politicising the debate on religious dress codes.

In the course of the debate on the hijab in France and other conspicuous signs of religions affiliation, it is important to acknowledge that secularism can be lived and experienced in an open, pluralist way which ensures equal access to all public facilities and respect for the traditions and beliefs of all. However, if construed narrowly, the very secularism that was called into being as a liberating instrument in the late nineteenth century to free France from the political grip of the Catholic Church, and to assist the two main minorities in France at the time (Protestants and Jews) in obtaining full political equality, may well become an instrument of exclusion and intolerance for another more recent minority. '*La rentrée*'<sup>242</sup> 2004/2005 was certainly viewed as a test for tolerant secularism.

So in France, the open wearing of religious clothing in the secular state-run school network was seen as an infringement of the very core of French society that promotes a self-understanding of firm secularism and the separation of the state and the Church.<sup>243</sup>

It is in this light that the French government contends that headscarves threaten the secularity upon which French society has traditionally been built.<sup>244</sup> However, many other countries that consider themselves secular have not thought it necessary to prohibit the headscarf or other items of clothing considered to carry a religious message in order to preserve the secularity of the state. In fact, many such countries have introduced 'best practice' policy measures regarding religious discrimination.

241 Document N° 1382 of the Assemblée Nationale of January 28 2004, Report by M. Jean-Michel Dubernard, Member of the French Parliament, 6.

242 Start of the new academic year in French schools on September 1.

243 The 1905 Act concerning the separation of state and church refers to the Christian churches and in particular to the Catholic Church, but in light of recent developments, it would be more accurate to speak of a separation of state and religion in France.

244 See the comments on *laïcité* in the Introduction.

## **United Kingdom – Best Practice Policies**

### **Introduction**

In reaction to the headscarf ban in France, British Deputy Foreign Secretary Mike O'Brien stated that Britain would not ban the headscarf or other religious symbols in state schools. At a meeting he had with Muslim groups, O'Brien said that France handled this issue differently due to its culture and history, while integrity did not require assimilation. 'The British identity can hold together different nations and cultures, and the differences are a part of Britain's power,' O'Brien said.<sup>245</sup>

The Department of Education and Skills takes the position that any rules on dress codes are the responsibility of the governors of each individual school. However, the department has issued official guidelines which state that school uniform policy must be sensitive to differences and the need to adhere to particular dress conventions for racial or religious reasons. By way of illustration, in some parts of London and other towns, headscarves are an optional part of the school uniform. Mulberry School in Tower Hamlets, for example, is a state school catering for local Muslim children of Bangladeshi background. A headscarf in school colours is issued to female students should they require it as part of their uniform, which in turn consists of a mulberry-coloured Shalwar Kameez.<sup>246</sup> These guidelines are open to interpretation. They stress that a pupil should not be disciplined for refusing to adhere to a uniform for religious reasons, and that exclusion on these grounds is even less appropriate. Other than these general guidelines, there is no overall legislation prohibiting the wearing of any particular items of clothing in educational institutions.

In addition, the wearing of the kippah and turban is protected by the Race Relations Act 1976 under which Jews and Sikhs are considered racial groups. As Muslims do not form a single distinctive ethnic or racial group, this legislation does not apply to Muslims.

Occasionally, the Islamic Committee for Human Rights has received reports of sporadic cases in which schools have attempted to ban headscarves or persuade Muslim girls not to wear them (for example in Luton and Peterborough), usually from a belief that they disrupt the school environment.

### **The Case of Shabina Begum v. Denbigh High School, Luton<sup>247</sup>**

This section will consider the case of Shabina Begum in order to illustrate the type of issues that arise in such cases from a human rights point of view, and to demonstrate

245 'World Protests Against French Hijab Ban', IslamOnline, 2004-JAN-17, at: [www.islamonline.net](http://www.islamonline.net).

246 A Shalwar Kameez consists of loose-fitting trousers and a jerkin-style tunic.

247 THE QUEEN on the application of SHABINA BEGUM (through her litigation friend Mr Sherwas Rahman) v. THE HEADTEACHER and GOVERNORS of DENBIGH HIGH SCHOOL, [2004] EWHC 1389 (Admin).

the issues schools face in deciding on matters related to religious dress codes pursuant to the Department for Education and Skills' official guidelines.<sup>248</sup>

Miss Begum's case does not specifically concern the wearing of the hijab, which her school authorizes as part of the school uniform designed with female Muslim students in mind, consisting also of a Shalwar Kameez, a form of traditional dress consisting of a tunic and loose-fitting trousers. Nevertheless, the issues that arise in her case are similar to any other case which involves contentious items of clothing worn for religious purposes.

### **The facts of the case<sup>249</sup>**

Denbigh High School, in Luton, Bedfordshire, is a mixed community school taking pupils from 11 to 16 years old. About 71 percent of students categorise themselves as being of Bangladeshi or Pakistani heritage. The school consists of 21 ethnic groups and 79 percent of the students declare themselves as Muslim.

The original school uniform at Denbigh High School was adopted several years before and then rationalised in 1993. There was then a school uniform working party which included students who were given the brief to ensure their designs took into account certain requirements as well as ensuring modesty. In October 1993, the governors approved the wearing of headscarves in response to requests by several girls. The design of the Shalwar Kameez was reconsidered by the school governors and was also approved by parents, staff and the local mosques.

Shabina Begum was 15 years old and at that time, a Muslim. In September 2000, when she was 12 years old, she started her secondary education at Denbigh High School. The school uniform for Muslim female pupils who did not wish to wear the traditional uniform was the Shalwar Kameez. Ms Begum wore her Shalwar Kameez to, from and in school until September 2002.

On September 3, 2002, Shabina Begum, together with her brother, Shuweb Rahman (who subsequently became her partner in litigation over judicial review proceedings), went to the school and asked to speak to Mrs Yasmin Bevan, the Headteacher. She was not however available, so they saw Mr. Stuart Moore, the Assistant Headteacher. The latter informed Miss Begum and her brother that she had to wear the correct school uniform. Shabina did not agree to adhere to the school uniform and did not return to the school.

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248 'Cultural, Race and Religious Requirements. 10. Whilst pupils must adhere to a school's uniform policy, schools must be sensitive to the needs of different cultures, races and religions. The Department expects schools to accommodate these needs, within a general uniform policy. For example, allowing Muslim girls to wear appropriate dress and Sikh boys to wear traditional headdress. 11. The Department does not consider it appropriate that any pupil should be disciplined for non-compliance with a school uniform policy, which results from them having to adhere to a particular cultural, race or religious dress code' – Department of Education publication.

249 All quotations in this section stem from the judgment in the case.

On September 5, 2002, the school spoke to Miss Begum's brother to ask why the claimant was not in school. Mr Moore was told that Shuweb Rahman was not prepared to let her attend school unless she was allowed to wear a long skirt (jilbab).

There were several attempts to solve the matter, but these talks did not lead to any result. Shortly afterwards, Miss Begum's brother, as her partner in litigation, started legal proceedings.

### **Arguments submitted on Miss Begum's behalf**

- It was argued that wearing the jilbab was a religious act in itself. She admitted that the Shalwar Kameez might meet the need for modest dress in general, but pointed out that it was also worn by people from other faiths. In particular, it was argued on her behalf that it was not a specifically Islamic dress and therefore did not meet the standard of modesty required by Islam.
- It was argued that her rights to religious freedom had been breached because she was being forced to accept an interpretation of Islamic dress laid down by the school. She also submitted that the school had breached the official Department for Education rules regarding ethnically and religiously sensitive school uniforms.
- Furthermore, she argued that the school's failure to reach a settlement had breached her right to an education as she was effectively excluded from her school on the grounds of non-compliance with its uniform policy.
- Ms Begum was aspiring to become a doctor and had had to resort to education at home on her own and with the help of friends.

### **The school's arguments**

At court, the school argued:

- It had done its utmost to uphold her religious freedoms by widely consulting Islamic scholars. Their verdicts had been mixed – they neither ruled out the Shalwar Kameez nor exclusively approved of the jilbab. Critics said guidance on Islamic dress did not specifically define the jilbab as the garment for a young woman.
- It was concerned that a stricter style of Islamic dress would create divisions among the students. In particular, the school argued in court that some girls could face being forced to wear the jilbab. In addition, it was feared that the jilbab could divide Muslim pupils as it could create a hierarchy of 'Islamically appropriate dress styles'.
- On Miss Begum's right to an education, the school argued it had tried to compromise with Miss Begum about her non-compliance with the school uniform and her choice of dress, but talks had come to nothing. The school also said that it had wanted Miss Begum to attend and had at no point taken an active decision to exclude Miss Begum, who had herself chosen to be absent from school.
- The school argued that an alternative uniform option for Muslim girls was already on offer and that the jilbab presented a health and safety problem. A significant part of the curriculum was delivered in science laboratories involving Bunsen burners, a variety of chemicals and equipment of a fragile nature such as glassware. There is a statutory obligation for the school to deliver the national curriculum in science

to *all* its pupils and this requires that they take part in practical scientific activities using the equipment described above. It was the school's concern, supported by risk assessments conducted in the school, that a long, flowing garment such as the one the complainant wished to wear could get caught in the flame of a Bunsen burner or upset and break glass equipment, leaving sharp fragments, or knock equipment over causing a spillage of chemicals. Other parts of the curriculum were delivered in food technology workshops with naked flame gas cookers and resistant material workshops with woodwork and metalwork equipment. There was a danger that long, flowing garments could catch fire from the naked flame of a gas cooker, or become trapped in machinery such as that designed for cutting and fashioning wood and metal.

- The school would not be able to meet its statutory responsibility to deliver to a student the national curriculum for physical education if the student were to wear a long, flowing garment such as a jilbab.

### **The Court decision**

Ruling in favour of the school, Mr Justice Bennett said school uniform policy had 'a legitimate aim' which was 'the proper running of a multi-cultural, multi-faith secular school'. Dismissing Sabina Begum's application for judicial review, Mr Justice Bennett said the limitations placed on what she could wear were 'proportionate' to that aim, and her human rights had not been infringed.

The High Court Judge said that whilst guidance for schools discouraged them from excluding pupils for breaching school uniform policy, this did not mean schools could not do so 'if the pupil flatly refuses to wear the appropriate school uniform. The uniform is designed to be inclusive and takes into account the cultural and sensitive needs of the pupils.'

The Judge said: 'In my judgment, the adoption of the Shalwar Kameez by the defendant as school uniform for a female Muslim (and other faiths) pupil was, and continues to be, a reasoned, balanced, proportionate policy.'

He said Miss Begum's human rights had not been breached because the school had demonstrated it had acted proportionately in deciding on the uniform. 'She had for two years worn the school uniform,' said Mr Justice Bennett. 'Abruptly, at least so it seemed to the [school], she changed her beliefs, which put the defendant in a very awkward situation.' The [school] wanted the claimant to continue to be educated at Denbigh High School and made every effort to persuade her to return. 'The fact that she felt that she could not change her mind does not invalidate the fact that she had a choice [of wearing the Shalwar Kameez or attending another school with a different policy on uniforms].'

Mr Justice Bennett said the school's refusal to allow Miss Begum to wear the jilbab was justified on the basis that it might infringe the rights of other students to be identified with a secular school environment.

The judge refused permission to appeal, but Shabina Begum could still ask the Court of Appeal to hear the case on the basis that it raised issues of general importance over the question of dress in multi-cultural schools. At the time of writing, it



was however announced that Shabina Begum had chosen not to appeal the decision on personal grounds.<sup>250</sup>

### The wider impact of the ruling

In an interview with the BBC,<sup>251</sup> Abdul Bari, deputy leader of the Muslim Council of Britain, said the High Court's 'landmark decision' was 'very worrying and objectionable.' 'The British Muslim community is a diverse community in terms of the interpretation and understanding of their faith and its practice,' said Dr Bari. 'Within this broad spectrum, those that believe and choose to wear the jilbab and consider it to be part of their faith requirement for modest attire should be respected.'

Whilst some commentators have tried to draw an analogy between this case and the French law forbidding the wearing of the hijab in public schools, the analogy is not quite as close as it might seem. On the day of the handing down of the judgment, the BBC comment on their news website ran: 'One of the most interesting points it has raised is whether the rights of a pupil to be schooled in a secular environment are breached by overt symbols of religion. The question is whether this step would have tipped the balance between a secular and religious environment.'<sup>252</sup>

This is not entirely the core concern of the case. The most important difference between the French law and this particular English ruling is of course that the court ruling referred to the policy of a single school which already had a culturally sensitive uniform policy. In no way did the ruling prohibit the wearing of a headscarf, nor did it disapprove of the jilbab in schools in general. The ruling was quite specific and did refer to the Department of Education's guidelines on culturally sensitive uniforms.

It was not a ruling about the display of overtly religious symbols, as arguably the hijab is one such overt symbol which is actually allowed at Denbigh High School. This ruling therefore is more about the balance to be struck between the school's right to determine its school uniform policy within proportionate and legitimate boundaries and a pupil's right to assert her choice of clothing beyond the school uniform options offered to her.

As to the question of whether or not Ms Begum's right of religious freedom has been constrained by the ruling, Article 9 of the European Convention of Human Rights, which was incorporated into the English legal system by the Human Rights Act 1998, provides for the right to hold a religious belief and the right to manifest that belief.<sup>253</sup> Whilst the right to

250 'The Law in Action', BBC Radio 4, Friday June 19, 2004.

251 June 15, 2004.

252 June 15, 2004, [www.news.bbc.co.uk](http://www.news.bbc.co.uk).

253 *ARTICLE 9* : Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.



hold a belief is an absolute right which may not be limited in any way, the right to manifest a religion can be limited by law if the limitation is deemed necessary in a democratic society in the interests of:

- public safety;
- the protection of public order;
- health;
- morals;
- the protection of the rights and freedoms of others.

In this case, the judge had to weigh up Miss Begum's right to manifest her belief by wearing the jilbab against the other pupils' rights to be identified with a secular school environment, their rights not to be pressurised into a stricter form of Islamic dress requirements and, finally, the health and safety reasons cited above. In particular, the judgment referred to the fact that 'since the... case has been publicised, several children have spoken to staff about their concerns that the jilbab might become school uniform.' The school held the view, which was upheld by the court, that it would be inappropriate to enquire of the pupils their feelings about any specific changes to the school uniform. Part of the rationale for this has been that seeking such views might either cause or stir up division amongst pupils.

Nevertheless, the publicity associated with this case has meant that a number of pupils have approached the staff on their own initiative. First, Muslim girls have talked to teachers about their concern that they might be forced to wear the jilbab and, possibly, at a later stage, the niqab (face covering). Secondly, non-Muslim children have talked to teachers about their fears that the school would seem to be favouring a particular religion. They feel that this particular mode of dress is associated with extreme views and would make them very vulnerable as non-Muslims.

In addition to this, if the jilbab were to be introduced as part of the school uniform, there would be a risk of creating two classes of pupil. The risk would arise from the jilbab being worn by those who followed a particularly strict interpretation of the Islamic dress code, whilst some different form of the school uniform would be worn by others. This could result in the view that better Muslims wear the jilbab. Any Muslim pupil wearing some other form of uniform could thus be regarded as a second class Muslim. A number of parents expressed this concern.

Additionally, views have been expressed by pupils that those wearing the jilbab would be identified with extreme Muslim sects. Many Muslim girls do not wish to be so identified and therefore object to wearing the jilbab. The non-Muslims have expressed the view that they would be afraid of people wearing the jilbab as that would identify them with extremists.

Furthermore, the case revealed a particular tension between differing interpretations of Islamic dress codes, as well as different Islamic groups which might put pressure on girls to comply with a particular interpretation of Islam.

In court, the Head Teacher, Mrs Yasmin Bevan, gave the following witness statement that may serve to illustrate the above point:

From what I have been told by pupils and staff, I am of the view that there are a number of girls in the school who are resisting the efforts of others to recruit them to extreme Muslim groups. They are grateful that they are not allowed to wear the jilbab at school as this would be unnecessarily restrictive as well as being associated with an extremist group. They are pleased that they can continue to wear the Shalwar Kameez. I have been given the firm impression that there are a number of girls in the school who rely on us to help them resist the pressures from the more extreme groups. I fear that if the school uniform were to be either adapted to include the jilbab or if the jilbab were to replace the Shalwar Kameez, these girls would be deprived of proper protection and would feel abandoned by those upon whom they were relying to preserve their freedom to follow their own part of the Islamic tradition. The school has not previously put forward this argument as it did not wish to highlight the unfortunate position in which some of the girls found themselves in resisting certain religious views. Now that this matter is before the High Court I wish to put forward all the arguments which are reasonably available to me. In addition to that, since this case has been given publicity, the school has been picketed by groups of mainly young men who would appear to be from the more extreme Muslim traditions. The problem has thus become much more obvious.

Independently of the wider political impact of the case, it is worrying that the administrative process of taking what was a relatively minor conflict in a local school, which would not have been irresolvable, to the High Court in London took two years and may hence have damaged the educational aspirations of a girl about to take her GCSEs.

This case has been outlined in detail to demonstrate the complexity of the issues involved. By analysing this in depth, we become aware of the complications not only for this case, but wherever in the world these problems arise.

### Public sector

Beyond the education system, the British public sector is keen to accommodate religious dress requirements. The public debate on Sikhs wearing turbans on motorbikes began in the 1960s. The Metropolitan Police Force (MPF) allows police officers to wear uniforms according to their beliefs. Muslim women in the MPF were given the right to wear their headscarves by the MPF in June 2003, and Muslim policewomen are now allowed to wear the headscarf and an ankle-length gown in police colours.

In 2000, new Home Office guidelines were issued allowing Muslim women to cover their heads with the hijab, or headscarf, on their passport photographs. The new guidelines allow religiously observant Muslim women to wear a hijab if the photograph shows the full face. These new guidelines followed the case of Fareena Alam,<sup>254</sup> a Muslim woman whose application to renew her passport was rejected at the British High Commission in Singapore because she was wearing a hijab. Miss Alam campaigned for her right to have her passport photo taken under the 1976 Racial Equality Act, as case law under the Act has held that the refusal to let Muslim women wear the hijab on passport photos would amount to indirect racial discrimination.

254 Ms Alam is now the editor of the mainstream Islamic magazine *Q-News*.

Jack Straw's comments in late 2006 concerning religious dress bring the issue up to date. He was surprised that his opinion caused so much furore, but as Leader of the House of Commons, his plea that Muslim women should not wear the veil when in public situations won top level support. Mr Straw explained that he asks visitors to his constituency surgery to remove their veils as he does not feel comfortable talking to someone when he cannot see their face. The Bishop of London, the Rt Rev Richard Chartres, sympathised with Jack Straw's view, as did other senior political and religious figures. Muslim peer Baroness Uddin called for a measured debate, adding that 'I think it's about human rights on both sides – Jack's right to say and the women's right to wear what they please.'<sup>255</sup>

However, Ruth Kelly defended the wearing of the veil as a personal choice by Muslims which must be respected, although she also welcomed an honest and open debate. Peter Hain, the Northern Ireland Secretary, expressed the view that he would not ask a woman to unveil if she sought his help. 'I believe that women, like everybody else, are entitled to dress as they choose to dress.'<sup>256</sup> Massoud Shadjareh, chairman of the Islamic Human Rights Commission, said that Mr Straw was being selectively discriminating.

It is astonishing that someone as experienced and senior as Jack Straw does not realise that the job of an elected representative is to represent the interests of his constituency, not to selectively discriminate on the basis of religion.<sup>257</sup>

As the media debate progressed, it became clear that views concerning dress had changed since the bombings in London in July 2005. A dress code drawn up by Imperial College outlawed the niqab in the interests of security, saying that staff had to check students' faces against the picture on their ID.

In October 2006, a Muslim teaching assistant, Aishah Azmi, was suspended by her school for allegedly refusing to remove her veil while in class. Ms Azmi maintained that she only refused to do so whilst male colleagues were in the class. The Mayor of London, Ken Livingstone, joined the debate and called for veils to be removed in such situations. In November, a senior judge was asked to decide whether female Muslim advocates could wear the veil in court. An advocate had been asked to remove her veil by a judge presiding at an Asylum and Immigration Tribunal.

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255 *Daily Mail*, October 6, 2006

256 *Guardian*, October 8, 2006.

257 *The Times*, October 5, 2006. On 2 November Jack Straw spoke at the Three Faiths Forum on equality and social justice. He spoke of the importance of the Muslim community integrating but not assimilating, and that differences should not be tolerated but celebrated. He pointed out that when he asked a constituent wearing the veil at his surgery to remove it, it was only a request and no more. He only made it if a female member of staff was present. He underlined his sensitivity regarding problems with faith and stressed the necessity of communication and dialogue. See Report from the Three Faiths Forum, November 6, 2006.

In the same month, the debate over religious clothing in the UK developed to include all religious symbols, as it came to media attention that a British Airways member of staff had been suspended for wearing a Christian cross. Nadia Ewida was sent home for wearing a crucifix, and the media storm that followed included comment from Archbishops, ministers and other leading figures. British Airways was forced to review its policy on uniforms following the controversy.

## **Ireland**

Most Muslims in Ireland come from immigrant ethnic minorities. As Ireland is a young immigration country in itself, it has relatively few Muslims among its residents and citizens.

Rules regarding school uniforms or dress codes are not the responsibility of the Department of Education but that of the governing authorities of each school. In this context, it should be mentioned that both the Irish Constitution and the Equal Status Act 2000 prohibit discrimination on the grounds of religious belief in the provision of goods, services and facilities. The Employment Equality Act also prohibits discrimination in employment on grounds of religious belief.

A single equality body, the Equality Authority, was established under the Equal Status Act to work towards the elimination of conduct prohibited under equality legislation. It works to promote equality of opportunity in relation to matters covered under the legislation and to provide information to the public on the workings of the legislation.

In the past few years, there have been several incidents of Muslim schoolgirls being denied access to schools due to their wearing the headscarf. However, these cases have been speedily resolved by the Equality Authority which advised the relevant schools of the illegality of their rules.

Beyond the education system, the Garda (police force) has proven to be very innovative with its creation of a Racial and Intercultural Office within the force. Its functions include monitoring, co-ordinating and advising on all aspects of policy in areas of racial, cultural and ethnic diversity. It recently announced that it intended to incorporate the headscarf as part of the uniform to encourage Muslim women to join the force. In contrast with accommodation of headscarves by the UK police, the Irish plans for acceptance were an initiative of the police force itself. There was neither pressure nor demand from any minority group or organisation, nor from individual Muslims. As a result the Garda Racial and Intercultural Office recently won an award of €30,000 as an innovation prize from the EU.

The Garda Racial and Intercultural Office has also been instrumental in efficiently tackling at least two incidents where Irish Muslim women were refused passports due to their wearing the hijab. The Office swiftly resolved the issue in favour of the women after contacting the Department of Justice.<sup>258</sup>

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258 Source: Islamic Human Rights Committee briefing on Good Practice on Hijab Issues, 2004.

## Italy

Italy has not witnessed many difficulties in respect of either state or school policies regarding the hijab. In 1999 there were press reports to the effect that Muslim women would rather not obtain a passport than remove their hijabs for the required passport photograph.<sup>259</sup> Muslim women organized a protest meeting in Turin when it was stipulated that foreign women had to give photos without headscarves in order to acquire a residence permit. To avert tension in the country, the Italian Foreign Ministry issued a circular allowing Muslim women to wear their headscarves in ID photos just as Catholic nuns could wear their religious apparel.

One of the reasons that there are fewer headscarf problems in Italy may be due to the existence of a concept of tolerant secularism. The Italian Constitution guarantees the freedom of worship for all its citizens, so Muslims can fulfil their religious obligations without any difficulty. This position was confirmed by Hamza Roberto Piccardo, the Secretary-General of the Union of Islamic Communities and Organisations in Italy (UCOII).

The type of secularism applied in Italy may perhaps be illustrated by the position held by Cardinal Ruini, President of the Italian bishops' conference, who opposed an Italian law prohibiting the hijab. He said in an interview with the newspaper *Corriere della Sera* that he would resist the introduction of such a law.<sup>260</sup>

## Norway: The Conflict of Rights

The Norwegian debate about the hijab in public life was triggered in early 2004 by the dismissal of 25-year-old Ambreen Pervez from her job with A-møbler in Oslo because she refused to take her hijab off at work.<sup>261</sup> The store stated that the headscarf breached its clothes code which – among other things – prohibits the wearing of hats and other headgear. The dismissal led to a long-winded debate on Norwegian television, radio and in the print media about the pros and cons of religious headgear in schools and in the workplace.

The Ombuds Authority for Equality<sup>262</sup> held that the dismissal of Ms Pervez constituted a breach of Norway's Equality Act<sup>263</sup> and that A-møbler could not prohibit employees from wearing headgear unless it constituted a danger to life and health. Prominent trade unionists such as Akhtar Chaudhry instigated a boycott against A-

259 'Per lo hijab rinuncio al passaporto'- Parlano le donne islamiche – *La Repubblica*, 30 ottobre 1999, 'Donne coperte' – *Il Manifesto* 30 ottobre 1999, 'I musulmani manifestano a Torino contro la questura. E non solo', *Il Manifesto*, 30 ottobre 1999.

260 Katolsk Informasjonstjenest, 29. March 2004 (Norwegian Catholic News Service).

261 Source: Norsk Senter for Menneskerettigheter (SMR) (The Norwegian Centre for Human Rights).

262 Likestillingsombudet, comparable to a monitoring and enforcement centre against any form of discrimination.

263 Lov om likestilling mellom kjønnene, 1978.

møbler and a series of well-known public figures, including human rights activists in Norway, took passionate positions on either side of the debate.

In the event, A-møbler allowed Ms Pervez to be reinstated in her old job wearing the hijab, but Ms Pervez handed in her notice shortly afterwards. She became a student at Oslo University.

It is interesting to note that the Norwegian hijab debate takes a somewhat different angle to the issues in France, Germany and the UK. Rather than debating the hijab's impact on the essence of society and whether it has a place in a modern secular society, the Norwegian discussion cuts to the core. It focuses on whether the hijab or other religious symbols constitute a right in themselves and if so whether this right may enter into conflict with other rights, such as a woman's right to freedom from oppression, the general right to gender equality and childrens' rights to make their own decisions on beliefs and their manifestations.

In an article entitled 'A Norway with Veil'<sup>264</sup> it is argued that the wearing of the hijab for religious reasons is a human right in itself. This view was echoed by prominent academics, and human rights activists at Oslo University have argued along this line in a book entitled *The Hijab in Norway*.<sup>265</sup> The book itself was the result of a seminar held at the invitation of the Norwegian Centre for Human Rights at the Law Faculty of Oslo University at which a series of academics, practitioners and women's groups from all over Scandinavia debated the implications of wearing the hijab in education, and in public and working life.

In a bizarre twist of circumstances, the book, which was promoted as an important point of departure and as a platform for a debate on the freedom of religion and Norwegian society's relationship with Islam, has come under attack by those who argue vehemently against the hijab in the public domain.<sup>266</sup> This is because they see the book as a vehicle for political correctness and argue that the right to wear the hijab in schools is outweighed by a child's right to be protected against the religious and political convictions of its parents.

At present, there are no plans in Norway either to ban or discourage the hijab in schools or the public sector. However, the philosophical and political debate on the wider implications of a visible Islamic presence in Norway is certainly not concluded.

## Sweden

In Sweden, with a Muslim population of 350,000, the largest in Northern Europe, few headscarf controversies have occurred. As with Norway, there is no general legislation against the wearing of any item of clothing on religious or other grounds in Sweden. In 2003, two girls wearing a burqha style garment were excluded from their schools in Gothenburg due to objections by the school administration. Their main objection was that wearing the burqha during exams could easily be used to cheat

264 May 15 2004, Dagsavisen

265 Hijab I Norge, Njl Høstmælingen, (ed) Abstrakt Forlag May 2004.

266 See e.g the Oslo University magazine *Universitas*, May 19 2004.

(bringing in notes for the exam under the burqha, or having another person take the exam in the place of the candidate). The teacher wanted to see the faces of the students so that she knew that it was actually the right student sitting the examination. However, the problem was solved as the two girls in question agreed to take off their burqhas during the examinations. On other religious matters, such as circumcision and kosher slaughter of animals, the views are quite different. Both are banned in Sweden (although it does now seem possible to slaughter birds according to halal rules). Due to the proximity of Sweden to other European countries, those Jews who wish to carry out these traditions can easily commute either to purchase food or to have their sons circumcised.

### **Denmark**

In Denmark, the wearing of the headscarf is allowed in the public domain. However, it is partially banned in the private sector. As a general rule, pupils and students are allowed to attend junior high schools and universities with their hijabs, just as teachers in Denmark also have the right to teach whilst wearing the hijab.

The Minister for Migration and Integration, Bertel Haarder, stated that he was not the ‘minister for the hijab’. He stressed that his main concern was with the integration of people in the country rather than with their clothes. Underlining that the headscarf is a personal right and freedom, Haarder said:

If we ban the headscarf in schools, then we have to ban Christmas celebrations and Jewish symbols. We do not have such a prohibitive mentality. While trying to drag the Muslim women from their houses and put them in the business sector, the headscarf ban will mean double standards and the Muslim women will be isolated from the society. We will not support such a decision.<sup>267</sup>

One of Denmark’s largest department stores, Magazine Du Nord, lost a court case brought by a 16-year-old schoolgirl, Islam Amin Baktyar, who was refused seven days’ job training because she wore a headscarf. In its historic decision on August 10 2000, the court remarked that she had been discriminated against in her effort to get a job training position.<sup>268</sup> Pointing out that Baktyar wore the headscarf as a consequence of her belief, the Odense City Court decided that the store discriminated against her and imposed a fine of 10,000 kronas as compensation.

The media debate that followed this court decision was largely negative. Both right and left-wing forces in Danish society, including newspapers, commentators, writers and cultural personalities, cautioned ethnic minorities not to demand too much and instead to accept the prevailing norms of the host society.<sup>269</sup>

267 Islamic Human Rights Commission – [www.ihrc.org](http://www.ihrc.org).

268 Pursuant to the Danish law against discrimination on the employment market Lov om v. om forbud mod forskelsbehandling på arbejdsmarkedet m.v. Lov nr 459 af 12/06/1996 (Gældende).

269 ENAR–EU Denmark Country report for 2000/2001.



After this decision by the Odense City Court, many businesses started preparing special uniforms for their employees wearing the headscarf. McDonalds, Tom's Chocolate Factory and Co-op Denmark are leading the way in this respect. Special uniforms for nurses incorporating headscarves have also been designed. The Defence Ministry has also started to prepare designs suitable for the headscarf, turban and kippah.

### **Belgium**

The Interior Ministry leaves the option on the headscarf ban to the schools themselves, according to the notification it sent to schools. While some schools enforce the ban, others do not. In cases taken to Belgian courts, the verdicts so far have mostly been in favour of those wearing the headscarf. Of all the cases brought to court, the majority proportionally stem from conflicts in Belgium's French-speaking community.<sup>270</sup> In 1989, the Education Ministry of the French-speaking community issued a notification in a case concerning 50 headscarf-wearing girls and declared that it was 'difficult' to ban headscarves in schools. However, the Ministry banned the type of veil that covered the whole face.<sup>271</sup>

Due to its close linguistic and geographical position, political developments in France often come to influence the French-speaking sector in Belgium. This is also true of the debate concerning the hijab. In a move that would reverse current practice in Belgium's French-speaking community, senators Anne-Marie Lizin (Socialist) and Alain Destexhe (Liberal) have proposed a bill mirroring France's attempt to ban religious symbols in schools.<sup>272</sup> Whilst the bill is not only aimed at the hijab, as it covers all religious symbols or clothing, such as the Jewish kippah, it is clear that it addresses mainly the hijab-wearing Muslim girls and women, as observant Jews who would wear the kippah at school are most likely to attend a Jewish school in Brussels or Antwerp. Christian parents who wish their children to wear crosses on necklaces or to be educated by nuns and monks, have the option to send them to a Catholic school, as the Belgian educational system offers a choice of secular state schools, or faith schools which are to a certain extent funded by the state.

