4 Pinsker Street, POB 4702, Jerusalem 91046, Israel
Tel: +972-2-530-0888 / Fax: +972-2-530-0837

International Conference

The Role of Religion in Human Rights