270 Study of the French Sénat carried out in 2003 and published online at:

<http://www.senat.fr/lc/lc128/lc128o.html>.

271 Source: Islamic Human Rights Commission.

272 *Proposition de resolution visant à garantir l'égalité des hommes et des femmes et la neutralité de l'état dans l'enseignement public obligatoire et dans les administrations publiques en interdisant le port de signes ostensibles d'appartenance religieuse* – Draft Bill to guarantee the equality between men and women by prohibiting the wearing of ostentative religious signs, presented to the Belgian Senate in January 2004.



### **Austria**

Few problems have been experienced on the headscarf issue in Austria, where Islam is accepted in legal and social terms, with the Law on Islam adopted in 1912.<sup>273</sup> Islam, Judaism and Christianity are officially recognised religions.

### **Spain**

Spain, known for its strong Catholic identity, has not encountered many problems involving the headscarf. The law of December 23, 2002 concerning the quality of education, which is binding on all autonomous communities in Spain, makes respect for freedom of conscience and the religious and moral convictions of others as obligatory as homework.<sup>274</sup>

In a case which arose in February 2003, a private Catholic high school refused to allow a Muslim student, Fatma Idrisi, to come to the school with a headscarf, so her parents took their daughter from that private school and sent her to a state school. The head of the Organisation for the Protection of Immigrants and Migrants, Mustafa al-Mirabet, pointed out that they have not encountered any problems other than this one, and that most Muslim families send their children to state schools wearing headscarves.<sup>275</sup>

### **The Netherlands**

The Dutch Constitution protects both the freedom of religion and the right to equality. The Equal Treatment Act 1984 prohibits imposition of direct or indirect discrimination in employment on grounds of religious or other beliefs. It also covers the provision of goods, services and facilities with particular reference to housing, education, health, welfare, sport and culture.

No law exists in the Netherlands prohibiting the headscarf, either in schools or in workplaces. In general, the authorities relied on the school administration to implement legal stipulations in the educational system. Therefore, each school decides whether or not to accept a student wearing a headscarf. At present in the Netherlands, students wearing headscarves can attend classes, from elementary school to university, without any problem. Cases that have arisen before the Equal Rights Committee have generally been resolved in favour of the students.

However, in Amsterdam and some other cities, attending classes with a veiled face is banned by the decision of the regional education directorates.

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273 Islamgesetz 1912. This law was enacted to give Islam an official status after the 1908 annexation of Bosnia Herzegovina by Austria. Following this annexation, 600,000 Muslims became resident in Austria.

274 Quoted as per a study commission by the French Sénat, <http://www.senat.fr/lc/lc128/lc128o.html>

275 Source: Islamic Human Rights Committee, Briefing on good practice on the hijab in Europe.

In cases concerning factories, the medical profession, supermarkets, and the like, wearing headscarves on the job has led to conflicts in which the side opposing the hijab cited efficiency, accessibility or hygiene as grounds for opposing the hijab in the workplace. However, the National Committee on Equal Treatment has ruled that a prohibition on wearing a headscarf in work situations is illegal since it is at odds with the right to religious freedom.<sup>276</sup> Only safety reasons or reasons of functionality could be legitimate grounds for proscribing religious headgear.

The issue of teachers wearing headscarves in state schools arose some years ago. A disagreement between a teacher and her school directors was settled by a ruling of the National Committee on Equal Treatment in 1998. This stated that a headscarf is not necessarily a symbol of religious orthodoxy and intolerance vis-à-vis non-Muslim beliefs or non-religious attitudes. Insofar as Muslim belief was not actively manifested or promoted, a headscarf as such was not a threat to the 'open' and 'tolerant' attitude that is required by the Dutch law on public education. The head teacher of the school should have interviewed trainees about the meaning of wearing a headscarf first, before concluding that it was an emblem of orthodoxy and intolerance.

In January 2000, the Dutch police force proposed to introduce the headscarf as part of the official police uniform. The police would provide for special headgear in the colour of 'police blue' so that it would match the rest of the uniform. Like Ireland, this was a police initiative to encourage Muslim women to join the force. However, after much public debate, no action was actually taken.

Most recently, Rita Verdonk then the hardline Integration Minister of the Netherlands, and known by some as 'The Iron Lady' for her series of tough anti-immigration measures, told Parliament that she was going to investigate where and when the burqha should be banned.<sup>277</sup>

### **Turkey: Militant Secularism versus Political Islam**

Article 2 of Turkey's Constitution of 1982 provides that Turkey is a secular country.<sup>278</sup> This secular tenet of the Constitution is strictly interpreted. Parliamentary rules do not specifically ban the wearing of the hijab by members in the Assembly chamber, although civil servants are forbidden to wear it, and it is banned in schools and public buildings. It is generally understood that the hijab is out of bounds in the chamber,

<sup>276</sup> The Dutch reading of the law is that a headscarf is a 'direct' manifestation of religious belief.

<sup>277</sup> *The Times*, October 13, 2005.

<sup>278</sup> Article 2: The Republic of Turkey is a democratic, secular and social State governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble. (English translation courtesy of the Turkish Ministry of Foreign Affairs).

as the case of Merve Kavakci, who won a seat in Turkey's 1999 general elections shows.<sup>279</sup>

When Ms Kavakci was preparing to take her oath as a newly elected MP in the Turkish parliament wearing her hijab, she was prevented from swearing that oath by heckling from MPs of other parties. The then caretaker Prime Minister, Bülent Ecevit, accused her of violating the basic principles of the secular Turkish Republic.<sup>280</sup> The debate became heated and whilst many secular Turkish politicians saw Ms Kavakci's hijab as the symbol of an ever more political complexion to Islam in Turkey, pro-hijab activists claimed that the Turkish state was violating human rights by not allowing public servants to wear the hijab. By contrast with other European countries which are experiencing a debate on their attitude to religious symbols in general or Islam in particular, the debate in Turkey has to contend with the additional aspects of the power of an aggressively secularist military and its considerable weight on the Turkish political scene, as well as the emergence of openly Islamist parties that are winning some successes with the electorate.

Ms Kavakci's case attained notoriety in Turkey, where the debate was naturally at its most vigorous, but also in Europe, where several magazines and newspapers in a number of countries followed the story closely, and Muslim organisations issued statements of solidarity. Ms Kavakci subsequently lost her Turkish citizenship due to having acquired US citizenship when she lived in the States with her parents, without first applying to the relevant Turkish authorities for authorisation to keep her Turkish citizenship. The loss of her Turkish citizenship, which in itself was seen as an instrument of disciplinary action by the state because she had provoked the political establishment by her obstinacy, meant that Ms Kavakci automatically lost her seat in the Turkish parliament.

Ms Kavakci is now a professor at the Elliott School's Institute for European, Russian and Eurasian Studies at George Washington University in the USA.

When the Swedish debate on the wearing of the hijab began, one of Sweden's most acclaimed female journalists wrote an article in a Stockholm paper<sup>281</sup> warning that any attempt to ban the hijab would be counter-productive and could lead *in extremis* to cases like Ms Kavakci's.

In February 2008, Turkey's President approved a pair of constitutional amendments that would allow female students to wear Islamic headscarves at universities. The secular state, which has been at odds with the religious communities within the country, passed the amendment on 9th February with a vote 411-103 that affirms equal treatment of all citizens and forbids anyone being denied access to higher education. The President, Abdullah Gul, is an observant Muslim whose wife and

279 Ms Kavakci canvassed and campaigned for the Islamist Fazilat Party and won a seat in urban Istanbul.

280 BBC News, May 3, 1999, published on the BBC's news website, see also article 'Merve Kavakçı'ya yönelik zulmü kınıyoruz' on the website of the Turkish Human Rights organisation Mazlumder: [www.mazlumder.org](http://www.mazlumder.org).

281 Tänk på Merve Kavakci när ni diskuterar slöjorna, Aftonbladet, Stockholm, 20 February 2004.

daughter wear headscarves. However, he was keen for the government to find ways to appease the secular parts of society, from whom they expect an appeal to be made against the legislation.<sup>282</sup>

### **Germany: Regional Policies**

Although there have been cases before local school inspectorates involving Muslim pupils wishing to wear the hijab at school, these are few and far between. Pupils have generally been allowed to wear the headscarf in school. The debate in Germany has centred primarily on Muslim teachers wearing headscarves at school.

Education and school policies fall within the remit of Germany's 16 regional states, and regulations and practice regarding the hijab and other religious symbols in the classroom vary widely. In all German regional states, teachers, once qualified and in employment, obtain the status of 'civil servant for life,' meaning that whilst teaching, they are actually representing the state which employs them.

Fereshta Ludin, a German citizen and observant Muslim teacher who wanted to wear the hijab in the classroom during teaching, became a cause célèbre throughout Germany. Her legal struggle to be allowed to teach with the hijab reached Germany's highest court, the Federal Constitutional Court (FCC).

In 1998 the regional state of Baden-Württemberg refused to employ the trainee teacher in a permanent position as a primary school teacher after she completed her training, as Ms Ludin had previously stated that she wished to teach wearing the headscarf.<sup>283</sup> The educational administration of Baden-Württemberg argued that it feared Ms Ludin wearing a headscarf would influence her pupils. Such an influence would be unacceptable to the state, as schools were obliged to remain neutral in questions of *Weltanschauung* and religion. Ms Ludin sued the regional state as she saw a violation of her freedom of religion in its refusal to employ her. In 2000, the Federal Court of Administrative Law decided that the state's duty was to be impartial with respect to Ms Ludin's right to practice her religion. Ms Ludin appealed against that decision to the Federal Constitutional Court.

In June 2003, the FCC ruled that the Baden-Württemberg state was legally wrong to ban a teacher from wearing a headscarf in school.<sup>284</sup> The state had argued that a teacher with a headscarf violated 'the strict neutrality of public schools in religious issues.' The FCC held that 'there is no sufficiently certain legal base to prevent teachers from wearing a headscarf in schools and during lessons in the legislation currently in force in Baden-Württemberg.'<sup>285</sup> The judges went on to say: 'In view of the societal

282 For an interesting reflection on the current situation, see the remarks of a prominent Turkish archaeologist and head scarf researcher as reported in *Der Spiegel*, <http://www.spiegel.de/international/world/0,1518,535256,00.html>.

283 In fact, the Land Baden-Württemberg had originally tried to ban Ms Ludin from even training as a teacher for the same reasons it later refused her permanent employment.

284 Decision number: BVerfG, 2 BvR 1436/02 of 3.6.2003, Paragraph (1-140), quoted as at: [http://www.bverfg.de/entscheidungen/rs20030924\\_2bvr143602.htm](http://www.bverfg.de/entscheidungen/rs20030924_2bvr143602.htm).

285 First leading argument (Leitsatz) of the aforementioned decision.

change following increasing religious plurality, the legislator may re-assess the admissible extent of religious references in schools.<sup>286</sup>

The court's ruling had no direct effect on Ms Ludin's position as a teacher. The ruling meant that the Federal Court of Administrative Law (BVG) had to re-assess its original judgment in which it had found against Ms Ludin in the light of the Federal Constitutional Court's decision.<sup>287</sup>

Following the judges' statement that the legislator may re-assess the admissible extent of religious references in schools, seven of the 16 regional states in Germany showed support in October 2003 for the view that the hijab should be banned from state schools, with three proposing to extend the ban to all public institutions. By June 2004, three regional states (Baden-Württemberg,<sup>288</sup> Niedersachsen<sup>289</sup> and Saarland<sup>290</sup>) have enacted legislation to prohibit the wearing of the hijab by Muslim teachers. Bavaria and Hesse were preparing similar bills. Whilst most of those regional states that are preparing bills on religious symbols in schools are specifically banning the hijab (and not Christian or Jewish symbols), only Berlin is planning to go further and ban all religious symbols for all religions from its entire civil service, including the educational sector.

Whilst lawyers for the state of Baden-Württemberg argued that the state was obliged to maintain neutrality in questions of religion, the debate around the proposed bills in various regional states shows that the German hijab debate is really focussed on the 'essential Christian nature' of the state. Annette Schavan, the Minister for Education in Baden-Württemberg, declared that the state's (i.e. Baden-Württemberg's) constitution placed Christian and Western values and culture at the heart of the education system. She further justified the ban by claiming that the headscarf is seen as a symbol of cultural division and part of a history of oppression of women.

The Minister for Education of Bavaria, Monika Hohlmeier, declared that pupils had a right to be protected against the influence of foreign religions.

Other arguments used by opponents of the headscarf in school were that the headscarf was a symbol of political Islamists and a sign of cultural separatism.

The Central Council of Muslims in Germany (ZMD) argued that the newly proposed legislation against religious symbols was *de facto* prohibiting observant Muslim women from working as teachers in German schools. In a statement<sup>291</sup> regarding the original legal proceedings brought by Ms Ludin against the state of Baden-Württemberg, Dr Nadeem Elyas, Chairman of the ZMD, stressed that the headscarf was not in fact a tool for conversion or the manifestation of a political position, but an

286 Second leading argument (Leitsatz) of the aforementioned decision.

287 At the time of writing, the Federal Court of Administrative Law is reviewing its judgment in this matter. At the same time, it is reviewing the constitutionality of two of the regional laws banning the hijab in the states of Niedersachsen and Baden-Württemberg.

288 Law came into force April 1, 2004.

289 Law came into force April 28, 2004.

290 At the time of writing the Saarland law was in its third reading before the plenary of the Saarland parliament.

291 ZMD press release of March 20, 2000, available at [www.zmd.de](http://www.zmd.de).

integral part of Islamic practice. He argued that the abuse by a few should not be the cause for a general prohibition.

In March 2005 the legislatures in two German states turned down proposals by the opposition Christian Democratic Party to ban Muslim schoolteachers from wearing the hijab. The parliament of Nordrhein-Westfalen rejected the party's request as having no legal merit. The Christian Democratic party had claimed that the hijab gave women a lower status and was a political symbol not entrenched in the Qur'an.<sup>292</sup>

## Conclusion

This overview of practice concerning the wearing of the hijab in various European countries has shown that there is no simple answer to the question of how states should strike a balance between the legitimate interests of Muslim women to profess and manifest their religion by wearing the hijab, and the maintenance of public secularism or at least the state's neutrality in matters of religion. In the case of Western European countries, there is also the issue of social integration for hijab-wearing women in society at large through the educational system and rules of the workplace.

Legislation against overtly religious symbols – such as that introduced in France – may slow down social cohesion and integration, as it is likely to encourage the demonising or politicising of a religious expression that in the majority of cases was not actually political at the outset. With very few exceptions, a girl who decides to wear the hijab to school or a boy who puts on his kippah does not have political intentions. In their own mind, they believe their action is the observance of a commandment of their religion. To draw attention to, and indeed to penalize the wearing of the hijab (be it in the form of school exclusions, professional restrictions or discrimination against hijab-wearing women in the workplace) will alienate observant Muslims who want to integrate into society and build their lives in European countries, creating unneeded martyrs to a cause. In some cases the issue can become a statement in which young people wish to express their right to their faith in public, even if the item of clothing is not viewed as an obligatory part of their faith.

If legislated against, young women who wear the hijab will feel rejected by society and be driven towards the extreme and often political end of the Islamic spectrum to which they would never have adhered had it not been for legislation against the garment. True social integration and community cohesion is not measured by what people wear; it is measured by how people can and do participate in society, be it in terms of education, employment or political decision-making, and how people think for themselves.

The English approach of leaving the decision on what pupils are allowed to wear to schools and to the individual school governors (who should be representatives of the local population in a state school), accompanied by the culturally sensitive guidelines

292 See the comment in the *Financial Times* of April 10 2004 where Bertrand Benoit sees the bills as threatening to 'achieve the opposite of their stated aim of preventing religious fanaticism spreading among Germany's 3.2 million Muslims'.

of the Department of Education, seems to be the most practical. This allows schools to take into account specific local factors (such as the presence of a large Muslim community in its catchment area). In this way, conflicts can be avoided from the start and pupils and teachers are not drawn into a political debate about the nature of religion. Perhaps conflicts over this question could be mediated with the help of the Head of the Islamic Studies Department if the school in question has such a Department.

We also need to keep in mind that many Muslim communities are immigrant communities with a quite traditional outlook on girls' education. As Shamim Miah points out in an article about a recent Ofsted report on Bangladeshi pupils, 'Some parents... still had a 'traditional' approach to schools for their daughters, believing it important that access to further education be fitted around marriage rather than the other way around.'<sup>293</sup>

As a society, it must be our aim to educate girls coming from such traditional immigrant families, to equip them with the tools and the knowledge to be able to live independent lives, to aspire to achieve educationally and professionally, and to contribute to society. Wearing the hijab has to be a matter of choice, and young women who want to wear the hijab should not be forced to choose between their religion and the opportunity of acquiring an education. Girls who find themselves in a situation of coercion will lose out, at great personal and social cost.

Rabbi Elisa Klapheck, the Jewish feminist, argues along similar lines when she writes about hijab-wearing girls in German schools:

The Muslim girls who voluntarily don the hijab and at the same time search for a way to participate in this [German] society have my complete solidarity. They strive to become emancipated citizens without denying their roots. If we want a modern and tolerant Islam, these girls are our future.<sup>294</sup>

In the Norwegian debate, the argument which claimed that children needed to be protected from their parents' religious and political convictions is a double-edged sword. On the one hand, and this is where the argument is most appropriate, children have the right to freedom and should not be forced, for example, to enter arranged marriages. On the other, it seems that whilst this sort of argument may at first sight seem plausible for girls who are being forced to wear the hijab against their will, it does not address the vast majority of girls and young women who themselves want to wear the hijab.

The general assumption that observance of the hijab comes about as a result of force and coercion is not only wrong, but also a dangerous position to take in a multicultural society. It assumes that Islam and its manifestations are only upheld under the watchful eye of parental repression. Ultimately, such a position calls into question

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293 Shamim Miah, 'Ofsted Report on Bangladeshi Students', *Q-News*, May 2004, 48.

294 This quote stems from an article that was first written by R Elisa Klapheck for the German daily *Die Tageszeitung* and subsequently published on the German-Jewish website [www.hagalil.com](http://www.hagalil.com) on 27.10.2003.



the right of parents professing and practising a minority religion or other conviction to educate their children according to their beliefs. It would be unthinkable for a Western society to question this right when applied to Christian parents who object, for example, to school sports competitions on Sundays and withdraw their children from these competitions.

The detailed examination of state legislation concerning the hijab illustrates one aspect of the interplay between religion and human rights – specifically the individual's right to express his or her own religion, and the way that this impacts on society. In this instance, it provides an example of how the functioning of society affects the rights of those with a religion and how this seemingly narrow issue actually influences a wider spectrum of society, and a wider understanding of society.

Those who wish to affirm their religion and their right to wear the hijab illustrate an interaction between religion and society which is potentially maximalist – their religion impacts on *all* aspects of their lives, including, for example, what they should be allowed to wear to school. In the case of Ms Begum, this was taken as far as the highest court in the UK, in her attempt to be allowed what she considered religiously appropriate. What is fascinating about this particular case is that one of the concerns of the teachers at the school was that, had Ms Begum been allowed to change her school uniform, this might well have reflected on the religious freedom of other children, namely Muslim children who would have felt obliged or forced to adopt a more conservative interpretation of their religion. In her case, she was deeply influenced by her brother who was definitely politically orientated in his observance.

In the Netherlands, where there are calls for the burqha to be banned, the few dozen women who wear this garment cannot be seen as a major threat to that society, although the issue appeals to right-wing voters and their party will receive votes for this relatively trivial reason.

Similar fascinating reactions have appeared in other countries, and towns in Belgium – Antwerp and Ghent – forbid the burqha, and Tunisia, a Muslim country, does not allow the hijab to appear. It is so much part of the general background and culture of a nation and the political sensitivity to other problems that need to be resolved, that occasions many of these reactions.

Often human rights causes are used as a pretext for highlighting political wishes of one group of people against another, in the same way as religion has done for centuries. In another chapter, we highlight this with the promotion of human rights in autocratic countries. In many cases the promotion of human rights is not really for its own sake, but to win control of oil or as a vehicle to break up a powerful economy, as in the case of China. Despite this, the importance of progress for all people towards equal opportunities and to fair treatment is something very deeply ingrained in Western culture. Hopefully, this form of complex democracy – also limited like every other form of government – gives the individual a better hope for a decent life. We should not forget that many nations were created artificially by Western society imposing their concept of freedom elsewhere. Tribal societies have functioned everywhere historically and often protected the people within them. To disrupt this pattern is often perilous – democracy ultimately breaks up these ancient and often



oppressive regimes. It is unlikely that any tribal system could accept the European Social Charter.<sup>295</sup>

On another reading, the approach to religion by some of those involved in these debates might be interpreted as heading towards the minimalist end of the spectrum. In other words, whilst they are prepared to go to court to confirm their rights, that is as far as they are prepared to go. In these examples, at least, there is no attempt to achieve the ends they desire by violence or other offensive means. On the other side of the coin, it is often state legislation that has protected the religious person and led to laws that subsequently serve to protect other minorities.

In conclusion, the case study concerning the hijab illustrates the complexities of the relationship between religion and human rights, complexities which by and large have been resolved through the legislative process. Whilst fraught with difficulty and agonizing personal decisions, it is a relationship that is neither terminal nor disastrous – rights and religion seem to co-exist in mutually beneficial ways.

It is better to encourage co-existence of citizens than isolation. However, separate faith schools have developed very well, partly due to some excellent teaching and the encouraging of pupils subsequently to attend universities where they can integrate securely and gain greater understanding about their religious belief from their school's education. This in turn allows them to cope with other views. Conversely, if children do not mix culturally at an early age, they will find it harder to mix with different people when they grow older. Both opinions are strongly held. Religious families feel more secure that their children will remain within their own religious faith if they have benefited from an in-depth education. However, it has been shown many times that over-exposure to one's own faith at an early age can have a perverse effect in that children long for something else. There is no definite right or wrong in this debate. The author has always felt that playing together is more healthy for tolerance and human rights, provided children still have the security and comfort of their own original family faith.

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295 Council of Europe, Strasbourg 1996.

### Introduction

In 2007, there were at least 1,250 executions in 24 countries around the world. China, Iran, the United States,<sup>296</sup> Pakistan and Saudi Arabia were responsible for 88 per cent of all executions. The following countries executed defendants in 2007: China at least 470 executions (according to public reports, China publishes no official figures), Iran (317), USA, Vietnam as well as Bangladesh, Belarus, Botswana, Chad, Congo, Cuba, Egypt, Iraq, Japan, Jordan, Kazakhstan, North Korea, Mongolia, Pakistan, Saudi Arabia, Singapore, Somalia, Sudan, Taiwan, Thailand, Uganda, Uzbekistan, Yemen, and Zimbabwe.<sup>297</sup>

Capital punishment is the lawful infliction of death as a punishment, and since ancient times it has been used for a wide variety of offences. One of the earliest written statements of capital punishment from the lex talionis or retributionist perspective stems from the 18<sup>th</sup> century BCE Babylonian Law of Hammurabi (see earlier comments in introductory chapter):<sup>298</sup>

If a builder builds a house for someone, and does not construct it properly, and the house which he built falls in and kills its owner, then that builder shall be put to death. If it kills the son of the owner, then the son of that builder shall be put to death.

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296 The Supreme Court in Nebraska ruled in February 2008 that using the electric chair as the method to execute a prisoner violates the ban on cruel and unusual punishment found in the constitution of Nebraska. “Condemned prisoners must not be tortured to death, regardless of their crimes,” the court wrote. If the state wishes to keep capital punishment, it must now consider alternative means, as the electric chair was its sole method of execution. Earlier, in January, the US Supreme Court heard arguments regarding the use of lethal injection as a means of execution. The issue the Court is addressing is the same as that debated in Nebraska – as to whether lethal injection also contravenes the constitutional ban on cruel and unusual punishment.

297 Source: Amnesty International USA.

298 These laws were especially brutal and ruthless.

The Bible prescribes death for murder and many other crimes, including kidnapping and witchcraft (see below for a list of biblical offences carrying the death penalty), as does the Qur'an, for a variety of offences. In Western jurisdictions, often equipped with legal systems which were heavily influenced by ecclesiastical legal codes, capital punishment was frequently administered, although the original list of biblical offences had been radically reduced.

By 1500 in England, only major felonies carried the death penalty, such as treason, murder, larceny, burglary, rape, and arson. By 1700, however, Parliament had enacted many new capital offences (such as horse-stealing), and execution was widely used as a means of punishment and deterrence. Reform of the death penalty began in Europe by the 1750s, and was championed by academics such as Cesare Beccaria, the Italian jurist, Voltaire the French philosopher, and the English law reformers Jeremy Bentham and Samuel Romilly.<sup>299</sup>

The essence of their argument was that the death penalty

- Is needlessly cruel;
- Is a non-effective deterrent; and
- Is capable of producing gross miscarriages of justice.

Alongside Quaker leaders (the most famous being Elizabeth Fry) and other social reformers, they defended life imprisonment as a more rational alternative.

After long campaigns within their respective societies, Venezuela (in 1853), Portugal (in 1867), Iceland (in 1869) and Switzerland (in 1874) were among the first nations to abolish the death penalty altogether. In the United States, Michigan was first state to abolish it for murder in 1847. Today, it is virtually abolished in all of Western Europe and most of Latin America. Britain abolished capital punishment in 1965. In America, Asia, Africa, and the Middle East (except Israel, where the only person to be executed was Adolf Eichmann) most countries still retain the death penalty for certain crimes and impose it with varying frequency.<sup>300</sup>

## Scope

This chapter examines the interplay between religion, human rights and the death penalty. It will look at Biblical, Talmudic and Qu'ranic sources on the death penalty

<sup>299</sup> Beccaria was an eighteenth-century aristocrat whose work *On Crimes and Punishments* (1764) inspired reform in the Italian criminal justice system. The brief work relentlessly protests against torture to obtain confessions, secret accusations, the arbitrary discretionary power of judges, the inconsistency and inequality of sentencing, using personal connections to get a lighter sentence, and the use of capital punishment for serious and even minor offences. Almost immediately, the work was translated into French and English and went through several editions. Philosophers of the time hailed it, and several European emperors vowed to follow it.

<sup>300</sup> The US Supreme Court has recently passed two rulings which have chipped away at the edifice of capital punishment, such that prisoners on death row have more opportunities to challenge their sentences. 'Rulings chip away at Capital Punishment', *Financial Times*, June 13, 2006, 7.

as well as modern-day legal theories. Its aim is to demonstrate that, whilst the death penalty seems to be firmly rooted in religious canonical texts, most religious traditions within the Abrahamic faiths do not lend themselves in modern jurisdictions to an easy one-sided interpretation favouring the application of capital punishment.

In the section on modern use of the death penalty in jurisdictions as diverse as the United States of America, the Islamic Republic of Iran and the Federal Republic of Nigeria, it will be shown that whilst advocates of capital punishment will employ a wide range of arguments in favour of it, the result of its administration sometimes indicates failed justice and a violation of human rights.

Of course, there are many other ways in which states have exterminated people. For example, the Third Reich worked Jews and others to death as slaves, and similarly in Asia many people have been killed through forced labour and starvation.

A special excursus of the chapter deals with the case of Eichmann and addresses the question of how justice could be administered in the face of unspeakable crimes against humanity. The Nuremberg trials were probably the first to document some of these.

## **The Death Penalty in Judaism, Christianity and Islam**

### ***Judaism***

#### **Introduction**

It seems that even a casual glance at any edition of the Bible<sup>301</sup> reveals a multitude of crimes punishable by death, especially in the books of Leviticus and Deuteronomy: death was a penalty prescribed by Biblical law for the commission of offences that violated ritual prohibitions (such as deliberate desecration of the Sabbath) as well as laws regarding inter-personal relationships (murder, kidnapping, incest or rebellion against one's parents).

#### **The abolition of capital punishment in rabbinic Judaism**

Forty years before the fall of Jerusalem in 70 CE, the rabbis abolished capital punishment altogether.<sup>302</sup> Rather than applying the four methods of execution themselves, they ruled that punishment should be carried out by divine agencies.<sup>303</sup> In other words, a punishment so awesome as the taking of a person's life should not be entrusted to fallible human beings, but only to God.

This ruling does not mean the rabbis dispensed with physical punishment altogether. On the contrary, they expressed no compunction about decreeing corporal punishment or harsh physical suffering. If the rabbis/judges were convinced of a de-

301 References to the Bible in this chapter are references to the Hebrew Bible or Tanakh; references to the Christian New Testament are referred to as such. References to individual books of the Hebrew Bible are given in the Latin or English form as per the general custom in English (e.g. 'Exodus' instead of 'Shemot').

302 See Soncino Talmud, Sanhedrin, 161,

303 Sanhedrin 37B, Ketubot 30A, & 30B.

fendant's guilt in a capital case, but the high standard of evidence required did not permit execution, the offender would be sentenced to prison on a ration of bread and water.

### **The death penalty in Israel**

Israeli law is neither biblical nor Talmudic law. The state of Israel has its own modern legal system which – due to the period of the British Mandate over Palestine – is partly based on English Common Law. Jewish law or *mishpat ivri* ('Hebrew law') is derived from Jewish legal sources and applied in the area of personal status and family law.

Whilst the Israeli penal code provided for capital punishment for murder, and in the early years of Israel's existence, until 1954, convicted murderers were indeed sentenced to death, such verdicts were never carried out. Instead, death sentences were commuted to life terms in prison.

It is interesting to note that in Israel's first murder trial, both the Ashkenazi and Sephardi chief rabbis sent a telegram to the Minister of Justice, urging him to abolish capital punishment at once. The rabbis warned that capital punishment was incompatible with the teachings of Judaism and a sin against Jewish law. Partly as a result of their representations, when the penal laws were revised in 1954 six years later, the death penalty was abolished, with one exception. The death penalty was allowed if the accused was found guilty of participation in genocide and or treason during a time of war.

Only one person has been executed in Israel: Adolf Eichmann, an administrator of the Nazi slaughter of the Jews of Europe. At this point I offer a personal observation on this matter, as my family had some involvement in the proceedings.

My cousin was married to Major Avner Less who had fled from Germany to Palestine before the Second World War and was an officer in the auxiliary police force during the British mandate. After Israel's independence, he served as a Consul with the Israeli embassies in France and the United States. In 1960 he was asked by Prime Minister David Ben Gurion to conduct the pre-trial interrogation of Eichmann. Avner Less complied with great reluctance, especially as his own parents were murdered in concentration camps under the control of Eichmann. Over a ten-month period he went through over 3000 transcripts with Eichmann, preparing the state's case for his trial. It was very difficult to obtain documents from the Nuremberg trials and from countless other sources, faxed messages, etc.

I had the privilege of meeting Avner Less many times in London when he later helped organise the State of Israel's membership of Interpol and was in close liaison with Scotland Yard and many other organisations in London. He was a popular man, very quiet yet outstanding and able to extract from Eichmann the most extraordinary evidence of the man's mentality, which few others could have achieved. The books chronicling the interrogation have been published by the Bodley Head.

Especially interesting is the book *Eichmann Interrogated*, transcripts from the archives of the Israeli police. Avner told me that what shocked him most was Eichmann's lack of remorse during the interrogation. The natural defence, which could have been expected in advance, was that he was only a transport officer shifting a

cargo, albeit a human cargo, for processing. He ran this transport exercise with horrific efficiency and even persuaded the highest authorities not to cut back on trains although they were needed elsewhere towards the end of the war for the German war effort. He was shown photographs of himself machine-gunning children in the arms of their mothers – to which he responded, when asked by Avner whether this was him: ‘Wasn’t I humane! I didn’t want the children to be afraid when I had to kill them with their parents.’

What is my reaction towards capital punishment after hearing all these cases and stories? I was horrified and still am by much of what I learnt from Avner Less. Nobody could have loathed Eichmann more than those who had been in concentration camps and in total terror of his actions. One of my closest friends held in a concentration camp had watched him and remembered him with horror and terror. We talked about the Eichmann trial many times. For Avner Less the miracle was that this all-powerful individual had been ordered to stand up in a glass box in court in Tel Aviv by a Jewish Israeli judge. To see this man stand to attention and obey the orders of the Israeli judges was for him a miracle, an incredible event. The death sentence passed on Adolf Eichmann was, for him, important.

I always remember my discussions with my friend and other people who had suffered in Nazi camps, all of whom wanted the death penalty. I respected their views enormously but deep inside me felt that the capital sentence did not achieve anything, except a modicum of satisfaction in retribution. The fact that he had been tried correctly, in an open court, was the key to the punishment. If he had remained in prison, he would possibly have suffered much more and this perhaps would have been better than the quick finale to his life. Avner Less accompanied Eichmann to the gallows and told me that his last few words were that the world would one day see what an excellent job he had done and would appreciate his contribution to German civilization. There was still no remorse whatsoever.

I discussed this with friends in Scotland Yard involved with some of my work on race relations in Britain and they agreed that often the most frightening aspect of criminals is indeed their lack of remorse.

Should one have the death penalty available as a final deterrent or not? From everything I have studied and read, I am convinced that it is never a deterrent, since the majority of criminals do not believe they will ever be caught. The cost to society is that of guarding those whom it would be better off without, for the rest of their lives. The degradation of execution is something separate from the murder itself – it means that a professional is willing to earn his living executing other people on the orders of someone else, who in turn has been given his orders by a judge pledged to enforce the law according to its strictures. This whole process is one which reduces the responsibility of the individual to obeying orders. It would be unthinkable for an executioner to decide whether or not to execute someone by his own judgement; but the fact that people can execute others by order is fundamentally disastrous, since decisions of this kind can lead to so many others.

Speaking with people in Germany, I have seen more myself that very few felt they could rebel against the orders of a state authority. They exterminated children, parents and grandparents based on the orders of their superior officers, as they themselves

would have been punished otherwise.<sup>304</sup> They felt that there was nothing wrong with this position, nor did they ever query it, as they were charged to carry out orders, not question them. In the German army, a soldier who had suffered shell-shock and ran away from the front line was immediately killed by his superior officer with no questions asked, and this had applied for generations.

In today's society each individual should be responsible for questioning any punishment meted out to others. Death is the ultimate punishment and I feel that despite the evil of certain people, it should not be within our power to take someone's life no matter how evil he appears to have been. It is also possible, although unlikely, due to the constraints on the judiciary, for the wrong person to be sentenced to death, or that the evidence in court could be framed by the police or other people. We have seen throughout history how the most dreadful things have happened, and how people have suffered by being banished to places such as Devil's Island. In the case of Captain Dreyfus, and countless others, these poor victims of so-called justice were blameless.

What concerns me is that the law is so complex and lawyers so brilliant that they can often manipulate the law to such an extent that someone guilty can be exculpated. To find a just balance will never be easy, but this is part of the challenge of improving human rights and for remembering that all human life is sacred. It is no use excusing all inhuman behaviour on the grounds of psychological or medical problems. On the other hand, death is the ultimate sanction which might be wrongly prescribed.

I visited Hungary during the communist era and tried to help Jews there who were in dire straits. During my visit, I was introduced to a group of Hungarian Jews who explained to me how, towards the end of the war, over 400,000 Jews were deported from Budapest to Auschwitz in cages, to be gassed and burnt. Between May 14 and July 8, 1944, 437,402 Hungarian Jews were deported to Auschwitz in 148 trains. The speed at which this was done (eight weeks) was due to the organisation of the Ukrainian death squads who in turn were ordered by the German army to collect a certain number of Jews every day. If they did not meet the quota they would be shot. They worked with horrific efficiency and enthusiasm, and in this way people who would never normally have been recognised as Jews, were caught and trapped. The transports organised by Adolf Eichmann were again an example of brutal efficiency, similar to what happened under his control all over Europe. None of the Ukrainians interviewed after the war ever queried what they had done as being morally indefensible. They never explained that they were acting under terror and found no relief from their nightmare. All seemed to feel that it was perfectly normal to hunt down civilians for extermination and this aspect has always shaken me with regard to the power of a state or a party machine that completely dominates all thinking in a society.

Today we have the enormous power of advertising and propaganda through the media which can twist and brainwash people very quickly to believe what is incorrect or what is actually morally wrong. The lack of objective reporting by many non-governmental organisations that are looking for money to keep themselves going (in

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304 Although it is argued that there have been no cases discovered where soldiers were punished or executed for refusing to carry out these orders.

the same way as television and newspapers seek ratings or circulation) means that anything that is sensational and dramatic is immediately published. The cutting of the throats of innocent people in Iraq was widely reported and is another dreadful example of media enthusiasm to publish the most gruesome examples of brutality. Perhaps if there was no publicity for them, terrorists would not have committed these deeds. They achieve their results only by instilling fear into the minds of people. In the same way, murder is something which is lapped up by the media, and such publicity can cause many to feel that they too want to become the heroes of a popular legend.

There is a wonderful cartoon by Hogarth showing two apprentices, the idle and industrious, who both sought success in life. The idle one became a murderer and was paraded to the gallows at Tyburn, where he was to be executed, with crowds lining the streets to watch his hanging. The same crowd watched his friend the industrious apprentice, who married the daughter of the owner of the factory where they both worked. The very same crowd watched him go to the Mansion House when he became Lord Mayor!

There are countless similar examples of this voyeuristic fascination in seeing others being executed or guillotined. It would be better for the media to concentrate on the positive values of society and to encourage this rather than focusing on the macabre for purely sensational reasons.

In an important prisoners' rights case Judge Menachem Elon, Deputy President of the Supreme Court of Israel, wrote an opinion<sup>305</sup> in which he said:

Jewish Law was particularly insistent on the preservation of even a criminal's rights and dignity during the course of punishment. Maimonides, after dealing with the types of punishment a court may impose, including imprisonment, concludes: "All these matters apply to the extent that the judge deems appropriate and necessary for the needs of the time. In all matters, he shall act for the sake of Heaven and not regard human dignity lightly. He must be careful not to destroy their dignity." According to Jewish law, a death sentence must be carried out with the minimum of suffering and without offence to human dignity. This is based on the Biblical verse, "Love your fellow as yourself," and the rule is, "Choose for him a humane death." From this we declare that even a condemned felon is your "fellow".<sup>306</sup>

305 *State of Israel v. Tamir*, 37(iii) P.D. 201 (1983).

306 Justice Elon's opinion in the *Tamir* case, translated into English, is reprinted in full in Elon, *et al.*, *Jewish Law (Mishpat Ivri): Cases and Materials* (Matthew Bender & Co, Inc., New York, 1999), 567-572.



## Islam

### Introduction<sup>307</sup>

The Qur'an states that the unjust killing of a single soul created by God<sup>308</sup> is tantamount to killing the whole of humanity, and that an unjust killing deserves *qisas* (a form of retributive punishment).<sup>309</sup>

However, the taking of a life comes with an important caveat. In Sura 6:151, the Qur'an states '...Take not life, which God has made sacred, except by way of justice and law. Thus does He command you, so that you may learn wisdom.'

This limitation on the prohibition on taking life 'except by way of justice and law' seems to imply that Islam condones the death penalty when applied by a court as a punishment for the most serious of crimes. As William Schabas points out, this position 'would seem to be the same as that found in the Fifth Amendment to the United States Constitution and such international instruments as the European Convention on Human Rights'.<sup>310</sup>

Islamic philosophy<sup>311</sup> holds that a harsh punishment serves as a deterrent to serious crimes that harm individual victims, or threaten to destabilize the foundation of society. Pursuant to the aforementioned principle – 'do not take life (...) except by way of justice and law' – two crimes are potentially punishable by death:

- Premeditated murder
- *Fasad fil-ardh* (literally: spreading mischief in the land)

### Premeditated murder

The Qur'an stipulates the death penalty for murder, although forgiveness and compassion are strongly encouraged. The victim's family is given the choice either to insist on the death penalty, or to pardon the guilty party and accept monetary compensation

307 Shari'ah is a now a familiar term to non-Muslims. It can often be heard in news stories about politics, crime, feminism, terrorism and civilisation. All aspects of a Muslim's life are governed by Shari'ah. Shari'ah law comes from a combination of sources including the Qur'an – the Muslim holy book, the Hadith – the sayings and conduct of the prophet Mohammed, and fatwas – the rulings of Islamic scholars.

308 God/Allah is used as a synonym throughout this section.

309 Qur'an 5: 32.

310 Schabas, William: 'Islam and the Death Penalty,' January 2, 2002. Presented as part of a conference sponsored by the Pew Forum in 2002, *A Call for Reckoning: Religion and the Death Penalty*. Originally published in *William and Mary Bill of Rights Journal* 9:1 (December 2000): 223-237.

311 In the framework of this chapter, it is not possible to present the breadth of views that are represented in various Islamic movements on the administration of the death penalty in Islamic or Western jurisdictions. A good overview is given by: Ahmad, Alay (University of Peshawar, Pakistan). 'Attitudes Towards Capital Punishment – An Islamic Perspective', a paper presented at the International Seminar in Kuala Lumpur, on *Counselling and Psychotherapy: An Islamic Perspective*, sponsored by Dept. of Psychology – International Islamic University, Malaysia, and the International Institute of Islamic Thought, Malaysia, August 15-17, 1997.

for the loss.<sup>312</sup> As such, a victim's family has a unique position in the administration of justice, a position that cannot be found in either of the other Abrahamic faiths or in modern Western jurisdictions.

### ***Fasad fil-ardh***

The second crime for which capital punishment is suggested has a somewhat vague title which may be interpreted in a number of ways. 'Spreading mischief in the land' can acquire a variety of meanings, but is generally held to refer to those crimes that affect the community as a whole and destabilize society.

Crimes in this category have included:

- Treason/Apostasy (defined as converting from Islam and joining the enemy in fighting against the Muslim community)<sup>313</sup>
- Terrorism
- Land, sea or air piracy
- Rape
- Adultery<sup>314</sup>
- Homosexual behaviour

Actual methods of capital punishment vary from place to place. Islamic societies follow different patterns in their methods of execution, often based on regional specifics. In some Muslim countries methods have included beheading, hanging, stoning, and execution by firing squad. Executions are often held in public so as to deter potential criminals.

It has been argued<sup>315</sup> that the purpose of *qisas* is the preservation of life. This argument relies on the Qur'anic verse which addresses *uly al-albab* (those who understand), saying that 'there is life in *qisas*' (Qur'an 2:179). Abu Zahrah understands this verse to mean that the murderer's execution has the long-term effect of preserving the life of the community, thereby emphasizing the retributive aspects of the capital penalty.<sup>316</sup>

312 Qur'an 2:178.

313 See the recent discussion of April 18 2005, 61<sup>st</sup> session of the Commission on Human Rights (CHR) *Victims of Jihad: Muslims, Dhimmis, Apostates and Women*.

314 For a detailed Islamic legal analysis of the imposition on the death penalty in adultery cases, see: Sanusi, Lamido Sanusi: 'The Hudood Punishments in Northern Nigeria, a Muslim Criticism' in ISIM NEWS 2000, Institute for the Study of Islam in Modernity, Leiden, the Netherlands.

315 See, for instance, the writings of Muhammad Abu Zharah (d.1974), the former head of the School of Law and Professor of Shari'ah at Cairo University and his general survey of classic Islamic jurisprudence in: Abu Zahrah, Muhammad. 'Concept of War in Islam', trans. by Muhammad al-Hady & Taha Omar. Cairo: Ministry of Awqaf, 1961.

316 Interestingly, a similar view has been documented by the Talmud which records Rabbi Simon ben Gamliel as saying: 'Such an attitude would increase bloodshedders in Israel.' Makkoth 7a.

Islamic jurisprudence<sup>317</sup> requires a high standard of proof in capital punishment cases: circumstantial evidence alone and hearsay evidence is insufficient to condemn a defendant to death. Generally, a four-fold confession by the defendant is deemed to be the best evidence. However, other witnesses are acceptable to the courts. These witnesses have to be eye-witnesses and be known to be of high moral standing in the community. In cases other than those in which the alleged crime is adultery, two male witnesses or one male and two female witnesses suffice. In cases dealing with adultery, four witnesses are required in order to increase the standard of proof.<sup>318</sup>

Islamic jurisprudence does not view the power of imposing capital punishment as a secular power pertaining to the state. The state is given merely the power of administering the death penalty, i.e. the execution. This distinction lies in the Islamic view of whose rights are violated by the act of murder. In Islamic jurisprudence, a person committing murder violates three separate rights:<sup>319</sup>

- *haqq al-'abd* (the right of the victim and his family),
- *haqq al-mujtama'* (the right of society to peace, safety and tranquility), and
- *haqq al-lah* (the right of God).

It is widely held by Islamic scholars that human beings by definition can address only the first two rights whilst the third is beyond the earthly domain and in the hands of God. God issues *qisas* or forgives the murderer regardless of any human feelings or views on the matter. According to Islam, this is not a matter for human beings to know. As the Qur'an states: 'God does not forgive *shirk* (polytheism), but he forgives anything else to whom he pleases.'<sup>320</sup>

### The role of the victim's family in the administration of justice

The victim's family, which suffers the painful and egregious effects of murder, has the most at stake. For this reason, Islamic law gives the family the right to seek *qisas* against the murderer in court. The victim's family alone has this right; no-one else can demand particular punishment. If the family does not seek *qisas* in court, then under the majority view in Islamic jurisprudence, the state is unable to do so on its own initiative. The state, however, may pursue other avenues to protect the public *maslahah* (welfare), such as confinement and exile (which have a lesser retributive effect, but are also deterrents). This restriction on the state is very important.<sup>321</sup> As the judiciary is a branch of the state, Islamic jurisprudence believes it important to

317 For an in-depth overview of Islamic legal perspectives on punishment, see: Awa, Muhammad Salim: 'Punishment in Islamic Law : A Comparative Study', Indianapolis: American Trust Publications, 1982; and Bassiouni, M. Cherif, (ed): 'The Islamic Criminal Justice System', London: Oceana, 1982.

318 Athar, Dr. Shahid: 'Capital Punishment – A Faith Issue in an Islamic Perspective', paper presented at the Indiana University School of Law, May 7, 1998.

319 See al-Hibri, Azizah Yahia Muhammad Toufiq, 'Capital Punishment in the United States', University of Richmond School of Law, 2001.

320 Qur'an 4:48.

321 Al- Hibri, *ibid*.

limit the state's ability to curb the right to life of any of its citizens. After all, the state may be oppressive and authoritarian, the judiciary may be biased, or the state may exercise undue influence over the judiciary.

While God gave the victim's family the right to demand *qisas*, he urged them to move forward and forgive.<sup>322</sup> Forgiveness is described in the Qur'an as better than revenge or punishment, and its virtues are extolled repeatedly in other contexts<sup>323</sup> as well.<sup>324</sup> According to the Qur'an, God's reward will be with those who forgive.<sup>325</sup> Islamic jurisprudence also knows the institution of *diyyah*, the victim's family right to ask for financial damages in lieu of the death penalty. Again, as with the right to call for *qisas*, this places the family of the victim at the centre of the administration of justice. It has been suggested, that '[t]his alternative can help the family mitigate some of the economic damage resulting from the murder. It also gives a genuinely repentant murderer the possibility of paying reparations.'<sup>326</sup> It is important to note that the family's demands and choice as to punishment has important consequences: in Islamic law, if one family member forgives the defendant in a murder case, it compels all other family members to do the same and thereafter they cannot demand further punishment of the defendant.

*In dubio pro reo* (if in doubt, for the defendant), the maxim of Roman law found in Western jurisdiction, is also a well-established feature of Islamic law: in cases of doubt, a jurist must err on the side of forgoing punishment. (*Idra'u al-hudud bi al-shubuhah*).

### The Universal Islamic Declaration of Rights

In 1981, the Islamic Council adopted a Universal Islamic Declaration of Rights stating: 'Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the law.' The final phrase appears to permit capital punishment and is consistent with the practice of all Islamic states.

The Arab Charter of Human Rights, adopted on September 15, 1994, proclaims the right to life in the same manner as other international instruments. However, three distinct provisions, Articles 10, 11, and 12, recognise the legitimacy of the death penalty in the case of 'serious violations of general law,' whilst prohibiting the death penalty for political crimes. They also exclude capital punishment for crimes committed under the age of eighteen and for both pregnant women and nursing mothers for a period of up to two years following childbirth.<sup>327</sup>

322 Qur'an 2:178; 42:40.

323 Qur'an 42:40; 5:45; 2:237; 24:22; 2: 109.

324 See also A. al-Jaziri's discussion of forgiveness in *Kitab al-Fiqh 'Ala al-Mathahib al-Arba'ah*, pp. 258-59, Beirut 1986.

325 Qur'an 42:40; 5:45.

326 Al-Hibri, *ibid*.

327 William Schabas, in: *William and Mary Bill of Rights Journal* 9:1 (December 2000): 223-237.

Such recognition is in line with the caveat carved out of the general prohibition to take a life found in Surah 6:151. The case study below will show that whilst Islamic legal theory contains safeguards against miscarriages of justice and whilst it strives to protect certain groups of people from execution by a death sentence, the same cannot be said in practice.

### **Case study: Amina Lawal and the death penalty under Shari'ah law in Nigeria**

#### ***Nigeria's political background***

The year 2003 saw Nigeria's first 'civilian to civilian' transition, after decades of military rule that ended in 1999. Olusegun Obasanjo was elected President for a second term in April 2003, winning more than 60 per cent of the vote in Nigeria's first civilian-run presidential poll for 20 years; but opposition parties rejected the outcome, citing allegations of vote-rigging.

Political liberalisation ushered in by the return to civilian rule in 1999 allowed militants from religious and ethnic groups to express their frustrations more freely, and with increasing violence. Thousands of people have died over the past few years of communal rivalry. Separatist aspirations among some groups have been growing, prompting reminders of the bitter civil war over the breakaway Biafran Republic in the late 1960s.

Impunity for human rights violations and the Nigerian Government's unwillingness to go beyond lip-service to human rights continue to present obstacles to meaningful human rights reform since the end of military rule. Human rights issues confronting the Nigerian people are numerous:

- The police continue to commit numerous extra-judicial killings, acts of torture, and arbitrary arrests.
- Opponents and critics of the government have been arrested, beaten, harassed, and intimidated. Scores of people were killed in political violence related to the elections in April-May 2003.
- Ongoing inter-communal tensions, especially in the oil-producing Niger River Delta, are still a cause of recurring violence. No one has yet been brought to justice for the massacre in 1999 of hundreds of people by the military at Odi, Bayelsa State, and in 2001 in Benue State.

#### **A brief political history of religious human rights in Nigeria**

The modern Federal Republic of Nigeria was created by the British out of a number of protectorates in 1914. It gained political independence in 1960. For the purposes of this case study, it is important to remember that Nigeria broadly contains three distinct geographical areas.

The North is the home of Islamic Hausa (16.8%) and Fulani (10.3%), with minorities in Plateau, Benin, Gongola and parts of Kaduna that are Christian and Animist. The West is very much Yoruba (17.8%). The East is largely Ibo (17.5%), who are largely Christian and Animist; it also has some significant minorities – Ijaws and Ogonis who produce about 80 per cent of Nigeria's wealth by working in the oil industry.

Since 1922, Nigeria has had seven constitutions, most recently the untested constitution of 1989. The country has experienced instability not only because of the interference of the military but also because of the more basic issue of welding a nation out of differing and distinct groups.

Two things in particular are critical for understanding religious human rights in Nigeria: corruption and religious pluralism. It is no secret that corruption has permeated the fabric of the Nigerian national polity and been institutionalised and systematised. Religious institutions are meant to be the moral conscience of society. They are key players in the fight against corruption, which necessarily denies some people their human dignity. It follows that the right and freedom to live one's religion is an important aspect of national life.<sup>328</sup>

Nigeria has long been religiously pluralistic, but today Islam and Christianity are key players in the country's national life. Indeed, in all the upheavals that Nigeria has undergone, it has been implied that their cause lies in part in a struggle between the Islamic North and Christian South. The administration of General Babaginda (1985-1993) quietly (and without public debate) affiliated Nigeria to the Organisation of Islamic States. That rankled with Christians. There were riots in the North in which many Christians and some Muslims died. Against that background came the famous Clause Six of the 1989 draft constitution, in which it was proposed to introduce Shari'ah law into the constitution.<sup>329</sup> In this century Shari'ah law has been a politically-inspired imposition, which has been as damaging to Muslim-Christian relations as has been the imperialisation that followed the Crusades. In the ensuing debate in Nigeria it was decided that the state was not to adopt any religion as the established religion. Further, every Nigerian was to be free to practise his or her own religion undisturbed.<sup>330</sup>

### Islam in Nigeria

The spread of Islam in Nigeria dates back to the eleventh century when it first appeared in Borno in the north-east of the country. Later Islam emerged in Hausaland in the north-west and its influence was evident in Kano and Katsina. Islam was for quite some time the religion of the court and commerce and was spread peacefully by Muslim clerics and traders. Increasingly, trans-Saharan trade came to be conducted by Muslims. In the second half of the eighteenth century a Muslim revival took place in Western Africa, with the Fulani cattle-rearing people who had settled and adopted Islam, playing a central role. In northern Nigeria, the Fulani scholar Uthman dan Fodio launched a jihad in 1804 that was to last for six years, aimed at reviving and purifying Islam, to eliminate syncretist beliefs and rituals and to remove all innovations contrary to the Qur'an and Shari'ah law. It aimed to encourage less devout Muslims to return to orthodox and pure Islam. However, this religious reformation also had a political element concerning state formation and state conflict. It united

328 Religious Human Rights in Africa, John S. Pobee, *Emory International Law Review* Vol. 10(1), Spring 1996, Religious Human Rights in the World Today.

329 Shari'ah is the Arabic word for Islamic law, also known as the law of Allah.

330 Ibid.

the Hausa states under Shari'ah law. In 1812 the Hausa dynasties became part of the Islamic State or Caliphate of Sokoto. The Sokoto Caliphate ended with partition in 1903 when the British incorporated it into the colony of Nigeria and the Sultan's power was transferred to the High Commissioner. However, many aspects of the caliphate structure – including the Islamic legal system – were retained and brought forward into the colonial period.

A new impetus to the spread of Islam was provided by Ahmadu Bello, Premier of the Northern Region after Nigerian independence in 1960, with his Islamisation programme that resulted in the conversion of over 100,000 people in the provinces of Zaria and Niger. The military coup in 1966, which claimed the lives of many politicians including Ahmadu Bello himself, brought his Islamisation policy to an abrupt end, but the 1970s saw a reversion of government policy to favouring Islamic dominance. History has shown that Islamisation was easier under military dictatorship and Islam spread quickly under Ibrahim Babangida.

### **Shari'ah in Nigeria**

There are four schools of Islamic law and the Maliki School applied in northern Nigeria, is particularly strict.

Maliki is the oldest of the four schools of *Fiqh* or religious law within Sunni Islam (the largest of the branches of Islam). Maliki is practised in North Africa and parts of West Africa. It is the second largest of the four schools, followed by approximately 25 per cent of Muslims.

It differs from the three other schools of law mainly on the sources it uses for derivation of rulings. While all four schools use the Qur'an as a primary source, followed by the *sunnah* of the Prophet Muhammad transmitted as *ahadith* (sayings), consensus of the scholars or Muslims (*ijma*) and analogy (*qiyas*). The Maliki School also uses the practice of the people of Medina (*amal ahl al-medina*) as a source. This, according to Imam Malik, sometimes supersedes *ahadith*, because the practice of the people of Medina was seen as the 'living sunnah' since the Prophet migrated, lived and died there and most of his companions lived there during his life and after his death. As a result, a more limited set of *ahadith* are observed than in other schools, which in turn leads to a stricter interpretation of Shari'ah.

Since 1999, twelve states in northern Nigeria have introduced new Shari'ah penal legislation, despite opposition from the federal government and the region's Christian minority. One state in the south, Oyo, has also reintroduced the strict legal code.

In some states Muslims are subject to Shari'ah even if they prefer civil courts that enjoy protection under Nigeria's Bill of Rights. Although non-Muslims in these states are not governed by such laws, there is a strong feeling among Christians that the new laws represent an increasing Islamisation of the region, and with it an intolerance of other faiths.

Many ordinary Muslims in Nigeria initially welcomed the new Shari'ah laws, believing that they would provide a more 'just' moral code governing their lives. This is because during the decades of harsh military rule, they had witnessed a corrupt and bureaucratic legal system. However, the states that have introduced Shari'ah laws are desperately poor, literacy rates are low and Islamic education has not reached a high



standard. Often, the supporters of Shari'ah law turned to it hoping for a moral code without being educated as to its precise content or actual procedures.

### **The laws of *hudud* and *zina* under the Shari'ah**

With the introduction of Shari'ah Law, the application of the death penalty has been extended to offences such as *zina*, rape, incest, and sodomy as defined in Shari'ah penal codes. *Hudud* is the part of Islamic law dealing with punishment for crimes such as *zina* ('illegal sex') or sex outside of marriage.

A person who has committed *zina* is defined by these penal codes as: 'Whoever, being a man or a woman fully responsible, has sexual intercourse through the genital [sic] of a person over whom he has no sexual rights and in circumstances in which no doubt exists as to the illegality of the act.' The offence of *zina* carries a mandatory sentence of death by stoning if the person is married or by flogging if the individual is single. It is an offence for Muslims only.

Rules of evidence under the new Shari'ah penal legislation discriminate against women, since the mere fact of her being pregnant is taken as evidence of her having performed the act of *zina*. However, a man on trial for this offence and who denies the charges under oath is often acquitted, unless four witnesses are produced to confirm his involvement in the act. This has meant that the number of death sentences imposed on women for *zina* is disproportionately higher than for men. There is no equivalent number of men in jail for the same offences, which raises the question: with whom are these women having sex?

### **Amina Lawal: A case study**

Amina Lawal was at the time of her trial a 30-year-old Muslim woman. She stood accused of the crime of *zina*.

On March 22, 2002, Amina Lawal had been sentenced to death by stoning in a Shari'ah court in Bakori in the Katsina State of northern Nigeria. She had allegedly confessed to having had a child while divorced. Under the new penal code, which applies only to Muslims, pregnancy outside of marriage constitutes sufficient evidence for a woman to be convicted of adultery.

The man named as the father of Amina Lawal's baby girl Wasila reportedly denied having had sex with her and the charges against him were dropped. Amina Lawal did not have a lawyer during her first trial, when the judgment was pronounced. However, she filed an appeal against her sentence with the help of Hauwa Ibrahim, a lawyer hired by a Nigerian women's rights group.

On June 3, 2002 her sentence was suspended until January 2004 to allow Amina Lawal to care for Wasila for two years. A further decision on the appeal itself was postponed to July 8, 2002.

On July 8, 2002, Amina Lawal submitted her appeal before the Shari'ah Court of Appeal of Funtua, Northern Nigeria. The hearing was adjourned to August 19, 2002 for the prosecutor to present his position to the court.

On August 19 2002, the Shari'ah court of appeal in Funtua upheld the sentence of death by stoning imposed on Amina Lawal. She was granted thirty days to appeal



against the decision and Amina's lawyer filed another appeal to the Upper Shari'ah court of appeal in Katsina.

On March 25, 2003 Amina Lawal's appeal hearing in Katsina was adjourned until June 3. The reason given was that the tribunal should have had five members, but only three serving members were available.

On June 3, the hearing of Amina Lawal's appeal was again adjourned until August 27, 2003. According to the registrar of the Shari'ah Court of Appeal of Katsina State, the hearing was once again not able to take place because insufficient serving members of the tribunal were available. Two of the judges were reportedly serving on ad hoc election tribunals, constituted after general elections in April and May 2003.

On August 27, 2003, the verdict of Amina Lawal's hearing of her appeal in Katsina state, northern Nigeria was postponed to September 25.

Finally, on September 25, 2003, the Shari'ah Court of Appeal in Katsina, Northern Nigeria, revoked the verdict of death by stoning of March 23, 2002 against Amina Lawal and acquitted her of all charges.

Reasons given by the judges included:

- The defendant did not have sufficient opportunity to defend her case. The court ruled that Lawal should have been allowed to retract her alleged original 'confession', which was taken by a village court after fundamentalist vigilantes raided her home at night shortly after Wasila's birth.
- Any defendant has the right to withdraw a confession, which should be made at least four times before a panel of judges, rather than just once before one judge as in Lawal's case.
- Nigeria's federal police should not have pressed charges in the case, unless they had four witnesses to the alleged adultery.

Legal rights campaigners said that her acquittal was a step forward, but that it must be viewed as merely a first step in ensuring that due process be followed in future Shari'ah cases.

Ibrahim told reporters that she hoped that Lawal's victory would serve as a useful but non-binding precedent that could be cited in appeal cases in other states. Amina Lawal's case would be non-binding in the other 35 federal states of Nigeria since each of Nigeria's states has its own independent judicial system.

### **The application of *zina* laws in the mirror of human rights**

Dawud Noibi, a Nigerian scholar of Islamic law, says: 'The provisions of the law are such that rather than being punitive, it is a deterrent; it's meant to be a deterrent.' He adds that the law encourages repentance, which will attract forgiveness from God. But human rights groups say that is not how it is being implemented in northern Nigeria.

According to Zainah Anwar of the Malaysia-based advocacy group Sisters in Islam, this law was intended originally to protect a woman's reputation against slander, but it is being distorted. 'What was particularly outrageous in the law was that a woman who reports she has been raped will be charged for slanderous accusation

and flogged 80 lashes if she is unable to prove the rape,' she says. 'Under the hudud law you have to produce four pious male Muslim eyewitnesses to prove illicit sex has taken place and that is impossible. Perversely, if there had been four witnesses to a rape, they would have been accessories to the crime.'

Ziba Mir Hosseini, author of *Islam and Gender*,<sup>331</sup> stated: 'We do not have in modern times any state which has introduced Shari'ah and has been able to respect women's rights.' She says nowhere does the punishment of stoning appear in the Qur'an. She adds that pre-modern interpretations of the Shari'ah, which often have a heavy overlay of cultural prejudices, are not in keeping with the spirit of Islam, which is about justice and equality.

### The death penalty and the application of Shari'ah Law in Nigeria

The death penalty is still on the statute books in Nigeria. The Constitution of the Federal Republic of Nigeria from 1999 does not prohibit its use. According to Amnesty International's information, Nigerian courts have handed down at least 33 death sentences since 1999. At the end of 2007 it was estimated that at least 700 people of different religious persuasions were on death row.<sup>332</sup>

Death sentences may be imposed under both the criminal law system (the Penal Code and the Criminal Code) and the Shari'ah penal system. Under criminal law it is applicable for criminal offences such as murder, culpable homicide, robbery and treason. The offence of culpable homicide is applied in some cases to abortion-related offences under the Penal Code and is known to be applied disproportionately against women.

Since the introduction of Shari'ah Law in northern Nigeria for criminal cases, one murderer has been executed under the code and at least 15 people have been charged with adultery, a crime that carries the death penalty. Dozens of thieves have been jailed and are awaiting the amputation of their hands.

Three alleged adulterers had already been cleared when Amina Lawal came to court, but several more – including a young couple of former lovers – were awaiting trial or appeal hearings.

### Wider human rights issues

According to Western-based human rights groups such as Human Rights Watch Nigeria and Amnesty International, 'Shari'ah courts continue to hand down sentences amounting to cruel, inhuman and degrading treatment, including death sentences, amputations and floggings.' For example, Jibrin Babaji was sentenced to death by stoning for sodomy in Bauchi State in September 2003, although he was later acquitted thanks to the work of human rights activists.<sup>333</sup> However, the number of capital sen-

331 Ziba Mir-Hosseini, *Islam and Gender: The Religious Debate in Contemporary Iran* (London: Tauris, 2000).

332 Amnesty International, <http://www.amnesty.org/en/for-media/press-releases/nigeria-government-misleads-world-about-death-penalty-record-20071217>.

333 Human Rights Watch Nigeria Briefing, December 2003.

tences has decreased and there appears to be reluctance on the part of the authorities to carry them out. No executions or amputations have taken place since early 2002.

Amnesty International notes that punishments such as stoning, flogging or amputation are considered cruel, inhumane and degrading treatment by international human rights standards. These punishments contradict the Convention against Torture ratified by the Republic of Nigeria in June 2001.

Furthermore, consensual sexual relations outside marriage between adults are not recognizable as criminal offences under emerging international human rights standards. The UN Human Rights Committee holds that: ‘...it is undisputed that adult consensual sexual activity in private is covered by the concept of “privacy”.’<sup>334</sup> Charging and detaining women for sexual relations violates their right to free expression and association, freedom from discrimination and the right to privacy, it says.

As was shown by Amina Lawal’s case, many trials in Nigerian Shari’ah courts fail to conform to international standards and do not respect due process as defined by Shari’ah legislation:

- Defendants rarely have access to a lawyer,
- Defendants are not informed about their rights,
- Both police and judges are poorly trained.

At the international level, the government of Nigeria is a state party to international human rights instruments, which include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights.

Nigeria is also a party to the Convention on the Elimination of All Forms of Discrimination Against Women, which expressly prohibits violence and other forms of discrimination against women.

## **Conclusion**

According to the statistics provided by the anti-death penalty organisation ‘Hands Off Cain’, fourteen states with a Muslim majority carried out at least 412 executions in 2003, mostly imposed by Islamic courts applying strict interpretations of Shari’ah law.

As has been shown, whilst Islam does in principle recognise the death penalty as a valid form of punishment, the Islamic tradition in jurisprudence has gone to great lengths to put obstacles in the way of sentencing persons for crimes carrying a capital penalty. Often an overly literal translation of a centuries-old text into contemporary penal legislation, punishments and rules involves the creation of an all-too-easy platform for fundamentalist, dictatorial or authoritarian regimes to use Shari’ah law as an improper means to impede the democratic process.

Of the 48 states with a Muslim majority worldwide, 19 can be considered abolitionist in various forms, whereas the retentionists are 29, with 14 of them actually applying capital punishment. The methods used to carry out Shari’ah punishment in

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334 Nicholas Toonen v. Australia, UN Human Rights Communique, No. 488, UN Doc. CCPR/c/ 50/D/488/1992 (1994).

2007 ranged from stoning to death, hanging, crucifixion and beheading to the use of a firing squad.

As Schabas observes, in October 1995, human rights activists from throughout the Arab world met in Tunis to consider the issue of capital punishment.<sup>335</sup> The meeting, which featured specialists on religion, philosophy and criminal law in the Arab states, was a joint initiative of the Arab Institute for Human Rights and the Citizens and Parliamentarians League for the Abolition of the Death Penalty 'Hands Off Cain',<sup>336</sup> with the support of the European Union. In a declaration adopted at the conclusion of the meeting, participants affirmed their shared 'commitment to the abolition of the death penalty as a strategic move.' They also stated that 'within the Arab civilizational and cultural background, no real impediments exist to obstruct the evolution of secular legislation in the process of setting up limits to the death penalty and abolishing it.' The statement concluded with a call to Arab states to adopt the Second Optional Protocol to the International Covenant on Civil and Political Rights, which constitutes an international legal commitment not to impose capital punishment.<sup>337</sup>

### **Christianity**

As with Judaism and Islam, there is no uniform 'Christian' position on the death penalty, and opinions or theological statements on the permissibility of capital punishment vary. Sometimes, these differences of opinion align with denominational differences, and sometimes, as will be shown, particularly within the South of the United States of America, they do not. Whilst the New Testament is the main religious text underpinning any informed Christian opinion on capital punishment, Christian positions on the death penalty – let alone Christianity as a whole – cannot be understood without reference to the Hebrew Bible (or, as it is referred to in Christianity, the 'Old Testament'). Christian interpretations of the Hebrew Bible vary, at times radically, not only from that of Judaism but also within various groups of Christians.

A good example of this can be seen when looking at Deuteronomy 19:21 which reads: 'Show no pity, life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.' Christian churches sometimes note this passage as support for capital punishment. However, the context in which this uncompromising statement appears deals with the treatment of proven false witnesses. Under Jewish law, an accusation by two or three witnesses sufficed to convict the accused. Then the defendant had to prove himself innocent. False witnesses could make a mockery of the system of justice. Once guilt had been established, the punishment had to fit the crime and be proportionate, neither exceeding the injury committed nor handing down some inconsequential punishment for a serious crime.<sup>338</sup>

335 Op. cit.

336 See [www.handsoffcain.org](http://www.handsoffcain.org).

337 Schabas, *ibid.*

338 Exodus 21:12-36, Leviticus 24:17-22.

Some Christians believe capital punishment is *mandated*, while others believe it is merely *permitted*. By contrast, there are Christians who feel it is biblically *prohibited*: the latter base their argument on the assumption that the New Testament reverses the mandate of the Old Testament prophecy dealing with habitual criminals. ‘Whoever sheds the blood of man, by man shall his blood be shed; for in the image of God has God made man.’<sup>339</sup>

However, some of Paul’s writings<sup>340</sup> imply that capital punishment is still permitted under the new covenant. Those who believe capital punishment is permitted but not necessarily required point to the fact that even the Old Testament gives us examples of criminal acts that were not punished by death. Cain, Moses, and David all took another man’s life, but were not put to death for their killings.

As explained in the chapter on Judaism’s position on the death penalty, the Hebrew Bible contains passages that permit capital punishment. However, it lays down strict guidelines to keep judgment from being unfair or excessive. Punishment must be commensurate with the crime<sup>341</sup> and must be based on certainty of guilt.<sup>342</sup> The crime for which the punishment is imposed must result from premeditated intent.<sup>343</sup> There must be due process. Cities of refuge were provided to protect the accused until trial.<sup>344</sup> Fairness and justice had to prevail regardless of wealth or reputation.<sup>345</sup> Restraint was to be exercised in imposing the death penalty.<sup>346</sup>

Both the Old and New Testaments indicate that personal retaliation is not appropriate.<sup>347</sup> Punishment should be the prerogative of the government/community, not of the individual. No matter how heinous the crime, retaliation just to settle a personal vendetta, is contrary to biblical principles.

### **Jesus’ position on the death penalty**

It can be argued that Jesus implied support for the death penalty in Matthew 5:17-19:

Think not that I am come to destroy the law, or the prophets: I am not come to destroy, but to fulfil. For verily I say unto you, Till heaven and earth pass, one jot or one tittle shall in no wise pass from the law, till all be fulfilled. Whosoever therefore shall break one of these least commandments, and shall teach men so, he shall be called the least in the kingdom of heaven: but whosoever shall do and teach them, the same shall be called great in the kingdom of heaven.<sup>348</sup>

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339 Genesis 9:6.

340 See for instance Romans 13:1-7.

341 Exodus 21:23-25.

342 Deuteronomy 17:6.

343 Numbers 35:22-24.

344 Numbers 35.

345 Exodus 23:6,7.

346 Ezekiel 33:11.

347 Leviticus 19:18; Romans 12:19-13:7.

348 King James Version.

Arguably, the law or the prophet to which Jesus is referring would include capital punishment. Yet, other passages of the New Testament portray Jesus if not opposed to the death penalty, at least opposed to public executions.

John 8:3-11 states that Jesus interrupted a scheduled stoning of an adulteress. He told her executioners: 'He that is without sin among you, let him first cast a stone at her.'

This statement could be read either as a statement against capital punishment or as a statement to the effect that capital punishment may be justified as a sentence, but that the execution of such a sentence would be subject to the executioners being free of sin. Both interpretations have been argued by Christians through the ages in support of and opposition to the death penalty.

### Early Christianity

Those Christian writers who discussed capital punishment during the first three centuries after the execution of Jesus were absolute abolitionists. Christians were instructed not to execute a criminal, not to attend public executions and even not to lay a charge against a person if it might possibly result in this eventual execution. Lactantius<sup>349</sup> is an early Christian writer who summarized his Christian position regarding capital punishment as follows:

When God forbids us to kill, he not only prohibits the violence that is condemned by public laws, but he also forbids the violence that is deemed lawful by men. Thus it is not lawful for a just man to engage in warfare, since his warfare is justice itself. Nor is it [lawful] to accuse anyone of a capital offence. It makes no difference whether you put a man to death by word, or by the sword. It is the act of putting to death itself which is prohibited. Therefore, regarding this precept of God there should be no exception at all. Rather it is always unlawful to put to death a man, whom God willed to be a sacred creature.<sup>350</sup>

This rigid opposition to the death penalty during the first few centuries of the Christian movement may have been motivated by multiple causes, especially the persecution and execution of early Christians by the Roman Empire.

### Evolution of the Christian teachings

Over the centuries, the Christian position on the death penalty (particularly that of the Catholic Church during the Inquisition) evolved from complete opposition to gradual acceptance, and later active application, in Europe, throughout the Middle Ages and into modern times. Whilst an analysis of the relationship between Church and state is clearly beyond the scope of this book, it should be noted that, on a political level, this development with respect to the death penalty was in part due to the

<sup>349</sup> 260-330 CE.

<sup>350</sup> *The Divine Institutes*, Book 6, Chapter 20.

Church's alliance with the state, across Europe.<sup>351</sup> The traditional Christian distinction, to give 'Caesar what is Caesar's' [and God what is God's] was transformed, and churches positioned themselves as a factor of power and political influence, mostly alongside a monarch *dei gratia* in an absolutist political system which applied the death penalty to criminal (e.g. theft, murder) as well as spiritual offences (heresy, offences against the God-appointed ruler, and witchcraft<sup>352</sup>).

Other Christian groupings, such as the Society of Friends, have never supported the death penalty as a legitimate form of punishment.

### **Current position of mainstream Christian movements**

Today, supporters and opponents of the death penalty can be found across the entire spectrum of Christian churches and communities; occasionally both parts of the divide can be found within one church.

It is not possible to analyse every Christian community's position within the constraints of this chapter. Therefore, the positions of the Catholic and Anglican churches as well as the evangelical churches of the South of the United States have been selected for deeper analysis. Reference will be made to other groupings within Christianity by way of example or contrast.

### **The Roman Catholic Church**

The Roman Catholic Church makes an interesting case study in the change of position on the death penalty.

The Fathers of the Church are virtually unanimous in their support for capital punishment, even though some of them, such as St. Ambrose, exhort members of the clergy not to pronounce capital sentences or serve as executioners. St. Augustine (354-386) writes in *The City of God*:

The same divine law which forbids the killing of a human being allows certain exceptions, as when God authorizes killing by a general law or when He gives an explicit commission to an individual for a limited time. Since the agent of authority is but a sword in the hand and is not responsible for the killing, it is in no way contrary to the commandment 'Thou shalt not kill' to wage war at God's bidding, or for the representatives of the state's authority to put criminals to death, according to law or the rule of rational justice.

St. Augustine (354-430) saw the death penalty as a form of charity. 'Inflicting capital punishment ... protects those who are undergoing it from the harm they may suffer ... through increased sinning, which might continue if their life went on.'

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351 The conversion of the Roman Emperor Constantine to Christianity in 312 is a key date in this shift.

352 In relation to witchcraft offences, it should be noted that whilst these were often tried by ecclesiastical courts empowered to impose the death penalty in Europe throughout the Middle Ages and Early Modern Times, this was not the case in England where witchcraft cases were tried by criminal courts under criminal rules of procedure.



Thomas Aquinas (1225-1274) continued the same line of argument in his *Summa Contra Gentiles* when he wrote: 'The civil rulers execute, justly and sinlessly, pestiferous men in order to protect the state.'

Whilst the Inquisition was a permanent institution in the Catholic Church charged with the eradication of heresies, the Spanish Inquisition (1478-1834) was particularly cruel and notorious. It embodied the conviction that death was preferable to a life lived in sin.

The Spanish Inquisition started by targeting *Conversos* (Jews who had outwardly converted to Catholicism but continued to practise Judaism) in Seville, and tribunals were established in quick succession at Cordova, Jaen and Ciudad Real, followed by Aragon, Catalonia, and Valencia. Between 1486 and 1492, 25 auto-da-fés (public judgement ceremonies which could last a whole day) were held in Toledo alone and there would eventually be over 464 auto-da-fés targeting Jews between 1481 and 1826. In total, more than 13,000 *Conversos* were tried from 1480-1492. The Inquisition against the *Conversos* culminated in the expulsion of the Jews of Spain in 1492.

The Inquisition, as a religious court, was operated by Church authorities; however, if a person was found to be heretical, they were turned over ('relaxed') to the secular authorities to be punished, since 'the Church does not shed blood.' This separation of judgement by the Church and execution by the secular powers was however purely technical, as the Church did not only know that a 'guilty judgement' would result in the death penalty, but also approved torture often used to gain repentance. The Spanish Inquisition administered death penalties by burning at the stake after garrotting (strangulation) for those who repented or burning alive for the unrepentant, or burning an effigy for those condemned in absentia.

The catechism of the Council of Trent, issued in 1566, approved capital punishment as an act of paramount obedience to the fifth commandment against murder.

As late as September 14, 1952, Pope Pius XII stated on capital punishment: 'It is reserved to the public power to deprive the condemned of the benefit of life, in expiation of his fault, when already he has dispossessed himself of the right to live.'

In the 1995 encyclical *Evangelium Vitae*, Pope John Paul II wrote that the only time executions could be justified was when they were required 'to defend society', and that 'as a result of steady improvements... in the penal system such cases are very rare if not practically nonexistent.'

The catechism of the Catholic Church in respect of capital punishment was eventually revised by the late Pope John Paul II. This revision was triggered by a statement by the Pope on the occasion of his visit to the United States. There, he proclaimed: 'The new evangelisation calls for followers of Christ who are unconditionally pro-life, who will proclaim, celebrate and serve the Gospel of life in every situation. A sign of hope is the increasing recognition that the dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself, without definitively denying criminals the chance to reform. I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary.'<sup>353</sup>

353 Pope John Paul II, January 27, 1999, St Louis, Missouri.



In his encyclical, *The Gospel of Life (Evangelium Vitae)*,<sup>354</sup> Pope John Paul II asked governments to stop using death as the ultimate penalty and pointed out that instances where its application was necessary to protect society had become ‘very rare’.

As a result of these statements by Pope John Paul II, the catechism was revised. The Catholic Church’s current position on the death penalty can perhaps be best encapsulated by this excerpt from its catechism:

Assuming that the guilty party’s identity and responsibility have been fully determined, the traditional teaching of the Church does have recourse to the death penalty, if this is the only way of effectively defending human lives against the unjust aggressor. If, however, non-lethal means are sufficient to defend and protect people’s safety from the aggressor, authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and more in conformity with the dignity of the human person. Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an offence incapable of doing harm – without definitely taking away from him the possibility of redeeming himself – the cases in which the execution of the offender is an absolute necessity are “very rare”, if practically non-existent.<sup>355</sup>

In the wake of the Pope’s visit to the United States in 1999, the Catholic bishops of the United States issued the so-called Good Friday Appeal to end the death penalty.<sup>356</sup>

Church historians locate the roots of changed Catholic thinking on the death penalty in the Second Vatican Council, as well as Pope John XXIII’s 1963 encyclical *Pacem in Terris*, both of which endorsed universal human rights and especially the right to life.<sup>357</sup>

### Anglican Church

The Church of England as well as the World Council of Churches (WCC), an international umbrella organisation of Protestant churches, holds an unequivocal position against the death penalty. The General Synod, representing the Church of England’s official view, pronounced on the death penalty issue in 1983, ‘that this Synod would deplore the reintroduction of capital punishment into the United Kingdom sentencing policy.’ It has not changed its policy since then.

The WCC demonstrated its conviction against the death penalty in a letter to Governor George Ryan of Illinois, commending his order to commute all death sentences in the state in 2003: ‘Capital punishment operates against the Christian principles of compassion, love and forgiveness. To promote the abolition of capital punishment is an expression of Christian belief in the sanctity of life.’

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354 Pope John Paul II, *Evangelium Vitae* (The Gospel of Life), par. 56.

355 Catechism of the Catholic Church, 2267, quoting in turn *Evangelium Vitae* 56.

356 <http://www.nccbuscc.org/sdwp/national/criminal/appeal.htm>.

357 John L. Allen Jr. ‘He executed Justice’ in: *National Catholic Reporter*, September 14, 2001.

It is the World Council of Churches' belief that all human beings created in God's image have inherent dignity and are of infinite worth and that the taking of human life is against the will of God. Capital punishment operated against the Christian principles of compassion, love and forgiveness. According to the WCC, promoting the abolition of capital punishment was an expression of Christian belief in the sanctity of life. As a long standing advocate of abolition, the Council has consistently urged governments to sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights that aims for the abolition of the death penalty. In keeping with this position, the World Council of Churches had campaigned with other international organisations for abolition of the death penalty in the United States of America.<sup>358</sup>

### Protestant Churches in the United States

A number of mainline protestant churches in America have also issued statements opposing the death penalty. These include the Black Ministerial Alliance of Greater Boston, the Episcopal Diocese of Massachusetts, the New England Yearly Meeting of the Religious Society of Friends (Quakers), and the Unitarian Universalist Association. A statement of the Evangelical Lutheran Church in America, for example, asserts: 'Renewed by the Gospel, Christians, as the salt of the earth (Matthew 5:13) and the light of the world (Matthew 5:14), are called to respond to violent crime in the restorative way taught by Jesus (Matthew 5:38-39) and shown by his actions (John 8:3-11).' Other organisations seeking to abolish capital punishment include People of Faith Against the Death Penalty.

Another example of this approach is the Missouri Synod of the Lutheran Church. This Synod has issued a statement on the death penalty in which it asks its members to use their influence, 'to whatever degree it is possible, in urging governments either to retain, to reinstate, or to abolish the death penalty, on the insistence that any punishment be administered with utmost fairness.' The statement continues:

All Christians, recognizing that government is God's servant for good, are encouraged:

- a) To develop a greater respect for human life, the rights of others, and for the laws of the land;
- b) To work for constant improvement in the system of criminal justice, namely, to define capital crime carefully and to apply justice more equitably and without undue delay, on the understanding that all such activities are to be undertaken within the context and under the impact of moral principle;
- c) To support the development of more effective methods of law enforcement;
- d) To contribute toward programmes and systems of reformation and correction which are both humane and progressive;
- e) To search for more effective ways of dealing with persons who commit hostile acts against society, including the possibility of alternatives to incarceration;

<sup>358</sup> <http://www.wfn.org/2003/01/msg00121.html>.

- f) To work toward the correction of spiritual, educational, economic, and social problems which cause discrimination, disadvantage, and poverty and so contribute massively to crime;
- g) To love, to pray for, and to extend a ministry of Law and Gospel to both victims and perpetrators of crimes, because everyone needs the compassion and Christian witness of the children of God who want others to know what they know, feel what they feel, hope what they hope, and have what they have through Jesus Christ, their only Saviour and Lord.

### **Evangelical Churches in the United States**

What then, should be made of the support for the death penalty by some evangelical churches in the USA? As with the arguments proposed by the pro-death penalty churches and action groups, Paul seems to allow the state to have the power to take life in order to fulfil God's rule of good governance.<sup>359</sup>

The most common arguments in favour of capital punishment from a politico-legal perspective are that it serves as an effective deterrent and that victims, and perhaps society as a whole, have a right to just compensation for ultimate crimes.

In the United States of America, a number of evangelical churches espouse these political arguments and attempt to deliver a theological grounding for such positions.

For example, on the issue of mercy and forgiveness, an evangelical statesman has the following to say: 'The rejection of capital punishment is not to be dignified as a 'higher Christian way' that enthrones the ethics of Jesus. The argument that Jesus as the incarnation of divine love cancels the appropriateness of capital punishment in the New Testament era has little to commend it. Nowhere does the Bible repudiate capital punishment for premeditated murder; not only is the death penalty for deliberate killing of a fellow human being permitted, but it is approved and encouraged, and for any government that attaches at least as much value to the life of an innocent victim as to a deliberate murderer, it is ethically imperative.'<sup>360</sup>

Support for the death penalty has been affirmed in resolutions by the National Association of Evangelicals and the Southern Baptist Convention. Barrett Duke, a supporter of capital punishment, is Vice-President for research at the *Ethics and Religious Liberty Commission of the Southern Baptist Convention* (SBC). In a statement to the Pew Forum on Religion and the Death Penalty, he stated: 'Historically, Southern Baptists have supported capital punishment in our rank and file. There were some attempts in the late 60s to have Southern Baptists actually go on record opposed to capital punishment... Southern Baptist rank and file rejected that as an option.' For the SBC, Duke pointed out, 'Support for the death penalty is a biblical position. And we do believe that the Bible continues to be relevant for life today.'

In 2000, the SBC's assembly adopted a resolution confirming its support for the death penalty. It sets out the SBC's position as follows: 'God authorized capital punishment for murder after the Noahic Flood, validating its legitimacy in human soci-

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359 Rom 13.1-7.

360 Carl F H Henry, *Twilight of a Great Civilization* (Crossway, 1988), 70, 72.

ety... (delegates of the SBC) support the fair and equitable use of capital punishment by civil magistrates as a legitimate form of punishment for those guilty of murder or treasonous acts that result in death.’

In 1972 and 1973, the National Association of Evangelicals (NAE) adopted resolutions in favour of the death penalty. In its resolutions, the NAE states: ‘We know how seriously God regards sin because He has declared, ‘The soul that sinneth it shall die.’ Even God does not forgive without appropriate penalties. That is why Jesus Christ paid the supreme penalty for our redemption.’<sup>361</sup>

There are a number of possible responses to Christians who advocate the death penalty on these grounds. The liberal response is to claim that the authority of the Scriptures is not binding, and needs to be interpreted in a way that accords with modern beliefs. Whilst this may or may not be true, such an argument will not sway the conservatives. In addition, a ‘modern belief’ may in fact conclude that violent crime is so widespread that it is necessary to widen the impact of capital punishment.

Therefore, the response has traditionally taken an alternative route. In terms of the laws of the Hebrew Bible, it is argued that whilst these are still divine laws, they were given by God for a specific time and place – that is, the nation of Israel, whilst it remained as a theocracy. For Christians, such laws are no longer binding, since they were only appropriate within that specific context.

The Christian theological point of view is that it is no longer necessary to pay for a life with another life, as the fundamental tenet of Christianity is that one life has ‘paid’ for them all – the life and death of Jesus. The death and resurrection of Jesus ended the need for blood to be paid for with blood, it is argued.

Ultimately, the Christian response to the death penalty is usually to argue that the Christian way is one of forgiveness and mercy. Jesus Christ’s life and teachings now govern our attitudes to social and political life, and this affects criminal justice as much as any other aspect. Retribution and pay-back are no longer what is required. The way that Jesus dealt with the woman caught in adultery (see above) seems to hint that the death penalty is not mandatory.

## **Conclusion**

Instead of a classical conclusion, and as a testimony to an interfaith approach against capital punishment, I have chosen to document excerpts from the statement of the National Council of Synagogues and the Bishops’ Committee for Ecumenical and Inter-religious Affairs of the National Conference of Catholic Bishops.<sup>362</sup> This is noteworthy because it is a joint statement from two religions, and it offers a shared perspective on this most important of issues.

361 <http://www.nae.net/index.cfm?FUSEACTION=editor.page&pageID=187&IDCategory=9>.

362 An Excerpt from: ‘To End the Death Penalty: A Report of the National Jewish/Catholic Consultation,’ United States of America, December, 1999.

Some would argue that the death penalty is needed as a means of retributive justice, to balance out the crime with the punishment. This reflects a natural concern of society, and especially of victims and their families. Yet we believe that we are called to seek a higher road even while punishing the guilty, for example through long and in some cases lifelong incarceration, so that the healing of all can ultimately take place.

Some would argue that the death penalty will teach society at large the seriousness of crime. Yet we say that teaching people to respond to violence with violence will, again, only breed more violence.

The strongest argument of all [in favour of the death penalty] is the deep pain and grief of the families of victims, and their quite natural desire to see punishment meted out to those who have plunged them into such agony. Yet it is the clear teaching of our traditions that this pain and suffering cannot be healed simply through the retribution of capital punishment or by vengeance. It is a difficult and long process of healing which comes about through personal growth and God's grace. We agree that much more must be done by the religious community and by society at large to solace and care for the grieving families of the victims of violent crime.

Recent statements of the Reform and Conservative movements in Judaism, and of the US Catholic Conference sum up well the increasingly strong convictions shared by Jews and Catholics...

Respect for all human life and opposition to the violence in our society are at the root of our longstanding opposition (as bishops) to the death penalty. We see the death penalty as perpetuating a cycle of violence and promoting a sense of vengeance in our culture. As we said in *Confronting the Culture of Violence*: "We cannot teach that killing is wrong by killing." We oppose capital punishment not just for what it does to those guilty of horrible crimes, but for what it does to all of us as a society. Increasing reliance on the death penalty diminishes all of us and is a sign of growing disrespect for human life. We cannot overcome crime by simply executing criminals, nor can we restore the lives of the innocent by ending the lives of those convicted of their murders. The death penalty offers the tragic illusion that we can defend life by taking life.

We affirm that we came to these conclusions because of our shared understanding of the sanctity of human life. We have committed ourselves to work together, and each within our own communities, toward ending the death penalty.<sup>363</sup>

## **Child Executions**

### **Overview**

Within the debate on capital punishment, the issue of execution of persons who have committed a crime punishable by death whilst they were children raises particular concern. In this context, 'children' are defined as people under the age of 18 at the time of the crime. The use of the death penalty against child offenders is prohibited under international law, yet a handful of countries persist with child executions.

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363 Excerpts from the Good Friday Statement of the US Catholic Bishops.

In Western-style democracies and other countries modelled on different systems of government, the law recognises a clear distinction between minors and adults. Under-age persons cannot vote or consent to (certain) contracts because they are not considered mature enough to make responsible judgements.<sup>364</sup>

More than 110 countries whose laws still provide for the death penalty at least for some offences specifically exclude the execution of child offenders, or may be presumed to exclude such executions by being party to one or another of certain treaties.

Yet, Amnesty International has documented child executions in at least seven countries since 2000 including:

- In the Democratic Republic of the Congo, Kisongo, a 14-year-old child soldier, was executed in January 2000 within half an hour of his trial by a special military court. Special military courts have since been abolished there.
- Pakistan banned the use of the death penalty against child offenders in most of the country in 2000 (although reinstating it in December 2004). In November 2001 Sher Ali was hanged for a murder committed in 1993 when he was 13 years old.
- In Iran, the official news agency reported that an 18-year-old was hanged in May 2001 for a crime committed two years earlier. A bill to raise the minimum age to 18 was reportedly due to be introduced in the parliament in late 2003.<sup>365</sup> However, as recently as August 2004, Atefeh Rajabi, a 16-year-old girl, was executed in northern Iran for 'acts incompatible with chastity'. Reportedly, she was publicly hanged on a street in the city centre of Neka. According to reports, she was not represented by a lawyer during her trial and the judge is said to have severely criticized her dress. It is alleged that Atefeh Rajabi was mentally ill both at the time of her alleged crime and during her trial proceedings. Another recent victim of a child execution was Kaveh Habibi Nejad, a 14 year-old boy, who was flogged to death on November 12, 2004. Kaveh Nejad was sentenced to 85 lashes for eating in public during the holy month of Ramadan. It is believed that he died because the metal cable used to flog him hit his head. And in 2007, Makwan Moloudzadeh was hanged for an alleged rape when he was 13.
- The USA executed four child offenders in 2000, one in 2001, three in 2002 and one in April 2003. The USA is the only country that openly executes child offenders within its regular criminal justice system.

Internationally, since 1990 there are seven countries (the USA, the Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia and Yemen) that are known to have executed prisoners who committed a crime while under the age of 18.

<sup>364</sup> <http://docs.hrw.org/archives/webarchive/archives/crd/US395.htm>.

<sup>365</sup> At the time of writing, no further information could be obtained on the state of the Iranian legislation and recent articles in the relevant press (e.g. *Persian Journal* of December 22, 2004, at [http://www.iranian.ws/iran\\_news/publish/printer\\_5078.shtml](http://www.iranian.ws/iran_news/publish/printer_5078.shtml)) suggest that child executions are still common practice in Iran.

### ***Child Executions in the International Legal Context***

Article 37(a) of the UN Convention on the Rights of the Child provides:

[No] capital punishment... shall be imposed for offences committed by persons below eighteen years of age.

The same prohibition appears in three other international human rights treaties:

- the International Covenant on Civil and Political Rights (ICCPR);
- the American Convention on Human Rights; and
- the African Charter on the Rights and Welfare of the Child.

The USA remains the only country not to have ratified at least one of these treaties without appending a reservation to the prohibition.

When the USA ratified the ICCPR in 1992, it announced a reservation to the effect that it reserved the right 'to impose capital punishment... for crimes committed by persons below eighteen years of age.' Eleven other states party to the ICCPR formally objected to this reservation. The UN Human Rights Committee stated in 1995 that it believed the reservation to be 'incompatible with the object and purpose' of the ICCPR and recommended that the reservation be withdrawn. The Committee also deplored provisions in a number of US state laws allowing for child offenders to be sentenced to death as well as 'the actual instances where such sentences have been pronounced and executed.' It exhorted the US authorities 'to take appropriate steps to ensure that persons are not sentenced to death for crimes committed before they were 18.'

The Inter-American Commission on Human Rights has held that the prohibition on executing child offenders is a norm of *jus cogens*, i.e. a rule of international law which is compulsory for all states.

Mary Robinson, the former UN High Commissioner for Human Rights, stated in August 2002 that 'an international consensus that the death penalty should not apply to juvenile offenders stems from the recognition that young persons, because of their immaturity, may not fully comprehend the consequences of their actions and should therefore benefit from less severe sanctions than adults. More importantly, it reflects the firm belief that young persons are more susceptible to change, and thus have a greater potential for rehabilitation than adults.'<sup>366</sup>

### ***The United States***

According to Amnesty International, the country that has executed the greatest number of juvenile offenders between 1990 and 2000 was the United States, where seventeen juvenile offenders were convicted and executed. Of the 38 US states whose laws provide for the death penalty, 21 allow its use against minors. Sixteen states whose

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<sup>366</sup> Quoted by Amnesty International. The figures given in this section come from the statistics published for 2007, available on the Amnesty International website.



laws provide for the death penalty exclude its use against child offenders, as does US federal law and US military law. Twenty-two child offenders have been executed in seven states since 1977. Over 70 child offenders are currently under sentence of death in the USA.

Of the states whose laws provide for the use of the death penalty against juvenile offenders, only Texas executed child offenders regularly and has so far executed 13 since the reinstatement of capital punishment. Texas is ahead of other states by a large margin, Virginia is second in line with three and Oklahoma comes next, having executed two juvenile killers. According to the American Bar Association, 14 states that have juvenile death penalties have never carried out such executions. Additionally, 86 per cent of the death sentences imposed on juvenile offenders are reversed, the Bar Association notes. Of the 21 states that prescribe a death penalty for juvenile offenders, sixteen put the minimum age at 16, the other five at 17.

In April 2003 the US authorities revealed that children as young as 13 were among the foreign nationals being held at the US Naval base in Guantánamo Bay, Cuba, where the sentencing by military tribunals remains legally permissible.

## The legal position within the United States

### *The case of Stanford v. Kentucky*

In its decision in the case of *Stanford v. Kentucky*, the US Supreme Court ruled in 1989 that the use of the death penalty against offenders aged 16 or 17 was not contrary to the US Constitution. One of the grounds for this decision was that there was insufficient evidence in the form of state legislation to indicate a 'national consensus' against the death penalty for offenders under 18.

### *Execution of mentally retarded prisoners unconstitutional: Atkins v. Virginia*

In 2002 in *Atkins v. Virginia*<sup>367</sup> the United States Supreme Court held that the execution of mentally retarded prisoners was unconstitutional. The majority of the court found that a 'national consensus' had developed against such executions. In their ruling, the judges cited, among other things, the 'large number' of states which had adopted legislation prohibiting executions of the mentally retarded and 'the consistency of the direction of change', namely 'the complete absence of states passing legislation reinstating the power to conduct such executions.'

The decision in *Atkins v. Virginia* has been used to underpin the case against child executions: not only can the basis of the decision<sup>368</sup> in *Atkins v. Virginia* be applied to the situation of child offenders, as a large number of countries, as well as US states, have adopted legislation forbidding the execution of convicted children, but the psychological and social profiles of such accused are often close to those of mentally

367 Supreme Court reference 00-8452.

368 For a detailed analysis of the legal arguments and the way the decision of *Atkins v. Virginia* might be applied to child offenders, see: Vivian Berger, 'Stop executing minors', *National Law Journal*, April 26, 2004.



retarded prisoners guilty of similar offences, according to opponents of child executions such as Amnesty International and Human Rights Watch.

The use of the death penalty against child offenders rejects any notion that wider adult society should accept even minimal responsibility in the crime of a child. The profiles of the condemned teenagers are often those of a mentally impaired or emotionally disturbed adolescent emerging from a childhood of abuse, deprivation and poverty. The backgrounds of child offenders executed in the USA since 1990 suggest that society had failed them well before it decided to kill them.<sup>369</sup>

#### Case Study: Glen McGinnis

The case of Glen McGinnis may serve to illustrate this argument: Glen, born to a mother who was addicted to crack cocaine and who worked as a prostitute out of their one-bedroom apartment, was sentenced to death in Texas in 1992. He had suffered repeated physical abuse at both her hands and those of his stepfather, who beat him with an electric cord and raped him when he was nine or 10. He ran away from home at the age of 11 and lived on the streets of Houston where he began shoplifting and stealing cars. Although black he was sentenced to death by an all-white jury for shooting Leta Ann Wilkerson during a robbery in 1990. Various juvenile correctional officials testified that he was non-aggressive even in the face of taunts about his homosexuality from other inmates, and that he had the capacity to flourish in the structured environment of prison. He was executed in January 2000.

### **Pakistan**

Pakistan has recently taken a step backwards towards reintroducing the death penalty for child offenders.

#### **Background**

Implementing obligations under the UN Convention on the Rights of the Child which Pakistan ratified in 1990, President Pervez Musharraf promulgated the Juvenile Justice System Ordinance (JJSO) on July 1, 2000 prescribing trials of juveniles separate from adults and prohibiting the imposition of the death penalty on anyone who had not attained the age of 18 at the time of the offence. In December 2001, following a meeting with Irene Khan, Amnesty International Secretary General, President Musharraf commuted the death penalty of all juveniles who had been sentenced to death before July 2000.<sup>370</sup>

Whilst the JJSO never extended to all of Pakistan and its implementation had been slow, the Lahore High Court ruled on December 6, 2004 that the JJSO be revoked, so children might once again be sentenced to death.

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369 Amnesty USA.

370 <http://news.amnesty.org/index/ENGASA330252004>.

### **The judgment of December 6, 2004**

The full bench of the Lahore High Court revoked the JJSO, reportedly finding it 'unreasonable, unconstitutional and impracticable'.<sup>371</sup> The High Court decision means that juvenile courts will be abolished and children will once again be tried in the same courts as adults and could be sentenced to death. Convictions of juveniles spared the death penalty while the JJSO was in force between 2000 and December 2004 would not be affected by this decision, but cases pending in juvenile courts would be transferred to regular courts. The move by the Lahore High Court came as a surprise, since Amnesty International had welcomed the extension of the JJSO to the Provincially Administered Tribal Areas (PATA) as recently as October 2004. Federally Administered Tribal Areas (FATA), the Northern Areas and Azad Jammu and Kashmir had remained outside its ambit.

The decision of the Lahore High Court of December 6, 2004 arose from a petition filed by Farooq Naqvi, whose son had been sodomized and burned alive by several young men including a juvenile who was sentenced to life imprisonment. Farooq Naqvi believed that the juvenile should have been sentenced to death as well and had been unduly protected by the JJSO. The Lahore High Court judgment stated that legal provisions existing before promulgation of the JJSO were adequate to protect juveniles and that courts were sufficiently sensitive to the needs of juvenile offenders, rendering the JJSO superfluous. It also stated that the ban on the death penalty had led to adults instigating juveniles to carry out capital offences on their behalf in the knowledge that they would be treated leniently under the JJSO.

### **The Future Outlook**

During the decade from 1990 to 2000, several countries which previously allowed the execution of child offenders, raised the minimum age for application of capital punishment to 18. Yemen and Zimbabwe raised the minimum age to 18 in 1994.

For child offenders currently on death row in the United States, the 2004/05 judicial term was an opportunity for change in the US practice of executing convicted children.

The United States Supreme Court was asked to rule on the constitutionality of the death penalty for juvenile defendants (those under the age of 18 at the time of their crime) in 2005. The case, *Roper v. Simmons*,<sup>372</sup> involved Christopher Simmons, who was 17 when he was arrested for the murder of Shirley Crook.

In 2003, nine years after his conviction, Simmons' case was reviewed by the Missouri Supreme Court. It determined that juvenile executions violated the Eighth Amendment's provision against cruel and unusual punishment under the 'evolving standards of decency' test. Simmons' death sentence was revoked.

In the past, the US Supreme Court had determined whether a practice was cruel and unusual by looking to the 'evolving standards of decency that mark the progress of a maturing society'. In addition, the Court examined whether there was still

371 Source: Human Rights Commission of Pakistan, cf.: <http://www.hrcp.cjb.net>.

372 Supreme Court reference 03-0633.

a social and professional consensus in the United States to execute child offenders. In this context, it was interesting to see whether the Court would take into account studies such as the 2001 study by the University of Chicago which found that 62 per cent of those polled supported the death penalty, but only 34 per cent supported it for juvenile offenders. In addition, a Gallup poll in May 2002 showed 72 per cent of Americans backed the death penalty, but only 26 per cent supported it for juvenile offenders. Data for the period from 1999 to 2003 showed that the number of juvenile killers receiving death sentences in the United States was decreasing.<sup>373</sup> In 1999, 14 juvenile offenders were sentenced to death, seven in 2001, four in 2002 and one in 2003.

To support the respondent in the *Roper v. Simmons*, numerous so-called Amicus Briefs were submitted by such notables as President Jimmy Carter, Mikhail Gorbachev, the American Medical Association, child advocacy organisations and the European Union.<sup>374</sup>

From a religious and interfaith standpoint, it is particularly interesting to note that a large number<sup>375</sup> of faith organisations filed Amicus Briefs with the US Supreme Court.

Under Supreme Court rules, the views of religious organisations provide 'additional evidence'<sup>376</sup> of a broad social and professional consensus against imposition of the death penalty for a particular class of persons. Because of their age and immaturity, minors lack the degree of culpability that would place them in the category the Court has described as those 'most deserving' to be put to death.

The arguments of the parties were heard on October 13, 2004, and a landmark decision resulted. The United States Supreme Court abolished the death penalty for juvenile offenders. Relying on the opinions of international and domestic human rights groups the Court found that the death penalty was unconstitutionally cruel for people who were under the age of 18 at the time of their crimes.

373 Data obtained from North-Western University's Bluhm Legal Clinic.

374 The list of amici and their submitted briefs can be viewed at <http://www.abanet.org/crimjust/juvjus/simmons/simmonsamicus.html>.

375 United States Conference of Catholic Bishops, Episcopal Church – USA, Presbyterian Church, United Methodist Church, American Baptist Church – USA, Southern Christian Leadership Conference, American Jewish Committee, Evangelical Lutheran Church in America, United Church of Christ, Alliance of Baptists, American Friends' Service Committee, American Jewish Congress, Muslim Public Affairs Council, Church Women United, Muslim Women Lawyers for Human Rights, Mennonite Central Committee, Community of Christ, American Association of Jewish Lawyers and Jurists, Unitarian Universalist Association, Jewish Council for Public Affairs, Union for Reform Judaism and the Central Conference of American Rabbis, Bruderhof Communities Church International, Buddhist Peace Fellowship, Engaged Zen Foundation, Foundation for the Preservation of the Mahayana Tradition, Progressive Jewish Alliance, Prison Dharma Network.

376 536 US, at 316 n.21.

Elsewhere in the world, human rights groups maintain pressure on states to ratify and implement the provisions of the various international treaties outlawing child executions.

### **Religion and the Death Penalty: Conclusion**

Claims that the death penalty is deeply rooted in religious tradition and a translation of God's word into practice are tenuous at best, as has been shown. Within Judaism, there is certainly a biblical tradition of the death penalty, but by the Talmudic period, rabbis had put an end to its application and developed powerful arguments against human enforcement of capital punishment.

Whilst Islam is unequivocal in its Qur'anic affirmation of the death penalty as a form of punishment and justice, there is also a strong tradition of mercy and forgiveness within Islam, and many Muslim jurists have placed themselves within that tradition to argue against the execution of death sentences.

The widest spectrum of positions regarding capital punishment today can perhaps be found in Christianity. The Roman Catholic Church is abolitionist and the Baptist churches are split: Southern Baptists in the US take a retentionist stance whereas the American Baptist branch of Baptist Christianity favours abolition of the death penalty. Pentecostal churches offer up a similarly mixed picture. Whilst Lutheran churches worldwide object to the death penalty, the Missouri Synod of the Lutheran Church is retentionist, stating that 'capital punishment is in accord with the Holy Scriptures and the Lutheran Confessions'.<sup>377</sup> At its ninth all-American Council in St Louis Missouri, the Orthodox Church in America passed a resolution in 1989 condemning capital punishment as unrighteous and evil.

Arguments in favour of the death penalty citing God as their authority have to be viewed not only in the context of the textual tradition they purport to originate from, but also within the (secular) political and cultural context in which they are claimed. It is no coincidence that Baptist Churches from the American South and the Missouri Synod of the Lutheran Church hold their retentionist positions within a politically conservative environment. Enforcement of capital punishment is particularly advocated in the Republican 'bible belt' of the USA. Internationally, countries with the highest execution rates are repressive authoritarian states with poor human rights records, such as Saudi Arabia or Iran.

Statements by politicians of an ostensibly religious demeanour, such as that of Senator James Donovan of New York, who asked, 'Where would Christianity be if Jesus got eight to fifteen years with time off for good behaviour?', and similarly, Edward Koch, former mayor of New York, who said, 'It is by exacting the highest penalty for the taking of human life that we affirm the highest value of human life,' disguise the brutal realities of the death penalty.

In contrast with the many biblical quotations that are cited in favour of the death penalty, the first biblically recorded murder which was directly punished by God was not in fact avenged by killing the perpetrator. In Genesis 4:11-15, Cain after murder-

<sup>377</sup> Proceedings of 1967 Synod meeting, published at <http://www.lcms.org>.

ing his brother Abel out of jealousy over a religious offering, was penalized by being made 'a fugitive and a vagabond'. In the administration of his punishment, God went further than a simple non-execution. In spite of Cain's crime, God continued to protect Cain's life against extra-judicial killings by placing a curse on anyone who killed him.

It is difficult to argue that all convicted murderers should be made to wander the earth as fugitives and vagabonds. Any religious argument in favour of the death penalty deliberately appears to ignore significant sections of liturgical text and thus the contrary arguments, and is often driven by a political rather than a religious agenda. The death penalty remains a cruel and unnecessary punishment that violates human rights. To sanctify it by giving it a religious aura is to invest it with a false legitimacy. Dr. Martin Luther King Jr. said in 1957: 'I do not think God approves the death penalty for any crime – rape and murder included. Capital punishment is against the best judgment of modern criminology and, above all, against the highest expression of love in the nature of God.'

Having examined a number of situations in which religion and human rights have been in conflict, it is useful to look at some positive areas where religion has supported human rights. That is, evidence that religions and religious practitioners can support human rights and uphold them in the midst of adversity.

It is worth recalling the analysis provided in Chapter 2 on the history of human rights. From the seventeenth to the nineteenth centuries, the most influential declarations concerning human rights were founded on belief in the dignity of human life that, in origin, was based on a religious conception of the creation of the human race. Whilst historians may wonder how rights might have progressed without religion, it is clearly the case that these rights were articulated and advanced on the basis of religious belief.

In the twentieth century, the modern human rights movement was built on these foundations in response to the horrors of the Second World War, and found sympathy among many religious people. Whilst the UDHR, and other human rights documents across the globe are by and large secular pronouncements, they are realised at the expense of clarifying what underlies these rights. Yet, if an attempt is made to establish the basis of human rights, one would surely begin to look to their religious antecedents, even if they do not articulate an explicitly religious foundation.

When exploring the relationship between rights and religion (even if current secular rights theorists wish to dispense with religion *historically speaking*, in terms of the history of ideas), it is not possible to separate the two completely.

The following examples explore some active areas where religion has supported human rights.

### **Gandhi and *satyagraha***

Perhaps one of the best examples of religious involvement and commitment to rights is the life of Mohandas Gandhi, known as Mahatma ('a great soul'). In India, new awareness of an Indian identity emerged in 1885 leading to the foundation of the Indian National Congress (INC), the first all-India political organisation. Officially

sanctioned, its beginnings were tame, but it soon developed a nationalist wing which questioned the British right to rule India.<sup>378</sup>

In 1905 the INC launched the first mass protest to resist the partition of Bengal and by 1917 the First World War and other events had quickened the demand for Home Rule. The British tried to counter these developments by slowly devolving power, but in 1919 the authority of the provincial councils was increased. Gandhi had studied law in London, but had campaigned in South Africa for 21 years over discriminatory legislation against Indians. He returned to India in 1914, and took an increasing interest in the Home Rule movement.

Fuelled by Muslim fury at the destruction of the Ottoman Sultan's power in the Middle East, the resulting joint Hindu-Muslim Non-Co-operation Movement saw Gandhi deploy *satyagraha* – non-violent mass action. In the 1920s it was commonly said of Gandhi that, 'There is more power in his loin cloth than all the guns in the British Army.' Driven by a passion for justice, founded on strict Hindu convictions, Gandhi captured the imagination and the following of millions in an attempt to defend the rights of indigenous people against foreign rule. He led a campaign to boycott British cotton exports to India in 1920-2.

I seek entirely to blunt the edge of the tyrant's sword, not by putting up against it a sharper-edged weapon, but by disappointing his expectation that I would be offering physical resistance. The resistance of the soul that I should offer would at first elude him. It would at first dazzle him, and at last compel recognition from him, which recognition would not humiliate him but would uplift him.<sup>379</sup>

Sadly, violence split the joint Hindu-Muslim action, but in the early 1930s Gandhi led a civil disobedience movement that resulted in the 1935 Government of India Act, under which Indians gained full autonomy at the provincial level – a major step towards independence.

378 My great-uncle was a doctor in South Africa before the Boer War and was very friendly with Gandhi when he was a young lawyer there. Gandhi's remarkable vision also included the weaving culture of the Indian villages. I think that his suggestions here were very sensible. It is amazing that even today much of the cotton entering Great Britain comes from India or the Far East. The world has certainly changed since the Industrial Revolution. In some products Indian manufacture is really not yet up to the standard of international trade compared to other countries, because India has such a huge home market. I have seen this when in India, advising the Dig-Jam Group on their wool production (part of the Birla organization – this is a distinguished and outstanding Hindu family who care deeply for their workers). There were certainly big problems of quality, although they had the most modern machinery. I was always very impressed with the silk sari production in Gujarat, but never worked out how this could be developed as a fashion for non-Indian people, although I am sure it could be achieved if the quality were uniform from village to village. This would mean that mass marketing could be co-ordinated in chain stores. I believe such work is essential for the growth of the Indian economy, despite the fact that poverty has been much reduced in recent years.

379 Mahatma Gandhi, *Non-violence in Peace and War* (Ahmedabad, 1948), 1, 44.

It is ironic that Gandhi's death in January 1948 came at the hand of a strict Hindu. The man who had fought so hard for civil rights on non-violent grounds was finally assassinated by someone who could not follow the peaceful path that Gandhi had advocated. Contemporary right-wing Hindu nationalist groups actually treat Gandhi's assassin, Shri Nathuramji Godse, as a martyr. Nevertheless, Gandhi remains a supreme example of a maximalist encounter between religion and the state, acting positively for human rights.<sup>380</sup>

### American Civil Rights<sup>381</sup>

Martin Luther King Jr., as already mentioned, is perhaps one of the best-known activists for civil rights. Born in Atlanta, Georgia, he returned to the South, after obtaining a doctorate in theology at Boston University, to organise non-violent protests against the racism then endemic in American society. Inspired by Gandhi, he became leader of the Southern Christian Leadership Conference and developed the practice of boycotts and sit-ins in public places.

Let freedom ring from every hill and mole hill of Mississippi. From every mountainside, let freedom ring. And when we allow freedom to ring – when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, black men and white men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing, in the words of the old Negro spiritual, 'Free at last, free at last. Thank God Almighty, we are free at last.'<sup>382</sup>

Dr. King's famous 'I have a dream' speech clearly illustrates that his passionate commitment to civil rights was informed by his religious convictions and that – despite differences between his religious beliefs and the beliefs of others – he maintained such rights to be the legacy of all people.

During his campaigning years Dr. King was imprisoned 16 times, and by 1963 had become the acknowledged leader of the movement. In 1964 he was awarded the No-

380 It does seem that many outstanding leaders for peace are murdered. Rabin in Israel was tragically murdered by a young fundamentalist. It is difficult to understand and assess the damage which this has done to the attempts for peace between Israel and its neighbours.

381 There is of course the interesting question of how American society developed, and how it became fertile soil for civil rights issues. The Pilgrim Fathers, and the early religious groups of Quakers and others, travelled to America in order to set up their own society free from religious persecution, in a sense seeking human rights. Similarly, Irish Catholics fled Ireland to seek a new freedom and a new living. All these people came to the US to be able to practise their religion in peace in a new society as against persecution elsewhere. There is a tradition that, so insistent were the Founding Fathers on the religious source of their society, that it was proposed that the constitution be written in Hebrew. See Mark Noll, *A History of Christianity in the United States and Canada* (Grand Rapids: Eerdmans, 1992).

382 From the speech 'March on Washington'.



bel Peace Prize, and over the next four years he took his message to the north of the USA, attracting mass black support. Nevertheless, in the next few years he became unpopular with certain militant black activists, who advocated more violent activism. As with Gandhi, Dr King fell victim to the hatred that he tried to overturn and he was shot dead by James Earl Ray on April 4, 1968, in Memphis, Tennessee. In the following days, 70,000 Federal troops were needed to quell the riots that erupted in reaction to Dr. King's murder. Dr. King's widow, Coretta Scott King, has carried on the civil rights work through the Martin Luther King Jr. Center for Nonviolent Social Change in Atlanta, Georgia, and every year the third Monday in January is celebrated as Martin Luther King Day in the USA.

Like Mahatma Gandhi, Dr. Martin Luther King was an overtly religious man. His speeches and his writings drew upon religion, and his beliefs informed his actions in support of human rights. Another example, taken from a speech in 1968, 'I've been to the mountaintop,' illustrates the power of religious metaphors in his thinking:

Well, I don't know what will happen now. We've got some difficult days ahead. But it really doesn't matter with me now, because I've been to the mountaintop and I don't mind. Like anybody, I would like to live a long life. Longevity has its place. But I'm not concerned about that now. I just want to do God's will, and He's allowed me to go up to the mountain. And I've looked over and I've seen the Promised Land. I may not get there with you, but I want you to know tonight, that we as a people will get to the Promised Land. And I'm happy tonight; I'm not worried about anything. I'm not fearing any man. Mine eyes have seen the glory of the coming of the Lord.

Religion is clearly working in support of human rights in the life and work of Martin Luther King.<sup>383</sup> King recognised that throughout the history of Christianity, there had been those who actively engaged with society on the basis of their religion, and there were those who merely sat back and allowed society to move in any direction. He wrote about this situation in his 'Letter from Birmingham Jail' (1963), criticising the *laissez-faire* approach of some in the church of his day, and acknowledging the religious roots of the human rights enshrined in the American Constitution:

There was a time when the Church was very powerful. It was during that period when the early Christians rejoiced when they were deemed worthy to suffer for what they believed. In those days the Church was not merely a thermometer that recorded the ideas and principles of popular opinion; it was a thermostat that transformed the mores of society. Whenever the early Christians entered a town the power structure got disturbed and immediately sought to convict them for being 'disturbers of the peace' and 'outside agitators'. But they went on with the conviction that they were 'a colony of heaven'; and had to obey God rather than man. They were small in number but big in commitment. They were too

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383 For a detailed examination of King's theological development and how his critique of liberalism maintained his commitment to Christian morals, see Clayborne Carson, 'Martin Luther King, Jr., and the African-American Social Gospel' in Paul E Johnston (ed), *African-American Christianity* (Berkeley: University of California Press, 1994), 159-177.

God-intoxicated to be 'astronomically intimidated.' They brought an end to such ancient evils as infanticide and gladiatorial contests.

We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.

One day the South will know that when these disinherited children of God sat down at lunch counters they were in reality standing up for the best in the American dream and the most sacred values in our Judaeo-Christian heritage, and thusly, carrying our whole nation back to those great wells of democracy which were dug deep by the Founding Fathers in the formulation of the Constitution and the Declaration of Independence.

In 1965, a now famous photograph captured Rabbi Abraham Heschel walking beside Martin Luther King in the front row of a civil rights march. Heschel was a descendant of pre-eminent rabbinic families of Europe where he received a traditional yeshiva education and obtained the traditional rabbinical ordination. After studying at the University of Berlin, where he obtained his doctorate, he went to the *Hochschule für die Wissenschaft des Judentums*, where he earned a second liberal rabbinic ordination and taught Talmud. He escaped from the Nazis to England and subsequently America, where he briefly served on the faculty of the Hebrew Union College, the main seminary of Reform Judaism, in Cincinnati.

In 1946, Abraham Heschel went to the Jewish Theological Seminary of America (JTS), the main seminary of Conservative Judaism. There his views on modern scholarship could live side by side with his commitment to the normative role Jewish law plays in society. He became Professor of Jewish Ethics and Mysticism, and served there until his death in 1972.

Rabbi Heschel expounded on many facets of Jewish thought, including studies on medieval Jewish philosophy, Kabbalah, and Hasidism. He had a special interest in the Prophets, and in the proper way for Jews to incorporate religion into their lives.

The relationship between King and Heschel began in January 1963. It appears that King encouraged Heschel's involvement in the Civil Rights movement, and in turn Heschel encouraged Dr. King to take a public stance against the Vietnam War. Notably, when the Conservative rabbis of America gathered to celebrate Heschel's sixtieth birthday in 1968, they invited Martin Luther King as the keynote speaker, and Heschel was the Rabbi Dr. King's widow invited to speak at her husband's funeral.

Interestingly, King and Heschel shared theological ideology, as well as political sympathies. King often emphasized the Exodus motif to such an extent that it overshadowed the figure of Jesus (a key feature of what is known as 'liberation theology'<sup>384</sup>), and this certainly played a major role in linking the two men. Rabbi Heschel appreciated that the use of the Exodus model in the Civil Rights movement was a significant step in the history of Christian-Jewish relations. Additionally, Heschel had an understanding of divine pathos which is also seen in King's understanding of the

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384 Liberation theology is a theology founded on the Exodus narratives, attempting to re-interpret the liberation of a historical people and apply it to contemporary settings.

nature of God's involvement with humanity. Both men were convinced that the theological had to be intimately intertwined with the political.<sup>385</sup>

Gandhi, Martin Luther King and Abraham Heschel are pre-eminent examples of personalities who positively used religion to support human rights.<sup>386</sup>

### Endorsement of Rights by Religious Bodies

Religious bodies may be distinct from religious believers and their activities, but they are taken to represent their religion, and therefore are subject to any contemporary analysis. Just as we have examined the failings of members of the Roman Catholic Church concerning the Holocaust, we can also detail more recent instances where, institutionally at least, the Church has supported human rights.

The 1963 papal encyclical *Pacem in Terris* is clearly indebted to the UDHR, and talks about man (sic) as having 'rights and duties, which together flow as a direct consequence from his nature.'<sup>387</sup> Positive endorsement of UDHR came from Pope John XXIII:

We think it is a step towards the creation of a legal and political system for the world as a whole, inasmuch as it enshrines a recognition of the dignity of the human person, asserts the right of every man on earth to seek truth in freedom, to observe moral norms, to do what justice demands, to live as befits a human being and to enjoy other rights consequent upon these. It is therefore our earnest wish that the United Nations Organisation should go from strength to strength.<sup>388</sup>

The McGill International Colloquium on Judaism and Human Rights was a powerful endorsement of human rights concerns (see Appendix). In protestant Christianity, we can find similar examples. In 1975 the General Synod of the Netherlands Reformed Church endorsed rights language:

385 For a helpful reappraisal of Dr. King's role in civil rights which tries to avoid the 'hero' status, see Clayborne Carson, 'Martin Luther King, Jr.: Charismatic Leadership in a Mass Struggle', *Journal of American History* 74, (September 1987): 448-454.

386 A recent obituary in *The Times* highlights the work of Cardinal Juan Francisco Fresno, a Chilean cleric who 'had a vital role in helping Chile to move from the military dictatorship of General Pinochet to a modern democracy... He believed that restoring democracy was the "will of God" and promoted rebuilding fragmented political relationships according to his dictum that "Chile should be a country of co-operation not confrontation"'. – *The Times*, Monday, November 1, 2004, 62.

387 Groundwork of Christian Ethics, 192.

388 *Pacem in Terris*, Encyclical of Pope John XXIII on Establishing Universal Peace in Truth, Justice, Chastity, and Liberty, April 11, 1963.

Human rights are not abstract principles which are ours because of our birth and which 'cling' to us as individuals. Human rights consist basically of the living space we are prepared to allow each other.<sup>389</sup>

In 1977 the General Synod of the Church of England positively endorsed human rights, and one year previously the World Council of Churches set up an advisory group on human rights to promote ecumenical study and awareness of rights issues.

The Ramsey Colloquium is sponsored by the Institute on Religion and Public Life, and consists of a group of Jewish and Christian theologians, ethicists, philosophers and scholars that meets periodically to consider questions of morality, religion and public life. Named after Paul Ramsey, the distinguished Methodist ethicist who talked about rights as a way of defining humanity's service to God,<sup>390</sup> in 1998 it produced a document celebrating 50 years since the adoption of the UDHR. Whilst acknowledging the various ways in which rights language could be grounded and interpreted, the Colloquium affirmed the UDHR and offered a Christian and Jewish interpretation.

The framers of the Declaration knew that they could not at that time spell out fully the moral and philosophical reasons undergirding universal human rights. The agreement among nations was tenuous; the conflict between democratic and totalitarian forms of government was intense. In view of the circumstances, the measure of moral and philosophical coherence that was achieved is remarkable... As Jews and Christians informed by the biblical understanding of the one human family created, sustained and judged by the one God of all, we have here attempted to contribute to such an account of the human rights project. We invite others to offer from their own traditions alternative ways to clarify, strengthen, and direct this great enterprise. Thus, building on the work begun in 1948, we may be able to develop together a grammar for a universal dialogue about our common human future. Nothing less than that is required of those who are the heirs and guardians of the historic achievement that is the Universal Declaration of Human Rights.<sup>391</sup>

Of particular interest today is the attitude of Muslims towards human rights. The argument thus far should make it clear by now that, as with Christianity and Judaism, there exist numerous and often conflicting interpretations of Islam. However, among these voices are some which are extremely supportive of human rights.

In 1967, Muhammad Zafrulla Khan, President of the Seventeenth Session of the General Assembly of the United Nations in New York, and a Vice-President of the International Court of Justice at The Hague, published a comparative study of Islam and the Universal Declaration of Human Rights. He stated:

The Declaration concerns itself with only certain aspects of human life and human relationships and must perforce seek to achieve its ideals through legislative, administrative and

389 Groundwork – see ref on 193.

390 Groundwork, 193.

391 On Human Rights: The Universal Declaration of Human Rights Fifty years Later: A Statement of the Ramsey Colloquium, *First Things* (82) 1988, 18-22.

judicial safeguards and action. It cannot avail itself of the means and methods necessary for achieving a more comprehensive and far-reaching revolution in the lives of individuals and peoples. ... Religion must travel far beyond the Declaration both in its objectives and in its methods. It is concerned with the totality of life, both here and hereafter. The Declaration certainly, like Islam, claims universality and seeks that the rights, freedoms and duties set out and expounded in it should be accepted and made effective everywhere in respect of everyone. Thus, in spirit, the Declaration, so far as it goes, and Islam are in accord. In respect of certain specific details, the Declaration employs language which is too general; Islam spells out the necessary safeguards. Occasionally, but unavoidably, there is a difference of approach. Islam and the Declaration are both concerned with human welfare, prosperity and happiness; but while the Declaration is concerned to secure them at the material level, through physical means and during this life only, Islam being a religion, is concerned to secure them at all levels, through every available means, both here and the hereafter. ... This divergence of approach leaves open the possibility of conflicting provisions for the regulation of specific detail. Should this happen, and the conflict prove irreconcilable, then it is obvious that so far as Islamic society is concerned, the Islamic provision must have priority.<sup>392</sup>

What is clear from this analysis is that Islam can agree with the UDHR. However, many felt it necessary to spell out an Islamic Declaration on Human Rights (The Nineteenth Islamic Conference of Foreign Ministers held in Cairo in 1990 (see Appendix) reflecting the tensions alluded to by Muhammad Zafrulla Khan. Thus, the Islamic Institute for Human Rights concludes:

One difference between the UDHR's version of human rights and the Islamic perspective, is that Islam has demanded that these rights be enforced on an individual, community, and institutional level. Respect for human rights must occur on each of these levels and not be mainly a political and legal effort, like the UDHR is. In Islam, human rights are a deeply rooted concept that necessarily touches upon every aspect of a Muslim's life, and both respecting human rights and enforcing them is compulsory to all Muslims.

Another difference... is that Islam views human rights as part of a religious or God-centred way of life. Historically, the concepts of many human rights were emphasized in religions such as Judaism and Christianity. Islam places an emphasis on human rights as being inseparable from a general, God-inspired way of life as well. This fact – that Christians, Muslims, and Jews view human rights as part of a larger God-centred view of life – ensures that over half of the world views human rights within a religious context and framework. By contrast, there is no mention of God in the UDHR. This is because some of the framers felt that mentioning God would serve to alienate parts of the human population, namely those who didn't believe in God. It should be remembered however, that Islam does not try to force others to believe in God. It clearly promotes tolerance for all beliefs, thereby retaining Islam's universal message by respecting other cultures and religions.

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392 *Islam and Human Rights*, by Muhammad Zafrulla Khan. Published by The London Mosque, 63 Melrose Road, London SW18, 140-143.

In conclusion, Islam guaranteed a superior version of human rights well before the United Nations 'declared' them. Superior in this context means that Islamic concepts are universal, are based on reason, and are acknowledged and able to be put into practice by a significant portion of the world's peoples.<sup>393</sup>

It is worth noting that, as in the other world religions, there are those who are suspicious of an attempt to harmonize Islam with human rights. Interestingly, from a secular and liberal perspective, the Institute for the Secularisation of Islamic Society argues that Islam and human rights can never be harmonized, simply because the Muslim world is still controlled by an authoritarian and medieval way of thinking, reminiscent of the Dark Ages, and as such it can never be held together.<sup>394</sup>

Whilst the majority of this work has focused on the Abrahamic faiths, it is important to note that other religions are making increasingly important contributions to human rights debates.

Followers of the Baha'i faith have the search for peace as a focal concern. Their beliefs emphasize unity and peace, but surprisingly, until recently adherents of the faith have been advised to abstain from political involvement. Although often portrayed as a utopian ideal, a number within the religious community have engaged with human rights issues and international law in an attempt to allow their religion to impact on worldwide issues.

*Emergence: Dimensions of a New World Order*, edited by Charles Lerche, attempts to link Baha'i themes of peace to contemporary political issues. It examines international relations, human nature, the possibility of a world federation, development, and the environment. Among its topics are the successes and failures of the United Nations, and the desire to transform this body and engage in human rights issues.

In the 1980s, the Baha'i International Community gained consultative status as an NGO on a number of bodies, including *ECOSOC* and *UNICEF*. Whilst such bodies have active involvement in human rights, as do individuals, it is worth noting that the new world order which the Baha'i faith seeks will not be achieved, according to their beliefs, until all humanity is persuaded of the truth of the Baha'i message.<sup>395</sup>

In the midst of the oft-repeated caricature that religion brings nothing to the world apart from war and violence, it is instructive to note that there are a growing number of interfaith organisations and activities that wish to promote human rights.

The Three Faiths Forum, run by Sir Sigmund Sternberg in London, has done much to let people of three of the world's main faiths (Judaism, Islam and Christianity) exchange views in a very positive and constructive framework.

393 [www.iifhr.com](http://www.iifhr.com).

394 [www.secularislam.org/humanrights/index.htm](http://www.secularislam.org/humanrights/index.htm).

395 *Exploring New Religions*, 253. See in the same book the discussion of the new Hindu religious movement, the Brahma Kumaris, and their guarded endorsement of documents such as the UDHR which is criticized for not recognising the transcendent nature of human beings. As one example among many, Dr Nazila Ghanea-Hercock, a Senior Lecturer at Oxford, has a special interest in human rights issues relating to the Baha'i in Iran, and has advised the UN on this issue.

In October 2003, a day-long interfaith forum brought together Christians, Muslims, Jews, Hindus and Buddhists in Atlanta, Georgia, under the theme 'Bridges of Faith in a Broken World'. The Council for a Parliament of the World's Religions holds local, national and international events in an attempt to enable religions to talk to one another, and also to encourage them to become involved in social and political transformation.<sup>396</sup>

We live in a world of difference. Yet, we are interdependent. Nowhere is learning to live with difference more important than religion. Too often, religion is misused as an instrument for division and injustice, betraying the very ideals and teachings that lie at the heart of each of the world's great traditions. At the same time, religious and spiritual traditions shape the lives of billions in wise and wonderful ways. They gather people in communities of shared beliefs and practices. When these diverse communities work in harmony for the common good, there is hope that the world can be transformed.

Over the years, the Council has initiated dialogues and nurtured relationships among people of difference. In doing so, the Council has provided a framework for expressing many visions of a just, peaceful and sustainable future. In the process, religious and spiritual communities have discovered a shared commitment to ethical principles. This shared commitment has opened the way for a new era of co-operative action among the world's religious and spiritual communities as well as with the world's other guiding institutions. The well-being of the Earth and all life depends on such a collaboration.<sup>397</sup>

The International Interfaith Centre was inaugurated in Oxford, UK, on December 6, 1993, inspired by the 1993 Year of Inter-religious Understanding and Co-operation. As a result of the increasing quantity and variety of interfaith activity around the world, it was perceived that a need could be met by an international, interfaith centre which would be informed about all these different efforts and able to encourage continuing understanding and cooperation.

A Trust was established by the two oldest international interfaith organisations, the International Association for Religious Freedom (IARF) and the World Congress of Faiths, together with Westminster College, Oxford, which has a highly regarded Department of Theology and the Study of Religions. The work receives continual support from the trustees, patrons, volunteers and international advisors and consultants.<sup>398</sup>

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396 [www.cpwr.org](http://www.cpwr.org).

397 [www.cpwr.org/what/what.htm](http://www.cpwr.org/what/what.htm).

398 The Woolf Centre at Cambridge is an academic institute for Christian, Jewish and Islamic studies, and has grown over the past few years. I was its first Chairman and Founder with its Directors Dr Edward Kessler and Dr Martin Forward. It is named now after Lord Woolf, the former Lord Chief Justice of England and Wales.



## Active Involvement in Rights by Religious Organisations

There are numerous groups and organisations actively involved in human rights who work from a faith structure.

### **Jewish**

There are well over 100 Jewish organisations committed to human rights issues and humanitarian campaigns of one sort or another.

According to its website, *B'nai B'rith* is an international Jewish organisation committed to the security and continuity of the Jewish people and the State of Israel, defending human rights, combating anti-Semitism, bigotry and ignorance, and providing service to the community on the broadest principles of humanity.' Founded in 1843, *B'nai B'rith* International is one of the world's largest and oldest Jewish human rights, community action and humanitarian organisations. It has founded hospitals, orphanages, senior housing communities, disaster relief campaigns, libraries, anti-hatred programmes and other initiatives.

World Jewish Aid acts on behalf of the UK Jewish community to provide emergency and development aid to those in need throughout the world regardless of race, religion or nationality. Its mission is to mobilise UK Jewish resources for international development, to be recognised as the UK Jewish response to humanitarian need and to represent the UK Jewish community within the international development community. It is a member of the larger body, World Jewish Relief.

The Consultative Council of Jewish Organisations, founded in 1948 by René Cassin, which is an NGO with consultative status at the UN, is among the others which have striven for international development, including WIZO, Agudat Israel, and the International Liberal Jewish Community.<sup>399</sup>

### **Muslim**

As with Christianity and Judaism, there is only space to give a few examples of the many human rights issues that Muslim organisations engage in – the work of the Red Crescent, alongside the Red Cross, for instance.

The Islamic Human Rights Commission is an independent campaign, research and advocacy organisation based in London. Its aim is to foster links and work in partnership with different organisations from all backgrounds, to campaign for justice for all peoples regardless of their racial, confessional or political background.

KARAMAH – Muslim Women Lawyers for Human Rights, is a charitable, educational organisation that focuses on the domestic and global issues of human rights for Muslims. Karamah stands committed to research, education, and advocacy work in matters pertaining to Muslim women and human rights in Islam, as well as civil rights and other related rights under the Constitution of the United States.

399 See *Jewish Yearbook*, appendix 263, which includes the work of other Jewish organisations.



### **Christian**

Within the Christian Church, one of the largest and most active organisations is the World Council of Churches.<sup>400</sup> The WCC represents over 340 churches, denominations and church groups in over 100 countries, representing over 550 million Christians. It works to a programme of five historic ‘themes,’ which include justice and international affairs. One of their stated aims is to:

Express their commitment to diakonia [fellowship] in serving human need, breaking down barriers between people, promoting one human family in justice and peace, and upholding the integration of creation, so that all may experience the fullness of life.<sup>401</sup>

On this basis, they actively contribute to international discussion on human rights issues. Their views on capital punishment have been highlighted elsewhere.

Within the UK, Quakers became well known for their social gospel work, particularly working for the rights of those in prison. On an international level, Quakerism now has a Quaker United Nations office. With premises in both Geneva and New York, it represents Quakers through Friends World Committee for Consultation (FWCC). It has had consultative status with the United Nations Economic and Social Council as an international NGO since 1948. It is involved in the prevention of conflict, the protection of refugees, and concern for the plight of child soldiers and women in prison, to name but a few. Its work on human rights is rooted in the Quaker testimonies to Equality and Peace.

A commitment to peace lies at the heart of Quaker faith and practice. It is part of our striving to live faithfully and is our testimony to the world. It has implications for our spiritual practice, for living every day and for our work for social change. For this commitment to be real, we need do no more than we are able – and must do no less. When we act, we do so as part of a worldwide community of nearly three hundred thousand Quakers and many more who share our goals and means. Inspiring us is the knowledge that our lives would be impoverished without this essential part of our relationship with God and the world, which we call peace.<sup>402</sup>

Whilst not strictly representing a religion or a religious body, the work of one religious man has recently stood out as an example par excellence of religion in the service of human rights: Archbishop Desmond Tutu, and the Truth and Reconciliation process in which he was instrumental. In the third Longford Lecture, Archbishop Tutu spoke of the restorative justice at the heart of the South African experience, as it dealt with the consequences of apartheid.

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400 As mentioned earlier in chapter 1, the WCC is still viewed with great suspicion by some in the Jewish community as they believe that it is trying to convert Jews to Christianity, although the WCC has ceased its missionary activities.

401 [www.wcc-coe.org/wcc/who/con-e.html](http://www.wcc-coe.org/wcc/who/con-e.html).

402 [www.quano.org/newyork/Resources/peacetestimony.htm](http://www.quano.org/newyork/Resources/peacetestimony.htm).

The Truth and Reconciliation Commission process was an example of restorative justice. In our case it was based on an African concept very difficult to render into English as there is no precise equivalent. I refer to *Ubuntu/botho*. Ubuntu is the essence of being human. We say a person is a person through other persons. We are made for togetherness, to live in a delicate network of interdependence.

Ubuntu and so restorative justice gives up on no-one. No-one is a totally hopeless and irredeemable case. We all remain the children of God, even the worst ones. We all retained the capacity to become saints. For us as Christians the paradigm was provided by our Lord and the penitent thief on the Cross. He had led a life of crime presumably until he was crucified. Some might be appalled at this death-bed repentance and conversion, but not God whom we seek to emulate – “Be as perfect as your heavenly father is perfect” is Jesus’ exhortation. We are not able to declare categorically that so and so has a first class ticket to hell. We shall be surprised at those we meet in heaven whom we least expected to be there and perhaps also by those we do not find there whom we had expected to be there.<sup>403</sup>

It is, though, to be regretted that Archbishop Tutu’s experience with reconciliation and peace in South Africa has not always been reflected in his statements on the Middle East, where he has chosen to intervene.

There are of course numerous Christian missions that have been involved in human rights work, either as a consequence of their proselytising work, or as the core intention of what they do. Historically, Albert Schweitzer, the medical missionary, is a widely-known example, and currently the charity Tearfund follows a programme of humanitarian works, albeit with an evangelical Christian edge. Similarly, Christian Aid is sufficiently well-known to sponsor a specific week of fund-raising.

Within Roman Catholicism, the second quarter of the twentieth century has often been labelled as the era of ‘social catholicism’, when many church leaders tried to rectify the evils of society.<sup>404</sup> CAFOD, the Catholic Agency for Overseas Development, perhaps the best-known of the Catholic development charities, has as its slogan, ‘CAFOD works to end poverty and make a just world.’ Christian Solidarity Worldwide quotes Proverbs 31.8 in the human rights work that it undertakes:

Speak up for those who cannot speak for themselves, for the rights of all who are destitute.  
Speak up and judge fairly; defend the rights of the poor and needy.

It is involved in campaigning, lobbying, fact-finding missions and raising awareness of a large number of human rights issues across the globe.<sup>405</sup>

403 [www.prisonreformtrust.org.uk/pdf%20files/LngfordLectTutu.pdf](http://www.prisonreformtrust.org.uk/pdf%20files/LngfordLectTutu.pdf).

404 This movement had its roots in the previous century, particularly with the work of Bishop Kettler (1811-1877), who argued that the social question was the essential problem of his time. Kettler’s social thought had a profound impact on Pope Leo XIII and his encyclical *Rerum Novarum* which laid the foundation of modern Catholic social teaching.

405 [www.csw.org.uk](http://www.csw.org.uk).

CARITAS is also extremely active in the human rights world – a Catholic relief organisation in over 200 countries and territories, it is one of the largest humanitarian networks currently operating.

Whilst any of these Christian charities and missionary works may have some policy details that may clash with human rights issues (most probably in the area of sex and sexuality), the bulk of their work is involved in promoting justice and rights.

### The Rejection of Rights by Religion

The 2005 World Report of Human Rights Watch highlights the growing conflict that exists in its view between religion and human rights.<sup>406</sup> The following comment on the Report by James Roberts for *The Tablet* outlines the issues at stake:

Secular and faith groups' beliefs about human rights are increasingly in conflict. Now a report from the influential organisation Human Rights Watch locates the flashpoints. It makes for uncomfortable reading

Wherever you look in the world, religion is a rising force. From the underground churches of China, to the mosques springing up across Europe, to the Pentecostal movements of Latin America, faith is not to be ignored. In its 2005 World Report documenting trends and transgressions, victims and violators, across 64 countries, Human Rights Watch (HRW), the international organisation dedicated to protecting political and other freedoms around the world, reflects the changing face of faith. But it makes difficult reading for many religious leaders.

The report provides invaluable information on developments in the specific countries which it examines in detail, but much attention ... is likely to focus on the four essays making up the opening section of the report which address "human rights developments of global concern". In particular, the essay by Jean-Paul Marthoz and Joseph Saunders examines the evidence for "growing conflicts between religious communities and the human rights movement". Most controversially, this essay argues for a universal human rights agenda that is in conflict not only with Islam but with the Catholic and other Christian Churches. To illustrate the issues at stake, Marthoz and Saunders point to the candidacy of the Italian Catholic, Rocco Buttiglione, for the post of European Commissioner on Justice, Freedom and Security, and to the religiously inspired murder of the film-maker, Theo Van Gogh, in the Netherlands, as areas where the new, secular human rights frontier is colliding with the "return of the religious" – what the French political scientist Gilles Keppel has called "God's Revenge".

Buttiglione's declaration, in front of what the report describes as "bewildered" members of the European Parliament, that homosexuality is sinful and that the family exists "to al-

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406 Human Rights Watch, World Report 2005 ([//hrw.org/wr2k5](http://hrw.org/wr2k5)).

low women to have children and be protected by their husbands” is seen as an example of religion running counter to universal human rights with the implication that, despite his insistence otherwise (acknowledged by the authors), Buttiglione would have been compromised in upholding the equality of all citizens. Their example of conflict between religion and human rights is followed immediately by another, the murder of the Dutch director for releasing a film that drew attention to violence against women in Islamic societies.

Human rights activists, the authors conclude, must not turn away from rights violations carried out in the name of religion. The presentation of Signor Buttiglione’s position in this way will raise eyebrows among many Catholics, not only those who would accept the “conservative” label accorded by HRW to Signor Buttiglione.

While the authors pay tribute to convergence of faith and secular groups on human rights issues in the 1970s and 1980s, they argue that today, on issues “at the crossroads of religious dogma and human rights ideology, of personal moral conviction and public health, the points of divergence are growing”. The secular groups are seen as taking rights-based positions on freedom of speech, gender, sexuality, sexual orientation and – perhaps most pertinently – “women’s reproductive rights” that clash with the positions of many religious groups.<sup>407</sup>

Whilst in the previous chapter we have highlighted numerous areas where religion has promoted human rights, the converse is also true. Moreover it is an argument to which we have not been blind throughout the rest of this book. There are many instances where religion has, and still does, infringe human rights. On balance, is the cause of human rights best served by religion, or is more harm done to human rights through religious observance?

The future of the Roman Catholic Church will be an interesting test case. The general perception is that the Vatican could become more right-wing with liberal reformers being marginalized. Pope Benedict XVI’s track record of being extremely conservative could cause the Vatican to become right-wing.

Of particular interest is the current Pope’s attitude towards Father Dehon (1843-1925), a pioneer of Christian democracy and social Catholicism. Even though Leo XIII was keen on social Catholicism, he kept his distance from Dehon because of his strong anti-Semitic views. The current Pope has moved to have this man beatified because of his outstanding work on social Catholicism, and he is now being presented in Rome as a great mystical figure, part of the previous Pope’s plans for expanding the role and number of saints.<sup>408</sup> Similarly in Spain, Queen Isabella (1451-1504) who was influenced by her advisors to instigate the most horrific persecution of Jews, was to become a saint. So here again, we can see a contradiction in the way the Church acts, and its stance vis-à-vis human rights.

‘That Martin Luther? He wasn’t so bad, says Pope.’ This was the headline in the 6th March 2008 edition of *The Times*, reporting Pope Benedict XVI’s desire to rehabilitate Martin Luther. The Reformer was excommunicated by the Catholic church over 400 years ago for his heresy, but the leader of the Roman Catholic Church, who

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407 James Roberts, ‘Rights and Religion at the Crossroads’, *The Tablet* January 22, 2005.

408 See Henry Tinq in *Le Monde*, June 2005.

is also a renowned theologian, will argue that Luther did not intend to cause schism and split the church, but only clean it of abuses and misunderstandings. It is part of a wider scheme that Ratzinger is implementing to soften his image and build bridges with other religious communities.

However, there are many groups who may not welcome the move, citing Luther's radical difference in doctrine with the Catholic Church, his radical rejection of the Catholic Church's authority, and for Jewish communities, his viscous and hateful anti-Semitism. Whilst every historical figure is to some extent bound by the views and opinions of his times, it is impossible to have a whole-hearted acceptance or rejection of any thinker without careful consideration of all of his views. So whilst we may welcome the Pope's open attitude to other religious groups, he cannot ignore the anti-Semitic views of Luther that filtered down into the German nation and became one of the building blocks for one of the most despicable crimes of the twentieth century.

According to Pope Benedict, much of contemporary culture is at odds with the Church. The Church should be the enemy of liberalism and its necessary concomitant, the belief that absolute truth is not likely to be available. Pope Benedict finds relativism, the belief that there can be no one true belief, distasteful. The dogma that all must have at least the offer of equal respect, and that modern society reaches the highest peak of civilization when it attains the most perfect tolerance of diverse faiths, is to Benedict one of the circles of hell! How can the Church align itself with the signs of the times, Pope Benedict asks, in a fallen world? Having said this, Pope Benedict is now seeking to build bridges with organisations of power and influence, and recently gave an affirmative speech at the United Nations on Human Rights. To many Jews his message for Good Friday in 2008 was hardly a bridge of understanding for the 'elder brother' of the church, which so many had hoped he would be able to adapt after centuries of anti-Jewish sentiment. His visits to synagogues were on the other hand appreciated and respected.

Whilst the Church should not be bullied by society, it seems incongruous that positions which seemed detrimental to women, to the intellectual life, to the cause of social justice, and all that the Church cares a great deal about, could be so deeply entrenched and so vigorously defended by the best and brightest of Catholic officialdom.<sup>409</sup>

Perhaps there is hope for the Vatican. Immediately after Joseph Ratzinger was installed as Pope, he set out to have a dialogue with other religions. He also signalled his intention to restore diplomatic relations with China, which were severed in 1951. Unfortunately, China has responded by saying that the Vatican must not interfere with China's internal affairs. Religious institutions can change and adapt to society, and the interpretation of religion is constantly evolving.

Throughout we have seen examples of 'fundamentalism' that threaten human rights due to the high price put on religion. Another example in Holland, the murder of filmmaker Theo van Gogh by a Moroccan bent on *jihad*, again illustrates the nega-

409 For a survey of Ratzinger's writings, see 'Reading Ratzinger: Benedict XVI, the theologian', Anthony Grafton, *The New Yorker*, July 25 2005, 42-49.

tive prospect for religion and rights. Presumably, the murderer was following a maximalist interpretation of religion, an interpretation which led him to believe that he had the right to take another person's life. Van Gogh's crime was to have focused on the abuse of Muslim women by Muslim men across Europe, as already mentioned.

### **The Changing Face of Religion**

Within many religious institutions, adapting to human rights issues would have been unthinkable some time ago. However, due to the enormous international pressure from the UN and other human rights organisations, as well as the growing emphasis on human rights, the major religions have been forced to evolve to survive. It is fascinating to see this, but most religions still have rather a long way to go.

The brilliance of many religions is that they can adapt and have adapted to new situations, demonstrating the evolution of religion in response to modern needs. This has happened throughout the centuries, and numerous studies have demonstrated this reality.<sup>410</sup>

At the same time, there is increasing interest among the general public in looking at other religions than their own and at spirituality, as we have observed in chapter three. Comparisons are made between religions and their role in the wider society, which in turn has been stimulated by interfaith dialogue. Many religions have anxieties about the world which they share with others. In my experience, for example, when Jews and Christians meet as sincere believers in their respective faiths they can ultimately radiate new concepts that enrich humankind. Conflicts between religions are often created by those groups that feel most vulnerable. Security will surely reduce fear: security that a group's own beliefs cannot be threatened.

It is obvious that there must be a dialogue both between religions and within religions. For example, the diversity within the Christian community is enormous, and many groups are not even in touch with one another. Beyond religious boundaries, non-believers have different concepts of human rights. There is little doubt that there needs to be promotion of the dignity of human beings. Can this ever be realised? Is the modern concept of human rights a suitable common denominator for all of us to focus on, to protect the way we would wish to live?

### **Religion and National Identity**

The relationship between religion and contemporary national identity is something that has been in the background of our discussions, but this of course has not been explored in full. It is highlighted in the discussion over the wearing of the hijab, and

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410 Robert Morgan's *Biblical Interpretation* (Oxford: OUP, 1988) is one of the leading texts which outlines the development of Christian biblical interpretation. More recently, the Scripture and Hermeneutics Series has pulled together an international team of scholars from Christian and Jewish backgrounds to examine the issue. On the history of interpretation, see volume 4, Craig Bartholomew, Stephen Evans, Marry Healey, Murray Rea (eds.), *Behind the Text: History and Biblical Interpretation* (Carlisle: Paternoster, 2004).

also relates to the issues surrounding terrorism. These issues demonstrate the need for cultural sensitivity in life and international diplomacy. How can such problems be tackled and assessed?

Religion is still one of the components of contemporary European identity, with religious roots manifesting themselves in various ways within secular society. Of crucial importance is the role of religion in further European integration and social inclusion, as well as the furthering of national character.<sup>411</sup> Countries wrestling with these issues include Poland, the Ukraine and Turkey.

Religious nationalism and ideological extremism regrettably remain and re-emerge. Society needs protection, and without this there is a danger of the breakdown of the status quo. This balance, achieving the coherence of society nationally and globally whilst still allowing each area of human rights and religion to develop, is one of the challenges for the 21<sup>st</sup> century.<sup>412</sup>

When the Soviet Union and later the Taliban took over Afghanistan, each had ideologies which were horrific and disastrous, and both failed. To what extent does this show that such forms of ideology cannot succeed in society, because society is made up of too many fine membranes, each needing to be nurtured separately in order to grow together? The genius of a nation is to accommodate differences. As soon as we stop seeing someone as human, problems arise and anarchy results. All people need space to develop.

Human rights infringements take place when there is a denial of a common humanity. In trying to unravel the history of ideas, Isaiah Berlin noted that,

The division of mankind into two groups – men proper, and some other, lower, order of beings, inferior races, inferior cultures, sub-human creatures, nations or classes condemned by history – is something new in human history.<sup>413</sup> It is a denial of common humanity – a premise upon which all previous humanism, religious and secular, had stood. This new attitude permits men to look on many millions of their fellow men as not quite human, to slaughter them without a qualm of conscience, without the need to try to save them or warn them.<sup>414</sup>

411 See the recent statement of the meeting between José Barroso, President of the European Commission, and religious leaders representing Christianity, Judaism and Islam, where all present reaffirmed their commitment to build 'a free, united, prosperous and peaceful Europe characterized by solidarity, where all citizens and nations, regardless of their religion, convictions, language and culture, tradition and ethnic origin, may live together and feel at home untied in diversity'. See <http://orthodoxeurope.org/page/14/71.aspx>.

412 See John A Armstrong, 'Religious Nationalism and Collective Violence', *Nations and Nationalism* 3 (4), 1997, 597-6-6.

413 Although this pronouncement about the novelty of the division is questionable.

414 Isaiah Berlin, 'European Unity and Its Vicissitudes', in *The Crooked Timber of Humanity* (London: John Murray, 1990), 179-180; originally delivered in 1959. Isaiah Berlin was another 'giant' that I had the pleasure of meeting and working with. He was appointed as the joint editor of an encyclopaedia of Russian Jews. I was asked by the Israeli backers of this project to liaise with Prof Berlin and develop the English translation of this work which aimed to highlight the contribution of Russian Jews both in Russia and worldwide.



Berlin was aware of the difficulty of articulating rights in the face of eighteenth and nineteenth century romanticism which had prioritised the individual, thus leading 'the revolt against the myth of an ideal world.' It is one of the questions that we have been faced with throughout this book. If there are competing claims to truth (religious or secular), then how or why do we continue to articulate universal rights?

If some ends recognised as fully human are at the same time ultimate and mutually incompatible, then the idea of a golden age, a perfect society compounded of a synthesis of all the correct solutions to all the central problems of human life, is shown to be incoherent *a priori*. This is the service rendered by romanticism and in particular the doctrine that forms its heart, namely, that morality is moulded by the human will and that ends are created, not discovered.<sup>415</sup>

If this universal foundation cannot be discovered, then how and why are we to carry on advocating and defending human rights? The irony is that, as Berlin observed, although the ideal of a 'universal, objective truth in matters of conduct' has been shaken, it is 'an ideal for which more human beings have, in our time, sacrificed themselves and others than, perhaps, for any other cause in human history.'<sup>416</sup>

### **Living in the Shadow of Terrorism**

Some of the preceding discussion has referred to the ever-present threat of terrorism. Terrorism is a human activity that endangers human rights.

Without a doubt there were religious elements to the motivation of the terrorists who commandeered airliners and crashed them into New York's World Trade Center. Whilst religion alone cannot be held responsible, the religious dimension is clear. Some Muslims, enraged by what they saw as the oppression of their faith by a Western capitalist world, perpetrated an act of terror against innocent people. These innocents – in the aeroplanes, in the buildings, and on the ground – were deprived of their human rights– murdered, injured, bereaved and devastated in horrific ways.

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Like myself, Isaiah Berlin was a member of The Athenaeum, and we met for tea several times analysing the concept of the encyclopaedia and discussing which of the Hollywood moguls were of Russian descent. Chain store owners, such as Simon Marks, and many world-famous authors and actors were from Russia, and could perhaps be included in such a book. I was completely overawed by Berlin's brilliance and the speed at which his brain worked. I also did not know many of those he mentioned who had convoluted Russian names! I wrote everything out phonetically and then went to see Professor Shimon Abramsky, who was extremely helpful and affectionate. Isaiah Berlin was, as always, charming and enthusiastic, and I felt overwhelmed to be in the presence of someone I had always idolized from hearing his lectures on Tolstoy and from reading his various philosophical works.

415 Berlin, 'The Apotheosis of the Romantic Will', in *ibid.*, 237; originally written in Italian in 1975.

416 *Ibid.*

This is the obverse of the coin. It stems from the maximalist interpretation of religion which we mentioned previously.

Conversely, the reaction to human rights abuses has been, at least for some, motivated by religion. At the immediate stage, care and rehabilitation for the victims of terror in New York was administered, at least in part, by those either with religious conviction or driven by it. Some were non-religious, but all of them cared deeply and did everything to save the lives of the many shocked or injured people who came out of the World Trade Center.

Secondly, in the immediate aftermath, many religious people were called upon to condemn, explain, and understand the religious dimension of the terrorist act, in an attempt to assure the world that religions (and of course, Islam in particular) did not condone such action. Many religions across the globe did unite in condemning the 9/11 atrocities, and in calling for greater peace and understanding.

Thirdly, in response to the long-term decisions and actions of states and governments, there have been many religious people, religious groups and religious organisations in the forefront of all those defending human rights and arguing for the reductions of extreme legislation against the War on Terror. In addition, religious people have also stood up against abuses at Guantánamo Bay, have questioned the utility and importance of identity cards and have protested against the possible detention without charge of foreign nationals on UK soil.<sup>417</sup>

However, between these 'two sides of the coin,' there is another, and perhaps more widespread intellectual position. This refers to those with no particular faith who condemn all acts of terror, whether done in the name of religion or not and who promote human rights and defend the abused, not because they are religiously motivated, but for a shared concern for humanity, based perhaps on an unconscious form of humanism, or some other ethical consideration.

The hypothetical issue then at the start of the twenty-first century is thus, whether, on balance, it would not be better to abandon religion, and forge ahead with promoting human rights and exposing human rights abuses. Surely, this is better than clinging to obscurantist religious views that, at their worst, infringe human rights and justify terror, while at their best achieve no more than that achieved by many non-religious people and associations?

For thousands, if not millions, of ordinary people, this is a fair question. Nevertheless, it is implausible to plan a world without religion. As our discussion hinted, there may in fact be truth in religion, and religious groups may be able to achieve that which non-religious groups cannot – for example, the Alexandra Declaration, an initiative for promoting dialogue between Jews and Muslims in the Middle East which has not so far been successfully achieved elsewhere.<sup>418</sup> The hope is that religions can

417 Although of course many who protest may not know the reasons behind the detentions which could possibly be fully justifiable. In the UK NaCTSO is the counter terrorist organisation tasked with the objective of pre-empting terrorism before it happens. The police can only deal with something after the event in the UK.

418 January 2001. See Edward Kessler, 'Jesus, Christians and the "new anti-Semitism"', [www.axe.org.uk/essays/Kessler.htm](http://www.axe.org.uk/essays/Kessler.htm).

continue positively by reinterpreting their ideologies for modern times without compromising the fundamental values which they respect.<sup>419</sup>

### **The Role of the Media**<sup>420</sup>

Much of modern society, and the different factions within it, find a common scapegoat – the media. The media can offer different interpretations of human rights and religion, partly biased according to national and political differences. Whilst the media are mostly helpful in human rights issues, it does depend on how the consumer selects any particular channel or newspaper, and what they choose to watch or read. In the USA, readership of serious papers is low in Republican areas, where the death penalty is still widely imposed. In the UK, the influence of some leading media empires on election results is well chronicled. The popularity of certain papers makes them financially viable, whereas more in-depth papers may lose a fortune each year. It seems that serious newspapers can only survive through being subsidised by popular tabloids.

If only a small percentage of readers is interested in the wider issues of human rights, and is more concerned by gossip, can religion still have any power whatsoever to provide society with a community spirit, and to what extent? Whilst this has been a key focus for many religions, perhaps today the media is filling this void and people do actually achieve a sense of belonging by looking in on the lives of celebrities or by following the gossip. Communal activity of one sort or another is critical for the perception of human rights, whether it comes from religion, local authorities or other organisations.

It is worth noting here that the Japanese and Arab approach to the media, for example, is quite different from that which we are used to in the West. When Japanese reporters carry out interviews, they would never dare to seek conflict or controversy with authorities, unlike the Western European media, which follow the Anglo-Saxon model.

This intrusiveness, developed in the USA, is strongly influenced by the British media.<sup>421</sup> In the tougher circles of modern journalism, reporters assume a function similar in some ways to the priesthood. Theoretically they are charged with telling society truths, with providing a format for debate in society and with holding the powers-that-be in society to account. For such a responsible task, persons of con-

419 In a meeting between Muslim and Jewish leaders held in Spain in 2006, Rabbi Daniel Sperber, President of the Institute for Advanced Torah Studies at Bar-Ilan University in Ramat Gan, Israel, argued that religious leaders had many shared beliefs and might be able to reach agreements where diplomats had failed. 'We haven't even begun to tap the resources of the religious world,' he said. 'This is the first stage, trying to bring people together to establish some sort of common agenda.' *International Herald Tribune*, March 27, 2006, 3.

420 Much of this discussion is developed in detail in John Lloyd, *What the Media are Doing to Our Politics* (London: Constable, 2004).

421 Following the work of Lloyd.

siderable responsibility are required. So in the USA, journalism training is highly advanced. The model works well and it is in a sense a shame that the sins of a few mar the excellent work of the majority.

In modern journalism, there is a struggle for power between politicians and the media – a struggle to be elected, to win votes and to sell newspapers. For the media, it is open to question whether they are reporting news or chasing public sympathy. The recent Hutton inquiry following the Kelly affair in the UK, raised questions about the impartiality of the BBC. In another situation, Bernard Goldberg, a CBS reporter, accused the three main US networks of distorting the news. Networks are often attracted to stars that bring them higher ratings, even if they are not as objective as other more professional people in the media.

Analysing this situation, John Lloyd suggests that the weakening of institutions and the growth in the importance of individualism has produced many obvious benefits; however, greater care needs to be taken of individual lives and rights by corporations. The danger presented by the cult of celebrity in the media is appalling – it can lead to intrusive and judgemental voyeurism, and a desire for fame at the expense of news reporting. Having said this, it is extremely important that we remain democratic, and the press retains its freedom while acknowledging its obligation to remain impartial for news and not to wallow in self-glorification.

The style of such a media suits a readership and viewership that wishes to learn the details of a given story as clearly and unambiguously as possible. For example, the American Catholic Church was given full-length exposure over allegations of pederasty in 2001-2, concerning especially the Irish-American churches of Boston. These, regrettably, were shown to have been true. The cruellest and fullest exposure was that by Gary Wills, a Catholic writer, especially in *The New York Review of Books*. Any attempt to appeal to the large American Catholic community or the wider Christian Church membership to stand together against such exposure in the cause of defending the reputation of Christian priests, was dismissed with contempt.

In other countries, attacks have been more muted, although the scandal of the Vatican embezzlement of funds a few years ago implicating a cardinal was highlighted everywhere. Complaints of media persecution of the Catholic Church's American hierarchy were dismissed in staunchly Catholic countries such as Ireland, Italy, and Poland. Such exposure in these countries would have been unthinkable, until recently. Yet even now criticisms are much more diluted than in the USA. Democracies, such as Italy and France, still seem reluctant to expose any sins of the establishment, by contrast with the Anglo-Saxon model. Among the differences of interpretation which Lloyd has highlighted, France (despite its large Catholic population) has a tradition of media enterprise and freedom; Italy has many more large state-funded broadcasters. In immediate post-war Germany, Hugh Carleton Greene (1910-1987) later Sir Hugh Greene and Director-General of the BBC, established remarkable journalism in 1945 by involving former Nazis so that the public could witness balance in the media.<sup>422</sup>

We can compare the Arab television broadcaster, Al-Jazeera and, from a previous era, the Russian newspaper Pravda, with the Anglo-Saxon model. Pravda claimed

422 I met Sir Hugh Greene at the launch of the book *Eichmann Interrogated*.

that it stood for 'the truth,' but in reality it was a manipulative propaganda paper serving the Soviet government. Today, all national journalists – in either free or partly free societies – embrace the Anglo-Saxon model. Like democratic institutions, it is viewed as the approved global standard for disclosure, because none other has the moral authority to describe itself as such. There is no longer any general acceptance of the kind of journalism Lenin expected when he took over Pravda, almost a decade after it had been established by Trotsky. Few would propose that journalism should put state interests ahead of truth – journalism with a predetermined goal given by political authority to establish Communism, to liberate the oppressed or to advance the case of a nation, is regarded as mere propaganda or advocacy, rather than proper journalism. Propaganda is of course at least as common in the world as the various degrees of independent journalism, but it has no principle on which to rest. The principle must be independence, the procedure open-minded pluralistic enquiry in the context of a free society which can tolerate such scrutiny. There is a social democratic consensus in the West, a commitment to public service in all journalism including broadcast news on TV and radio.

The impact of cyberspace on human rights still has to be assessed, although it is perhaps breaking down the control of the traditional media. The worldwide web can be used for negative aims by anyone. Similarly, it can be harnessed for positive reporting objectives.

Although the media can become scapegoats for many of society's ills, they can still play a positive role in defending human rights. The Anglo-Saxon model probably provides the best way of exposing areas where religions are in conflict with human rights and of highlighting international issues that deserve the attention of human rights activists.

## Hope

The common denominator between religion and human rights is hope. Many of those questioning the identity or meaning of God did so in 'hopeless situations.'

Some may wonder why God created human beings at all. There are many philosophical works on this subject that are fascinating, particularly Isaac Luria (sixteenth century) *On the Contraction of God*. What later became known as Hasidic concepts are described very colourfully.

They revolve around the idea that God created the world because he wished to be known, loved and desired. This longing for something beside himself resulted in him radiating outside himself and producing so-called 'spheres of separation' – creation, formation and production. These incorporate the worlds of ideas, forces, forms and matter, the realms of genius, spirit, soul and life. Accordingly God wraps his destiny in layers and coverings, only the outermost of which has any association with man, and it is here where the blessed presence is banished. This furthest point of the godhead calls out to be returned to its roots, so in addition to the usual verticality of the godhead upwards and downwards, Hassidism sees a constant traffic from inside outwards and vice versa, a process towards the *Shekinah* (spirit) and inwards towards

the reunification of the created world and God within it.<sup>423</sup> If one explores it more deeply and unwrap the materiality, then one meets the world of production. Unwrap still further and one comes to the world of formation. Unwrap even further and one comes to the world of creation. Exploring further still, one reaches the world of separation until one comes to infinity – Blessed be He!

The Jewish mystical explanation of the creation of the world is partly due to the emphasis laid on speech. God spoke of the creation; furthermore, he utters the word repeatedly. With the dispersion of his presence through the breaking of vessels (where the sparks of God get crushed and splinter through the whole world), countless millions of new mouths have come into existence able to utter new words. God for Hassidism is the speaker, the Lord of the voice, who continually expresses his love, commands, interdictions, consolation and guidance through the most unexpected channels. The voice of Sinai added nothing more.

To some extent the jargon used by religion and human rights is no more than a collection of grand terms for hope. Perhaps the words themselves should be treated like franchises, given and taken away from those who misuse them. But this is a fanciful idea. Looking at the variety of interpretations of any religion and considering why it developed, one can quickly see, for example, that Buddhism gave hope in the Far East on a scale unknown previously. The Catholic Church in Mexico, despite the indescribable cruelty of the first Spanish invaders, has somehow managed to find refuge in a deeply religious society, although the interpretation of Catholicism today is different from what it would be in Italy. The popularity of Catholicism in Poland was deeply ingrained due to Communism, and it may change now that the oppressive non-religious 'religion' has been defeated.

Human rights and religion are humanity's manifestations of something far, far better, something we can also call hope.

In his fascinating work, *Art and Illusion*, Professor E H Gombrich highlights the extraordinary relationship between the perception of art as seen by the viewer, and the skill reflected in and reality of what has been painted by the artist. The brilliant way in which artists through the centuries have managed to create images that are easily comprehended, but which are in most cases illusions of the actual reality they portray.<sup>424</sup>

The same naturally applies to religion and human rights. We believe and feel many things which may have no bearing on reality, but are mere perceptions making us believe that we are nearer to God in our prayers, or that we have rights which we must implement for our own interest or for the interests of others. Of course, the

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423 Christian process theology follows a similar strand of thought. Baal Shem Tov was the founder of Hassidism, and on his death was succeeded by Dov Ber of Mezhrich who brought Hasidic teaching and the thought of Isaac Luria together. See 'Hassidism' in Cecil Roth, and Geoffrey Wigoder, (eds.), *The New Standard Jewish Encyclopedia* (London: Allen, 1970), 852.

424 At the very least, artists are telling a story about their subject. Van Dyke's image of Charles II makes him out to be something he never was; Michelangelo's David similarly extends the human form beyond reality into idealism – to what ends?

human brain remains a mystery. Precisely why we respond in certain ways cannot be known or measured. We cannot rely on psychology, spirituality, religion, sociology or anthropology for definite answers.

Why is it that when we see a small baby or an old person we react in different ways? When we see a tree stripped of its leaves as winter approaches, we are not emotionally upset as we are when we see a human being or even an animal standing in the bitter cold? Perhaps it is because we can associate in feeling with the other human being or animal and try to think that it might be us who would be suffering as they do. We do not feel this way when we look at inanimate objects. When we look at the sky, there are beautiful cloud formations, and we sometimes imagine that there is something behind those clouds which could be a heaven; or in terrifying times of storm, thunder and lightning, we imagine a hell – these are all images due to other visions. These have already been implanted in our brains and enable us to associate the concepts with something which we were perhaps involved with, or were informed about previously.

The same sensitivity applies to the way we look at books that we read. We do not think of the letters, but of the stories which the words tell us and we are able to share the stories which the author has presented to us in an extraordinary fashion, in perhaps much the same way as we look at works of art.

Music is another stimulus that, depending on where and how we live, we can relate to in a very personal way. It can affect our emotions in a very deep and spiritual way, or else it leaves us completely cold – particularly if the culture from which it stems is alien to us.

The same applies to many of the subjects that have been highlighted in this book, as they all affect the relationship between religion and human rights. Our deeply entrenched philosophical views on these subjects have ruled humankind's universes from the very beginning of history.

We have highlighted how propaganda indoctrinates and ingrains its influence on the mind, which in turn reacts positively or negatively towards it. It is very difficult for the majority of people not to believe the propaganda pouring out of the media every day of our lives. This is true whether it is presented by advertising agents, newscasters, newspapers or other vehicles of communication as really authentic, and therefore to be believed, even if the truth is that it should be rejected and not believed. If we reject certain propositions, is it because they are unsound or because we have been taught the opposite? And if we have been taught the opposite, was this correct reasoning, or was one source able to project its image and its arguments better than another?

It is unlikely that we can ever be really objective about anything in life, but if we look too closely at the receptors in our brain that absorb, distil and analyse what we hear and see, we may never be able to do anything, and therefore reject all action. We need to take things for granted, we need to have the security that we are looking at things in the correct way and unless we possess this confidence within ourselves, it is unlikely that we can be happy human beings.

Much of what we believe is influenced by our formative years, and child psychologists have studied the impact of different surroundings and stimuli on children,



and how they are conditioned from the earliest age to learn and recognise all that is around them – physically, mentally and visually. There is also the factor of our genes and to what extent they govern the way we hear, listen and react. It is unlikely that great composers such as Mozart could have created their works if they had not had any beneficial outside influences for example parents or mentors, though some will argue that such talents can be entirely innate. Many of us wonder why it is that these enormous talents manifest themselves in certain individuals and not in others. What is it in our physical make-up that enables human beings to develop in one direction or another, or not develop in any way significantly? How much of it is brought about by conditioning, and how much is influence from outside on the individual during his or her lifetime?

Religion and human rights are just two components which together bring to the human brain historical tradition, reasoning and intensive emotional experiences. Surely these are among the most important influences that will continue to direct the way humans react to one another and share some of the most basic norms of decency and sensitivity to each other.

There are many instances in my conclusions where hope is of paramount importance. The late Rabbi Hugo Gryn gave the following account<sup>425</sup> of his time spent in a Nazi concentration camp. His father took him behind one of the huts, away from the crowd. He took his butter ration and used it to form some candles with which to sing Hanukkah hymns. Hugo questioned his father about the waste of the butter, but his father answered that they could live for one week without water, a month without food, but were unable to survive for a single day without hope.

The moral values created by many faiths have been the foundation on which societies have based their attitudes. It has not only been successful in creating a feeling of identity, but also in laying down very clear moral codes on which we can base our lives.

It is particularly sad, despite the outstanding moral codes that have been distilled by people throughout the ages, that intolerance, bigotry and disrespect for those of different beliefs have continued to raise their heads. The human rights developments of the 19<sup>th</sup> century, which played such a significant role in emancipating people, have enabled societies to alter and to respect the poorest via complex forms of social welfare. Both human rights and religion have been catalysts for the improvement of humanity's welfare, underpinning this at the United Nations in 1948 through the Declaration of Human Rights, or through the various covenants on human rights, have succeeded in making people test their conduct against new non-religious benchmarks. (In spite of this, we see the most appalling failures occurring across the globe.)

Religion inevitably creates a feeling of tension in individual human hearts. The believer feels anxiety because he longs to be close to God whilst having to accept his remoteness. There must be conflict between human rights and religion. We should rejoice at the spiritual conflict which perhaps influences them both.

We need a better and broader platform for dialogue between all faiths and institutions, even those which are not mutually compatible, in order to distil from them

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<sup>425</sup> In a BBC broadcast.



canons that will protect human beings and give them more dignity where this is lacking. It is of course important that we do not provide this platform to those who wish to destroy rights and repress others. How do we do this, and yet avoid censorship? It is not easy. Human rights must have limitations if society is to exist.

How do we determine whether what we believe is going to destroy the foundations of the civilisation we believe in? Open debates are clearly crucial if we are to create something that may ultimately strengthen our spiritual understanding of the incomprehensible. People of all faiths and traditions need to see each other as 'normal' and sincere people. Incitement to hatred must be forbidden to those who wish to destroy the state or the individual. Controlling and regulating individuals is fraught with dangers in interpreting what is freedom of expression as against ruthless intolerance by the individual of the state. The terrible dilemma – and a potential nightmare for us all – is how to do this. Tolerance is not easy.

A book of lectures from 1898 by Thomas Masaryk, later President of Czechoslovakia, was published in Prague in 1938, the very year when his country's freedom was destroyed. He took the view that every type of compromise is unsatisfactory. In the end it should only be accepted in insignificant matters since it affects all principles. If principles are endangered, a compromise is morally impossible. There are really very few occasions, Masaryk stated, on which only minor issues are at stake. Compromise for him therefore most frequently meant that, in principle, a party to a dispute gave in, thus creating ethical and political diletantism that is so common today. How can we be so tolerant as to incorporate the traditions of all humanity? The need for religion not to fall into an abyss in society is clear.<sup>426</sup>

If we consider the framework of theistic beliefs – whether Jewish with Maimonides, Christian with Aquinas, or Islamic with Ibn Roshd – all have also been influenced by non-theological sources and other faiths. The fall of humanity in the biblical sense was one of the first arguments used to illustrate the frailty of the human condition. On the other hand, it could be argued that human rights have been beautifully highlighted in the Bible when God asked Adam why he had stolen from a tree. Adam was entitled to defend himself. These are the symbols of reasoning and spiritual insecurity.

In varying ways theologies strive to help us with our insecurities and fears, especially at times of poverty, depression and anguish. However, religions have also frequently exploited people. We need only to look at some of the modern preachers in the United States, who often build up enormous followings (as mentioned earlier), through what have to a large extent become theatrical shows, to entertain people and distract them from their sorrows. To make people feel better, such preachers use religion to emphasize some social issues that confront the individual. Religious films are another example. The preachers often become as wealthy as film stars at the expense of their followers! People are led to believe that what they see on film, and read in print, is authentic, even when it is blatantly false, or when part of the story has been omitted.

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426 On March 21, 2006, the Prince of Wales gave a speech at al-Azhar University in Cairo calling for greater tolerance between faiths.

The fight for human rights on the part of Karl Marx was based on a desire to break through to a higher form of liberty which could liberate the poverty-stricken working-class. The thesis behind this was anti-religious, yet in many ways religion stimulated Karl Marx to become what he was. Marxism immediately consolidated into a new ideology based on class ownership of the means of production, implying the need for workers' control. This eventually culminated in Stalinism via Leninism and all the brutality which this entailed, with the power of the state controlling individuals whose rights were to be strictly limited.

Are there any conclusions we can draw to improve life through human rights, human obligations and our understanding of individuals to underpin the Declaration of Human Rights and to support the moral values that every religion has as its foundation? The answer almost certainly lies in greater education. We need to understand the culture and religion of the other, and to be very wary of those religious precepts which demand that one merely obeys without questioning. All religions have this unfortunate element in their creed, their manifesto, or set of beliefs.

However, teaching tolerance and respect for other faiths and other interpretations of the same faith are not concerns of the extremists.<sup>427</sup> Fundamentalists (as we have noted earlier, a largely Western concept) believe passionately, but who decides what they should select and obey, and who edits the ideologies that are then conveyed to their congregations?

Selections are made by individuals that do not explain fully a religion's theological beliefs. It is a frightening dilemma for the innocent believer who is longing for spirituality and more security. Such a believer may not wish to think too much about the moral values of his life when he or she is struggling to survive amid all the problems that life poses at every level. Religion can and does help in encouraging people to do something for others as well, so fostering society to assist those in need. The welfare state also attempts to achieve this goal. Religions have all had and still have some form of educational and social element to offer their communities.

Society could benefit from more sensitive tolerance and by exploiting today's media to inform and educate. As technology moves apace and we come closer to achieving Marshall McLuhan's vision of a 'global village', perhaps human rights will enable people to integrate to such an extent that extremists become increasingly marginalized, even ridiculed.

There will never be a single ideology for all people, and the sooner we accept this the quicker human beings will be able to live in harmony and peace with one another.

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427 UNESCO actively promotes race relations – this is to be applauded, but there is always more that needs to be done.



**Declaration by the United Nations, January 1, 1942**

A Joint Declaration by the United States, the United Kingdom, the Union of Soviet Socialist Republics, China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxembourg, Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, South Africa, Yugoslavia.

The Governments signatory hereto,

Having subscribed to a common program of purposes and principles embodied in the Joint Declaration of the President of the United States of America and the Prime Minister of the United Kingdom of Great Britain and Northern Ireland dated August 14, 1941, known as the Atlantic Charter,

Being convinced that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands, and that they are now engaged in a common struggle against savage and brutal forces seeking to subjugate the world,

DECLARE:

- 1) Each Government pledges itself to employ its full resources, military or economic, against those members of the Tripartite Pact and its adherents with which such government is at war.
- 2) Each Government pledges itself to cooperate with the Governments signatory hereto and not to make a separate armistice or peace with the enemies.

The foregoing declaration may be adhered to by other nations which are, or which may be, rendering material assistance and contributions in the struggle for victory over Hitlerism.

Drafted at Washington  
January First, 1942

[The signatories to the Declaration by United Nations are as listed above.]

The adherents to the Declaration by United Nations, together with the date of communication of adherence, are as follows:

Mexico June 5, 1942	Peru Feb. 11, 1945
Philippines June 10, 1942	Chile Feb. 12, 1945
Ethiopia July 28, 1942	Paraguay Feb. 12, 1945
Iraq Jan. 16, 1943	Venezuela Feb. 16, 1945
Brazil Feb. 8, 1943	Uruguay Feb. 23, 1945
Bolivia Apr. 27, 1943	Turkey Feb. 24, 1945
Iran Sept. 10, 1943	Egypt Feb. 27, 1945
Colombia Dec. 22, 1943	Saudi Arabia Mar. 1, 1945
Liberia Feb. 26, 1944	Lebanon Mar. 1, 1945
France Dec. 26, 1944	Syria Mar. 1, 1945
Ecuador Feb. 7, 1945	

## Universal Declaration of Human Rights – 1948

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights, the full text of which appears in the following pages. Following this historic act, the Assembly called upon all member countries to publicize the text of the Declaration and ‘to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories.’

### PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance,

both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

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Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

- 1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
- 2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

- 1) Everyone has the right to freedom of movement and residence within the borders of each state.
- 2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

- 1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- 2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

- 1) Everyone has the right to a nationality.
- 2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

- 1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- 2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- 3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.



Article 17.

- 1) Everyone has the right to own property alone as well as in association with others.
- 2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

- 1) Everyone has the right to freedom of peaceful assembly and association.
- 2) No one may be compelled to belong to an association.

Article 21.

- 1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- 2) Everyone has the right of equal access to public service in his country.
- 3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

- 1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- 2) Everyone, without any discrimination, has the right to equal pay for equal work.
- 3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- 4) Everyone has the right to form and to join trade unions for the protection of his interests.

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Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

- 1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- 2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

- 1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- 2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- 3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

- 1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- 2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

- 1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- 2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

- 3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

## European Convention on Human Rights – 1950

The governments signatory hereto, being members of the Council of Europe,

Considering the *Universal Declaration of Human Rights* proclaimed by the General Assembly of the United Nations on 10 December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members and that one of the methods by which the aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those Fundamental Freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration;

Have agreed as follows:

### ARTICLE 1

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

### SECTION I

#### ARTICLE 2

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- a) in defence of any person from unlawful violence;
- b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
- c) in action lawfully taken for the purpose of quelling a riot or insurrection.

ARTICLE 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 4

No one shall be held in slavery or servitude.

No one shall be required to perform forced or compulsory labour.

For the purpose of this article the term forced or compulsory labour' shall not include:

- a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- d) any work or service which forms part of normal civic obligations.

ARTICLE 5

Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- a) the lawful detention of a person after conviction by a competent court;
- b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;
- f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.

Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law

to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

#### ARTICLE 6

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Everyone charged with a criminal offence has the following minimum rights:

- a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b) to have adequate time and the facilities for the preparation of his defence;
- c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### ARTICLE 7

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilized nations.

#### ARTICLE 8

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### ARTICLE 9

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

#### ARTICLE 10

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### ARTICLE 11

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

#### ARTICLE 12

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

**ARTICLE 13**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

**ARTICLE 14**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**ARTICLE 15**

In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

Any High Contracting Party availing itself of this right of derogation shall keep the Secretary-General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary-General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

**ARTICLE 16**

Nothing in Articles 10, 11, and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

**ARTICLE 17**

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

**ARTICLE 18**

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

**SECTION II****ARTICLE 19**

To ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, there shall be set up:



A European Commission of Human Rights hereinafter referred to as ‘the Commission’;

A European Court of Human Rights, hereinafter referred to as ‘the Court’.

### **SECTION III**

#### **ARTICLE 20**

The Commission shall consist of a number of members equal to that of the High Contracting Parties. No two members of the Commission may be nationals of the same state.

#### **ARTICLE 21**

The members of the Commission shall be elected by the Committee of Ministers by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly; each group of the Representatives of the High Contracting Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.

As far as applicable, the same procedure shall be followed to complete the Commission in the event of other States subsequently becoming Parties to this Convention, and in filling casual vacancies.

#### **ARTICLE 22**

The members of the Commission shall be elected for a period of six years. They may be re-elected. However, of the members elected at the first election, the terms of seven members shall expire at the end of three years.

The members whose terms are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary-General of the Council of Europe immediately after the first election has been completed.

A member of the Commission elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor’s term.

The members of the Commission shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

#### **ARTICLE 23**

The members of the Commission shall sit on the Commission in their individual capacity.

#### **ARTICLE 24**

Any High Contracting Party may refer to the Commission, through the Secretary-General of the Council of Europe, any alleged breach of the provisions of the Convention by another High Contracting Party.

## ARTICLE 25

The Commission may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right.

Such declarations may be made for a specific period.

The declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties and publish them.

The Commission shall only exercise the powers provided for in this article when at least six High Contracting Parties are bound by declarations made in accordance with the preceding paragraphs.

## ARTICLE 26

The Commission may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

## ARTICLE 27

The Commission shall not deal with any petition submitted under Article 25 which:

- a) is anonymous, or
- b) is substantially the same as a matter which has already been examined by the Commission or has already been submitted to another procedure or international investigation or settlement and if it contains no relevant new information.

The Commission shall consider inadmissible any petition submitted under Article 25 which it considers incompatible with the provisions of the present Convention, manifestly ill-founded, or an abuse of the right of petition.

The Commission shall reject any petition referred to it which it considers inadmissible under Article 26.

## ARTICLE 28

In the event of the Commission accepting a petition referred to it:

- a) it shall, with a view to ascertaining the facts undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;
- b) it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention.

## ARTICLE 29

The Commission shall perform the functions set out in Article 28 by means of a Sub-Commission consisting of seven members of the Commission.

Each of the parties concerned may appoint as members of this Sub-Commission a person of its choice.

The remaining members shall be chosen by lot in accordance with arrangements prescribed in the Rules of Procedure of the Commission.

## ARTICLE 30

If the Sub-Commission succeeds in effecting a friendly settlement in accordance with Article 28, it shall draw up a Report which shall be sent to the States concerned, to the Committee of Ministers and to the Secretary-General of the Council of Europe for publication. This Report shall be confined to a brief statement of the facts and of the solution reached.

## ARTICLE 31

If a solution is not reached, the Commission shall draw up a Report on the facts and state its opinion as to whether the facts found disclose a breach by the State concerned of its obligations under the Convention. The opinions of all the members of the Commission on this point may be stated in the Report.

The Report shall be transmitted to the Committee of Ministers. It shall also be transmitted to the States concerned, who shall not be at liberty to publish it.

In transmitting the Report to the Committee of Ministers the Commission may make such proposals as it thinks fit.

## ARTICLE 32

If the question is not referred to the Court in accordance with Article 48 of this Convention within a period of three months from the date of the transmission of the Report to the Committee of Ministers, the Committee of Ministers shall decide by a majority of two-thirds of the members entitled to sit on the Committee whether there has been a violation of the Convention.

In the affirmative case the Committee of Ministers shall prescribe a period during which the Contracting Party concerned must take the measures required by the decision of the Committee of Ministers.

If the High Contracting Party concerned has not taken satisfactory measures within the prescribed period, the Committee of Ministers shall decide by the majority provided for in paragraph 1 above what effect shall be given to its original decision and shall publish the Report.

The High Contracting Parties undertake to regard as binding on them any decision which the Committee of Ministers may take in application of the preceding paragraphs.

## ARTICLE 33

The Commission shall meet 'in camera'.

**ARTICLE 34**

The Commission shall take its decision by a majority of the Members present and voting; the Sub-Commission shall take its decisions by a majority of its members.

**ARTICLE 35**

The Commission shall meet as the circumstances require. The meetings shall be convened by the Secretary-General of the Council of Europe.

**ARTICLE 36**

The Commission shall draw up its own rules of procedure.

**ARTICLE 37**

The secretariat of The Commission shall be provided by the Secretary-General of the Council of Europe.

**SECTION IV****ARTICLE 38**

The European Court of Human Rights shall consist of a number of judges equal to that of the Members of the Council of Europe. No two judges may be nationals of the State.

**ARTICLE 39**

The members of the Court shall be elected by the Consultative Assembly by a majority of the votes cast from a list of persons nominated by Members of the Council of Europe; each Member shall nominate three candidates, of whom two at least shall be its nationals.

As far as applicable, the same procedure shall be followed to complete the Court in the event of the admission of new members of the Council of Europe, and in filling casual vacancies.

The candidates shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

**ARTICLE 40**

The members of the Court shall be elected for a period of nine years. They may be re-elected. However, of the members elected at the first election the terms of four members shall expire at the end of three years, and the terms of four more members shall expire at the end of six years.

The members whose terms are to expire at the end of the initial periods of three and six years shall be chosen by lot by the Secretary-General immediately after the first election has been completed.

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

The members of the Court shall hold office until replaced. After having been replaced, they shall continue to deal with such cases as they already have under consideration.

ARTICLE 41

The Court shall elect the President and Vice-President for a period of three years. They may be re-elected.

ARTICLE 42

The members of the Court shall receive for each day of duty a compensation to be determined by the Committee of Ministers.

ARTICLE 43

For the consideration of each case brought before it the Court shall consist of a Chamber composed of seven judges. There shall sit as an 'ex officio' member of the Chamber the judge, who is a national of any State party concerned, or, if there is none, a person of its choice who shall sit in the capacity of judge; the names of the other judges shall be chosen by lot by the President before the opening of the case.

ARTICLE 44

Only the High Contracting Parties and the Commission shall have the right to bring a case before the Court.

ARTICLE 45

The jurisdiction of the Court shall extend to all cases concerning the interpretation and application of the present Convention which the High Contracting Parties or the Commission shall refer to in accordance with Article 48.

ARTICLE 46

Any of the High Contracting Parties may at any time declare that it recognises as compulsory *ipso facto* and without special agreement the jurisdiction of the Court in all matters concerning the interpretation and application of the present Convention. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain other High Contracting Parties or for a specified period.

These declarations shall be deposited with the Secretary-General of the Council of Europe who shall transmit copies thereof to the High Contracting Parties.

ARTICLE 47

The Court may only deal with a case after the Commission has acknowledged the failure of efforts for a friendly settlement and within the period of three months provided for in Article 32.

## ARTICLE 48

The following may bring a case before the Court, provided that the High Contracting Party concerned, if there is only one, or the High Contracting Parties concerned, if there is more than one, are subject to the compulsory jurisdiction of the Court, or failing that, with the consent of the High Contracting Party concerned, if there is only one, or of the High Contracting Parties concerned, if there is more than one:

- a) the Commission;
- b) a High Contracting Party whose national is alleged to be a victim;
- c) a High Contracting Party which referred the case to the Commission;
- d) a High Contracting Party against which the complaint has been lodged.

## ARTICLE 49

In the event of dispute as to whether the Court has the jurisdiction, the matter shall be settled by the decision of the Court.

## ARTICLE 50

If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party, is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

## ARTICLE 51

Reasons shall be given for the judgement of the Court.

If the judgement does not represent in whole or in part the unanimous opinion of the judges, any judges shall be entitled to deliver a separate opinion.

## ARTICLE 52

The judgement of the Court shall be final.

## ARTICLE 53

The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties.

## ARTICLE 54

The judgement of the Court shall be transmitted to the Committee of Ministers which shall supervise its execution.

## ARTICLE 55

The Court shall draw up its own rules and shall determine its own procedure.

ARTICLE 56

The first election of the members of the Court shall take place after the declarations by the High Contracting Parties mentioned in Article 46 have reached a total of eight.

No case can be brought before the Court before this election.

**SECTION V**

ARTICLE 57

On receipt of a request from the Secretary-General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of this Convention.

ARTICLE 58

The expenses of the Commission and the Court shall be borne by the Council of Europe.

ARTICLE 59

The members of the Commission and of the Court shall be entitled, during the discharge of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

ARTICLE 60

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

ARTICLE 61

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

ARTICLE 62

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

ARTICLE 63

Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary-General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.

The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary-General of the Council of Europe.

The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Commission to receive petitions from individuals, non-governmental organisations or groups of individuals in accordance with Article 25 of the present Convention.

#### ARTICLE 64

Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

Any reservation made under this article shall contain a brief statement of the law concerned.

#### ARTICLE 65

A High Contracting Party may denounce the present Convention only after the expiry of five years from the date of which it became a Party to it and after six months' notice contained in a notification addressed to the Secretary-General of the Council of Europe, who shall inform the other High Contracting Parties.

Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

Any High Contracting Party which shall cease to be a Member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 63.

#### ARTICLE 66

This Convention shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary-General of the Council of Europe.

The present Convention shall come into force after the deposit of ten instruments of ratification.

As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

The Secretary-General of the Council of Europe shall notify all the Members of the Council of Europe of the entry into force of the Convention, the names of the High



Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Executed in Rome this 4th day of November, 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the signatories.

## **McGill International Colloquium on Judaism and Human Rights: Declaration on Judaism and Human Rights**

Adopted in Montreal on April 23, 1974

By

- The Jacob Blaustein Institute for the Advancement of Human Rights of the American Jewish Committee
- Canadian Jewish Congress
- Consultative Council of Jewish Organisations

We, the undersigned, gathered in Montreal at the McGill International Colloquium on Judaism and Human Rights, have adopted the declaration that follows.

### **I.**

In the light of the contributions Judaism and the Jewish experience have made to human rights, we affirm:

Human rights are an integral part of the faith and tradition of Judaism. The beliefs that man was created in the divine image, that the human family is one, and that every person is obliged to deal justly with every other person are basic sources of the Jewish commitment to human rights.

The struggles of Jews for freedom from oppression and discrimination in the modern era have helped advance the cause of human rights for all.

Jews and Jewish organisations have significantly aided efforts to secure national and international protection of human rights and freedoms.

We accordingly reaffirm our long-standing dedication to the advancement and protection of fundamental rights and freedoms for all persons.

### **II.**

To all governments and peoples, we commend the following principles and goals:

#### *The Universal Declaration of Human Rights*

Brought into being by a joint effort of the nations and reflecting the varied cultures of the world, the Universal Declaration of Human Rights affirms the human rights and fundamental freedoms of all persons. However much nations may vary in their values, needs and priorities, the Declaration remains a universally applicable standard for the conduct of persons and nations.

#### *The Interdependence of Human Rights*

Civil and political rights are interdependent with, and indivisible from economic, social and cultural rights. Difficult though it may be to preserve individual civil and political rights under conditions of poverty and deprivation, it must be done; for abandoning or subordinating them will only exacerbate inequality and injustice, without ensuring economic betterment.

*The War Against Poverty*

Conversely, a reasonable degree of economic well-being is a precondition for the enjoyment of civic and political rights. On these as well as on humanitarian grounds, the distressing disparities in living standards, income distribution and availability of social services within and among nations, and the dire poverty and famine afflicting vast areas of Africa, Asia and Latin America, oblige all governments to promote, jointly as well as separately, the economic welfare of their people. Affluent nations must help less fortunate peoples through bilateral and multilateral aid programs and equitable trade arrangements.

*Progress in Human Rights Law*

Continuing development of effective international law is essential to further just relationships between individuals and their governments, among groups within a nation and among the countries of the world.

All nations should adopt bills of rights and make them effective.

All states which have not yet done so should ratify the Convention on the Prevention of Genocide, the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the International Convention on the Elimination of Racial Discrimination, and other human rights agreements inspired by the Universal Declaration.

Effective international institutions and procedures should be set up to implement the international law of human rights.

All nations should make the furtherance of human rights an integral element of their foreign policies.

*The Integrity of Human Rights Law*

Human rights laws should be interpreted in good faith to further the rights they seek to promote. They must be applied impartially, with a single standard for all, and any tendency to apply them restrictively so as to thwart their true purpose, directly or indirectly, must be resisted. Human rights issues should be treated on their merits; they should never be exploited for the extraneous political purposes.

*Elimination of Racial, Ethnic and Religious Discrimination*

Racism is an evil wherever or by whomever promoted or maintained, and all forms of racial discrimination and hatred deserve condemnation.

The same applies to ethnic hatred, as is recognised by the International Convention on the Elimination of Racial Discrimination, which outlaws invidious distinctions based on descent and ethnic origins as well as on color and race, and which obligates all states to take immediate measures to eradicate discrimination and hatreds based on such distinctions.

By the same token, discrimination on the basis of religion should be uprooted. An effective human rights instrument against all forms of religious intolerance should be promptly adopted. Attempts to thwart promulgation of such a document should not be allowed to succeed.

United Nations bodies and agencies, Member States of the UN and non-governmental organisations should accelerate their efforts toward eradicating all manifestations of group discrimination and hatred, and should apply a single standard of disapproval to all such violations.

Governments, non-governmental organisations and educational institutions should support the goals of the Decade of Action to Combat Racism and Racial Discrimination, proclaimed by the United Nations on December 10, 1973. They should cooperate to the best of their ability with this program, so as to help eliminate all forms of injustice based on race or ethnic origin.

#### *The Struggle Against Anti-Semitism*

The current manifestation of anti-Semitism in various parts of the world, whether open or under one or another guise, are to be condemned and combated, in keeping with the International Conventions on the Elimination of Racial Discrimination. Vicious libels about Jews and Judaism are being disseminated in some countries, including certain Arab states and the Soviet Union. It is incumbent on all governments, citizen groups and private persons to desist from any anti-Semitic activity and to do all they can to curb it.

#### *The Preservation of Cultures*

Many agreements between two or more nations, including the International Covenant on Civil and Political Rights, confirm the right of each of the world as religious, ethnic and linguistic groups to preserve its unique cultural heritage; but this right is often denied in practice. Jewish minorities in particular have suffered grievously from such denials in some countries. All states should undertake or intensify action to safeguard the rights of all groups to their cultures, according to the existing commitments.

### **III.**

We call on the international community to take a stand against the deprivation of rights currently suffered by Jews – deprivation they have undergone again and again in their history.

Today the Soviet Union denies vast numbers of Jews the right to leave, and harasses, abuses or imprisons those who seek to exercise that right. Soviet Jews also are prevented from freely teaching, practicing and preserving their religion and culture. In Syria, Jews are denied the right to leave, discriminated against and cruelly persecuted.

Silence or inaction in the face of such human rights violations is complicity in injustice. The international community must vigorously condemn and combat these violations.

### **IV.**

We call on Jewish communities to preserve and sharpen the traditional sensitivity of the Jewish conscience to the plight of the downtrodden, whoever and wherever they may be. We reaffirm our faith in study, teaching and education as means to advance

human rights throughout the world. More than that, we pledge to be advocates and activists for human rights.

We recognise the commitment and the contributions of other religions and peoples to human rights and recall our many joint efforts in that cause. We look forward to continued partnership in seeking to bring the blessings of human rights, fundamental freedoms and human dignity to all mankind.

Nobel Laureate René Cassin has eloquently recalled how Jewish leaders throughout the ages and in our own time have upheld the dignity of human beings and championed human rights. We respect and honor their example; we call upon our generation and our children to emulate them.

To labor for the human rights of all peoples has been an integral part of commitment to Judaism throughout our long past. We shall remain faithful to it in the future.

## **The Cairo Declaration on Human Rights in Islam – 1990**

The Member States of the Organisation of the Islamic Conference,

Reaffirming the civilizing and historical role of the Islamic Ummah which God made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with spiritual faith; and the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization.

Wishing to contribute to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah.

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization and of a self-motivating force to guard its rights.

Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person is individually responsible – and the Ummah collectively responsible – for their safeguard.

Proceeding from the above-mentioned principles,

Declare the following :

### ARTICLE 1 :

- a) All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection.
- b) All human beings are God's subjects, and the most loved by Him are those who are most useful to the rest of His subjects, and no one has superiority over another except on the basis of piety and good deeds.

## ARTICLE 2 :

- a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to protect this right from any violation, and it is prohibited to take away life except for a Shari'ah prescribed reason.
- b) It is forbidden to resort to such means as may result in the genocidal annihilation of mankind.
- c) The preservation of human life throughout the term of time willed by God is a duty prescribed by Shari'ah.
- d) Safety from bodily harm is a guaranteed right. It is the duty of the State to safeguard it, and it is prohibited to breach it without a Shari'ah prescribed reason.

## ARTICLE 3 :

- a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate dead bodies. It is a duty to exchange prisoners of war and to arrange visits or reunions of the families separated by the circumstances of war.
- b) It is prohibited to fell trees, to damage crops or livestock, and to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

## ARTICLE 4 :

Every human being is entitled to the inviolability and the protection of his good name and honour during his life and after his death. The State and society shall protect his remains and burial place.

## ARTICLE 5 :

- a) The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from enjoying this right.
- b) Society and the State shall remove all obstacles to marriage and shall facilitate marital procedure. They shall ensure family protection and welfare.

## ARTICLE 6 :

- a) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.
- b) The husband is responsible for the support and welfare of the family.

## ARTICLE 7 :

- a) As of the moment of birth, every child has rights due from the parents, Society and the State to be accorded proper nursing, education and material, hygienic and moral care. Both the foetus and the mother must be protected and accorded special care.
- b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the inter-

est and future of the children in accordance with ethical values and the principles of the Shari'ah.

- c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the Shari'ah.

ARTICLE 8 :

Every human being has the right to enjoy his legal capacity in terms of both obligation and commitment, should this capacity be lost or impaired, he shall be represented by his guardian.

ARTICLE 9 :

- a) The quest for knowledge is an obligation and the provision of education is a duty for Society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee educational diversity in the interest of Society so as to enable man to be acquainted with the religion of Islam and the facts of the Universe for the benefit of mankind.
- b) Every human being has the right to receive both religious and worldly education from the various institutions of education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defence of both rights and obligations.

ARTICLE 10 :

Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.

ARTICLE 11 :

- a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most High.
- b) Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all states and peoples to support the struggle of colonized peoples from the liquidation of all forms of colonialism and occupation, and all states and peoples have the right to preserve their independent identity and exercise control over their wealth and natural resources.

ARTICLE 12 :

Every man shall have the right, within the framework of Shari'ah, to free movement and to select his place of residence whether inside or outside his country and, if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari'ah regards as a crime.



## ARTICLE 13 :

Work is a right guaranteed by the State and Society for each person able to work. Everyone shall be free to choose the work that suits him best and which serves his interests and those of Society. The employee shall have the right to safety and security as well as to all other social guarantees. He may neither be assigned work beyond his capacity nor be subjected to compulsion or exploited or harmed in any way. He shall be entitled without any discrimination between males and females – to fair wages for his work without delay, as well as to the holidays, allowances and promotions which he deserves. For his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

## ARTICLE 14 :

Everyone shall have the right to legitimate gains without monopolization, deceit or harm to oneself or to others. Usury (riba) is absolutely prohibited.

## ARTICLE 15 :

- a) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general. Expropriation is not permissible except for the requirements of public interest and upon payment of immediate and fair compensation.
- b) Confiscation and seizure of property is prohibited except for a necessity dictated by law.

## ARTICLE 16 :

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interest stemming therefrom, provided that such production is not contrary to the principles of Shari'ah.

## ARTICLE 17 :

- a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his self-development and it is incumbent upon the State and Society in general to afford that right.
- b) Everyone shall have the right to medical and social care, and to all public amenities provided by Society and the State within the limits of their available resources.
- c) The State shall ensure the right of the individual to a decent living which will enable him to meet all his requirements and those of his dependants, including food, clothing, housing, education, medical care and all other basic needs.

## ARTICLE 18 :

- a) Everyone shall have the right to live in security for himself, his religion, his dependants, his honour and his property.

- b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.
- c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

ARTICLE 19 :

- a) All individuals are equal before the law, without distinction between ruler and ruled.
- b) The right to resort to justice is guaranteed to everyone.
- c) Liability is in essence personal.
- d) There shall be no crime or punishment except as provided for in the Shari'ah.
- e) A defendant is innocent until his guilt is proven in a fair trial in which he shall be given all the guarantees of defence.

ARTICLE 20 :

It is not permitted without legitimate reason to arrest an individual, restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experimentation without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

ARTICLE 21 :

Taking hostages under any form or for any purpose is expressly forbidden.

ARTICLE 22 :

- a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.
- b) Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah.
- c) Information is a vital necessity to Society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm Society or weaken its faith.
- d) It is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination.

ARTICLE 23 :

- a) Authority is a trust; and abuse or malicious exploitation thereof is absolutely prohibited, so that fundamental human rights may be guaranteed.

- b) Everyone shall have the right to participate directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of Shari'ah.

ARTICLE 24 :

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

ARTICLE 25 :

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

## An Autobiographical Sketch

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My own personal concern for the relationship between human rights and religion stems from my upbringing and background. I was brought up in the Jewish tradition in Germany and became a refugee child in England at the age of three. My status as a refugee taught me that you can adapt to wherever you live, and in so doing experience a breadth of human society which enriches you. This was made possible for me through the concerns and caring attitude of others.

We kept the major Jewish holidays and went to synagogue, and although we were more liberal than orthodox, my father kept traditional values. Our family on my father's side were partly of Sephardi origin. Sefarad is the old rabbinic word for Spain and Portugal, thus 'Sephardi' denotes those Jews whose ancestors hailed from Spain or Portugal and who were expelled from the Iberian Peninsula in 1492 (Spain) and 1496 (Portugal) respectively. Many of the merchant families found refuge in North-Western European cities such as Amsterdam, Copenhagen, London and Hamburg. In Hamburg, the Sephardi Jewish community was the first Jewish group to be allowed to settle within that city, partly because they successfully pretended to be Portuguese Catholic merchants. Yet the community was quickly allowed to practise Judaism and, unusually, given permission to establish a synagogue, a privilege that local German Jews would not be accorded until the second half of the seventeenth century. The two communities were separate from very early on.

Some of my family were thus part of a long Sephardi history in the midst of the northern 'Freie und Hansestadt Hamburg' which itself had a longstanding tradition of trade and exchange all over the world, although my forefathers came from Copenhagen and Rendsburg, which was originally Danish before it became part of Prussia. Prior to the Danish-Prussian war they worked for the kings of Denmark as accountants, and the crown of the Danish king is engraved on their gravestones, to denote that they were crown-protected Jews of Denmark, until they moved on to Hamburg.

The Reform Jewish movement was inaugurated at the Hamburg Temple in 1812 and was part of the Jewish community of Hamburg, Altona and Wandsbek (known by its Hebrew acronym AHU), a federation of three communities on land that today is Greater Hamburg. By that time, the Jewish community of Altona in particular had developed into a centre of Jewish learning and spirituality renowned throughout the Jewish world.

My father was proud of his Danish ancestry before his grandfather<sup>428</sup> left for Hamburg, which became an independent state after the Danish-Prussian war. He was a remarkable example of a person who adapted to his new environment as soon he came to England to escape the Third Reich – not only to find a way to earn his living, but to do voluntary and human rights work in his own way. The same was true of my mother.

My father was active in the St John's Ambulance and became a member of the Order of St John. He offered to read the Old Testament lessons at camps for children, and even did so in the church where they held the service for the St John's Ambulance, which was his great love. He always said that the greatest gift from God was to hear children laughing at the camps that he and my mother voluntarily organised in Buckinghamshire where we lived. This brought 200-300 children together every year. My mother would help with the cooking while my father, together with groups of other volunteers of St John's men and women, organised the camp.

My mother's family kept what could be called 'middle-of-the-road Judaism' in the Ashkenazi tradition. I was fortunate that my grandparents on my mother's side also came to England with us, and my grandfather went to synagogue every Saturday.

My mother was one of the first female students to receive a doctorate in political economics at Königsberg and Heidelberg University. She was an active young woman in Germany before meeting my father in Hamburg. After emigrating to England, she enjoyed doing voluntary work and even played the organ in a Baptist church in Chesham when they were short of an organist. She would cycle there on Sunday mornings. She was also extremely busy in our local synagogue, a mere hut in Amersham, Buckinghamshire, and helped to organise everything with my father. We used to walk to synagogue – a Jewish tradition – on Saturdays.

The high holidays and Saturdays played an important role in my life, in a multi-faith way, especially during the war when we were in Amersham. There were Jews who were extremely religious and others who were liberal, yet we all managed to work and co-operate together. My mother also ran the Amersham Woman's International Zionist Organisation (WIZO) in the early 1950s, which collected money for a baby home in Jerusalem. Her sister was working on a kibbutz in Israel, and had a deep love for everything to do with Israel. My father was initially less enthusiastic, but after visiting the country realised what an important role it played for Jews worldwide. Nevertheless, my father concentrated on developing his roots in the UK. The socialist background of the kibbutz appealed to him and this was what appealed to me, although more theologically. Jews needed to till the soil in order to create a spiritual society, I thought, rather than praying in synagogue. Later I realised how important both were, particularly after I married. My late father-in-law drew my attention to writings on Judaism by G. F. Moore, a Cambridge professor who, although not Jewish himself, wrote so clearly that many things became far more interesting for me. Perhaps it is at times easier for an English-educated child to comprehend the informed and educated explanation of his own faith by those educated in this country, even if the teacher is not Jewish! Since then, I have been reading constantly.

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428 Who was Mayor of Rendsburg.

We lived in a charming cottage in Amersham and later my parents bought a very comfortable house. During our cultural afternoons, my mother used to play the piano at which she was extremely accomplished. She could read any score and we often heard Schubert Lieder sung by friends of ours. Walter Goehr, an eminent conductor of the BBC Symphony Orchestra who also came from Germany, often used to come and help out during these afternoons.<sup>429</sup> This was wartime and people did not go to London for concerts, so our home became very much the Sunday afternoon place for people who created music.

During the Second World War, many different people living in London came and stayed in our house. My mother put down mattresses in all rooms so that people could be comfortable and safe away from the bombing. With our nanny, who was also a refugee and who was like a second mother to us, my mother worked very hard preparing food and baking cakes so that everyone had enough to eat. We had our own chickens, geese and ducks, with special feed rations to sustain them and provide eggs for our neighbours and family. From time to time one of these fowls would appear on the dining room table! This feeling of community spirit was nurtured at many lunches, dinners and concerts in our home. People of every profession and walk of life were there, especially refugees like ourselves from Germany and Austria. Many were from the *Kindertransport*, including some of my cousins.<sup>430</sup> I felt secure but was aware that there were many worlds outside of my own which I would want to explore when I grew older.

At the beginning of the war, we children had a great shock when the police took my father away early one morning. He was interned as an enemy alien, despite the fact that he was a Jewish refugee from Nazi Germany. Fortunately, he came back after six months, but he was extremely ill and never really recovered. He was also terribly shaken and depressed by the whole experience, which affected him much more than many other people. The lack of freedom, the degradation of being locked up and not being with his family, the injustice – all this was brought home to him when non-Jewish Germans from circuses who had elephants were allowed leave to feed their animals, whereas internees like himself were not even allowed home to look after their own children. My mother coped with this period by letting virtually every room in our rented cottage and expanding our chicken flock in the garden. In this way, we managed to survive quite well.

We as children were not aware that money was extremely tight, but we were aware that we could have been interned any day. My mother had packed rucksacks which were in the hall, just in case the police came again. We would otherwise have been unprepared, as my father had been when he was arrested and interned. He was also very bitter that having done so much voluntary work since he arrived in England in 1936, he was still classed as an enemy alien due to Home Office procedures. Fortu-

429 His son, now a lifetime friend, has become Professor of Music at Cambridge and a prominent composer. We were probably too young to appreciate the romanticism of Lieder!

430 The 50th Anniversary of the *Kindertransport* (10,000 children) was organised by a group of dynamic women and I was asked to help with this remarkable reunion that I opened in Harrow-on-the-Hill.

nately he recovered from his depression and rejoined the St John Ambulance throwing himself into its work. It was, in some ways, a haven – just knowing that once again he belonged, when in fact everything had been taken away from him – once in Germany and now nearly again through internment in Britain.

I was able to attend Berkhamsted School in Hertfordshire, and as I moved up from the prep school to the senior school past the junior school, I joined the Officers Training Corps. I had already been a member of the Scouts and the St John's Ambulance Cadets in Amersham. I appreciated my school and was absorbed in the school and all its activities.

During the Second World War I hated the Germans so powerfully that I would have killed them in my dreams, although my feelings now are totally opposed to killing and capital punishment. I can nevertheless well understand hatred of another race that springs from one's own suffering and misery. My wife's family was much more traditional and had a very big influence on the Sephardi community. After I married, I started to worship at the Sephardi synagogue in Maida Vale, the Spanish and Portuguese congregation, which in a strange way reunited me to a tradition lost since coming to England as an infant. I joined the Spanish and Portuguese congregation in London which could trace members of my wife's family going back to the time of Cromwell, when they first came to settle in England. I became more aware of the development of emancipation for Jews in this country. It was possible to have a deep religious belief and to co-exist here. I had met my wife at the Anglo-Jewish Association, where after college I also met many stimulating young people who have been friends for my entire life. Through this organisation I learnt much more about the Jewish community and subsequently through them, under the guidance of the late Maurice Edelman MP, I became the AJA's Treasurer.

Years later, after Robert Carvalho (who was the President of the Elders of the Spanish and Portuguese congregation, as well as being President of the AJA) followed Harold Sebag Montefiore, Basil Bard CBE and Victor Lucas, I was elected President of this association. Representing leading Jews on its council from all walks of life was a big challenge for me, and much of my human rights work was channelled through this body. Fred Tuckman OBE followed me as the next President.

Both my wife's family and mine have a sense of spirituality and concern for people of all faiths, which of course is part of Judaism. I am sometimes accused of being more an anthropological Jew as I always wish to learn more about the symbolism in our congregation and its traditions. I am part of a religious body, a people marked out in their identity by their religion. As I live today, I consider myself to be a spiritual person. Perhaps I do not pray enough for my own well-being, but I prefer to be an activist in dealing with intolerance wherever it occurs. I believe my passion for this has come partly from having heard of the horrors of the Holocaust and those members of my family who were killed, and through the suffering of many of my relations who had to start completely anew in their middle age. It is remarkable how many of them learnt English and were able to find positions to develop their personalities and careers, but it was certainly not easy for any of them. Some, like my father, were able to bring their expertise in business management and textiles to this country and developed this talent enthusiastically.

My two uncles in America were a surgeon and a food chemist, and they too had a deep sense of spirituality and humanity. My late uncle, Professor Helmuth Nathan, worked in Harlem with poor people, operating voluntarily on them nearly once a week throughout his life. I was deeply moved at his passing, as so many came to his funeral.

Today I am not particularly ritualistic in a religious way (although it depends on which end of the spectrum you look from), and I am not associated with the most right-wing traditions, even though I am a person who derives comfort from prayer and religious thought. I am fully aware that religions are a very important need for many of us, including myself. Whether that need is in our own imagination, or is in fact a reality, does not matter to me in the end provided it gives comfort. I would never dispute or argue about people's religious faiths, as I would be terrified to undermine their sense of security.

In the same way, I am not particularly keen to debate the possibility that my religious beliefs may be illogical – they are part of me. To me, religion is a way of holding life together. It is really an explanation of the unknown – I am part of a tribe or group which has evolved over thousands of years, and religion copes with our fears. Our beliefs may or may not be true.

I have explored this notion in Chapter 3; suffice it to say that I am committed totally to the belief that there is something in all religions that is completely beyond our comprehension. The divine incomprehensibility of God, as mentioned in Maimonides' first and second principles, seems more logical to me. What this something is, is another matter. I am certainly not an agnostic or an atheist, and I find that all religions have something remarkable and outstanding about which one needs to know and perhaps if appropriate follow.

I can happily worship anywhere that is not an affront to my own community. The concept of God is complex for us all, and obviously continues to provoke much thought with me – and will continue to do so.

I am committed to human rights that respect the differences of people everywhere and see the absolute imperative for humanity to work together. I am happier conceiving of rights as obligations of one human being to another, a responsibility rather than a right. The discussion has highlighted why this functions better when rights are in dialogue with religion. In my own tradition, it is worth noting that there is no Hebrew word for 'rights', only obligations to each other. Jewish law has a rich and deep understanding of the law of obligations, as it relates to possessions, land, business, contracts, and other relationships. Viewed from the perspective of obligations, rights become less something which a person naturally deserves (to potentially twist and turn to their own selfish ends), and more something that enables one to flourish as a human being within a collection of other human beings.<sup>431</sup> The strength of this

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431 Dr Isaac Herzog, the late Chief Rabbi of Israel, discusses obligation law at length in *The Main Institutions of Jewish Law: Volume Two – The Law of Obligations* (The Soncino Press: 1980). The language of obligation is also enshrined in many human rights documents, including the European Convention of Human Rights and Fundamental Freedoms, which talks of 'civil rights and obligations'.



articulation is that it places an individual and his or her rights directly into a social and civil context – the very context where the clash of rights is most clearly seen.

The differences between various faiths and cultures can be enhancing and can bring a rich diversity into all our lives. Co-operating together, we each can retain our communal and religious traditions, and yet we can do more than we could if we were isolated from one another.

Before I conclude, I should like to reflect briefly on a matter that is dear to me, but that is not debated at length in the body of this book, mainly because it would make a book in and of itself.

My involvement with Israel goes back to my earliest childhood when my uncle and aunt (my mother's youngest sister) moved to Palestine from Germany in the early 1930s to develop a Kibbutz called Ashdot Yaakov. We received letters every week from them that were read to us on Friday evenings by our grandparents. These were about life on the Kibbutz, the problems of growing fruit trees and the difficulties of rearing animals, clearing mosquito-ridden swamps and planting eucalyptus trees to absorb brackish water and wash the salt out of the soil before planting. Right through my earliest childhood, my uncle was an enthusiastic writer of English, and wanted to give us a feeling about the spiritual values of Palestine. When they moved with their son to a *moshav* (collective farm) where the work is only done by those who manage their own farm we used to wait to hear of the misbehaviour of their donkey which was used for ploughing and laugh at my uncle's stories about this little farm, which became part of our lives, where they planted citrus fruit and pecan nut trees. It was through this that the spiritual value from a socialist point of view of sharing things with everyone and equality of all human beings became a dominant feature of our attitude to Palestine and later Israel after its foundation. My uncle was a Talmudic scholar but not interested in practising any ritual religion whatsoever.

I recollect my family telling me how often they had stretched out their arm in friendship to the Arab farmers and had been rebuffed. Much later when Israel occupied the West Bank, after the 1967 war, the Palestinians who were now defined only as those of Islamic descent and who lived on the West Bank used to come over with Israeli Arabs in big Mercedes cars to help pick the oranges in the village where my aunt and uncle had their farm. They refused to make use of this cheap labour as they felt it was immoral not to do the work themselves, but others in the village were keen to have help. Those who took help and were good friends of my aunt used to ask her to keep spare jeans and T-shirts in her cupboard for the young Arab people who would come to her, have a shower and slip on Israeli clothes until they were collected in the evening. They wanted to be like Israeli youngsters in modern clothes. Sometimes a youngster helping to pick the fruit was not well and my aunt would pick her up and put her in her bed and look after her until she had to go home at night. They used to eat together with many of these Arab workers in their little house and there was, and still is, a very friendly relationship between many Israeli and Palestinian Arabs and Israelis at this level. Before she died my aunt was in a Nursing Home. Some of the most wonderful nurses were Israeli Arabs who came in each day to help. There was a deep love and affection between them and my aunt.

Many Israelis are absolutely terrified of the Arab neighbour. The propaganda which has indoctrinated Arabs and their children now for generations makes them hate anything which is in Israel. When I went to a major hospital in Jerusalem on one visit to see a friend who was extremely ill I was amazed at the number of Palestinian Arabs and Israelis coming in with their grandmothers or their babies for treatment, having operations and then sometimes lying in bed and, according to one young doctor, cheering when a bus was blown up by a suicide bomber killing dozens of children. They seemed to have a separation of attitudes between the outside world of Israelis and their personal need to be helped and cured by them.

On many occasions I have been involved in discussing Palestinian/Israeli problems with British and Israeli Government officials. I was amazed to hear how the Palestinians generally preferred the authoritarian Prime Minister Begin to Peres because they felt that they understood and knew where they stood with this type of right-wing leader, whereas Peres was to them someone completely incomprehensible. I would have thought the opposite would have applied.

I cannot really understand why the Islamic fundamentalists could not have seen that it was in their interests to have peace with the State of Israel and to have channelled their hatred towards those Arab countries who have never helped the poor Palestinians kept for generations in refugee camps. If one looks at the State of Israel, it is impressive how many refugees have been absorbed and have become part of the dynamic structure of the country. One is even more conscious of the total failure and dysfunction of many of the Palestinian Arabs and, in particular, those Arabs who could have done something. The vast sums of money now being poured into the Lebanon by several Arab countries since the war is an example of what could have been done 50 years ago to help the Palestinian refugees but their view was always that if they helped them they would never come back to Palestine and it was better to let them rot in camps than to give them an opportunity to develop a new life.

I cannot help reminding myself that, although many of the Jews in Israel have come from European countries and from countries in the Middle East, there have been Jews living in Palestine since 1300 BC. The Ottoman Empire constituted a wonderful image for many Muslims in that the whole area was governed by Turkey for 500 years, and everybody was oppressed and... a minority. This was an acceptable situation for many Muslims but, in fact, under the Ottoman Empire, the Jews of Palestine were better off alongside their neighbours than afterwards. No Jews can live in Saudi Arabia, Jordan or most of the Middle East countries today. When the West Bank and part of Jerusalem were part of the Hashemite kingdom of Jordan the synagogues and the ancient cemeteries were desecrated. There was no respect for Jews or anything relating to them. Today, I think it is true to say that all the Islamic holy places in Israel are beautifully maintained, spotlessly clean and looked after and any Muslim can go there to pray without any inhibition.

I find the mutual distrust deeply saddening. I was involved with a big Jewish international organisation that offered and gave several million dollars to teach the Palestinians in Gaza plumbing and building in order to improve their own housing. Some of this money was actually dispensed. As soon as it was working, the Palestinians accused the State of Israel of trying to bind those Palestinians to the State of

Israel and to be their building workers. They could not see that the genuine intention was to improve conditions in Gaza. When a few years ago a major project at a school of textiles with which I was involved started to teach Jordanian Arabs textiles the Palestinian Arabs immediately used the same tactic to say that Israel was avoiding giving them work.

In the various government conferences in Israel which I attended, the general view switched after the 1967 war from helping the Arab neighbours to keeping a complete separation because the view in Israel was that whatever help one gave would be used to attack Israel and not to build up the feeling of co-operation for the future.

I do not know what the solution is. I have thought about this all my life. The creation of the State of Israel came about to a large extent due to the horrific anti-Semitism which existed in Europe for 2000 years and that ultimately culminated in the Holocaust. The whole of Europe must feel responsible that such a dream as a State for Jews materialised due to persecution and not only because of religious beliefs. All people have the right to live without harassment.

I love the State of Israel because whenever I visit it I see new immigrants blossoming out and developing in all fields, from science to education, although there is an enormous area of the State of Israel which has indescribable poverty but about which one hears little. It is not easy to absorb 1 million immigrants from Russia who had been persecuted, or those from Ethiopia with a different cultural background, but to each new challenge there has been a response from the people that was more than positive. The same could have applied to the territories around the State of Israel. It is not unnatural that as fear grows many people become more defensive and truculent. The Israeli Arabs are in the Knesset (Parliament) and are active, vocal and critical. They have the right to speak their minds. There is no doubt that human rights in Israel are better for those of the Jewish faith than others but the difference is very marginal considering how it is in all the countries surrounding the State of Israel. It is still the only bastion of democracy in the Middle East and it has been the dream of Jews for centuries to look to Jerusalem and to Zion as their home.

For myself, Judaism is more universal than national and therefore it seems to me that although the State of Israel is crucial for the well-being of world Jewry and world Jewry is crucial for the State of Israel, Jews should live all over the world and should participate in the activities of the communities where they live for the well-being of everybody. I have always believed in this, and have been brought up to believe that dialogue with all faiths and all people is part of the richness of life. If all Jews moved to the State of Israel the world would, in my opinion, be worse off and indeed Jews themselves would be far worse off if they did not enjoy cross-fertilisation with other faiths. This is one of the tragedies I see of Jews emigrating to Israel. In two generations many of them have lost the ancient cultures that they brought from India, Ethiopia, Central Europe and elsewhere. In fact, many have even lost their Jewish identity, as there are far fewer practicing Jews in Israel than one might imagine. Or they have become extremely orthodox and live again in a Ghetto within a Ghetto that is the State of Israel. It is very difficult for an Israeli not to be isolated when he is surrounded by enemies. The only cross-fertilisation for those living in Israel is to move out of Israel for education, or bring in people from outside to enrich that society. The Shenkar

College, for instance, the textile college with which I am deeply involved, has contributed to this work by bringing in international experts on textiles and marketing. Most Israeli higher educational institutions have developed similar strategies. In this way, the students have the opportunity to go outside of Israel to see what the world is like and not just become parochial in a country that is smaller than Wales. I genuinely believe that this type of support for Israel by world Jewry is crucially important for its very survival, and similarly the identification of every Jew worldwide with the State of Israel is spiritually equally important. There are many Scotsmen living in England who are proud of their Scottish ancestry. Jews also can be affectionate to two different countries.

I am deeply disturbed at times by the policy of the Israeli government in dealing with the problem of rocket and terrorist attacks. I am not sure whether the counter-attacks and reaction of reprisals can really achieve very much. On the other hand, I do not know what one should do. One cannot allow people to shoot over one's border or to kidnap people without taking some counter-action. The situation in Northern Ireland was extremely difficult and on the whole the British Government was very restrained in its reaction to the dreadful bombings that took place. There were no counter-attacks or reprisals against the Irish Republic, and it reflects a great deal of restraint from both Dublin and London that they have always remained on reasonably good terms. The analogy is probably not similar but the hatred between Catholics and Protestants in Northern Ireland was also very much a political manoeuvring for power.<sup>432</sup>

In the long term, the State of Israel must live in peace with its neighbour, but if the neighbour does not want it to exist or to live in peace there is no other solution but to have a strong and powerful army. Israel cannot be as powerful and strong as all the 22 Middle East countries that are Arab-dominated.

Jerusalem has always been at the heart of Jewish worship. Mecca is the central point for all Islam and it is wrong to assume that Jerusalem is fundamentally part of the Arab world. There was a time in the 1930s when Dr. Judah Leon Magnes, first President of the Hebrew University, thought that a federation of states would be a better solution than an Israeli State, because the Arabs would accept this with Israel then being a minority in a confederation. I still think this would be a good solution if the State of Israel could be treated as an equal in a confederation, but I am doubtful that any Arab country would accept this or that the people on the streets of Israel would, for some time to come, trust any Arab country to treat them as an equal. My only hope is that Arab public opinion, which is so oppressed by its leaders, will one day revolt and force through equality, thus enabling these countries to blossom out and become a modern, viable group of states rather than living off high oil revenues while exploiting their own people in an appalling way. The Arabs too have a right to freedom and dignity.

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432 In a recent talk by Sir Quentin Thomas, he observed that one of the costs of the resolution to the conflict was the denial of any one group being victorious. Compared to the Middle East, a positive outcome was achieved in Northern Ireland thanks to the fact that there was enormous common ground between the two parties, whereas in Israel / Palestine there is very little.



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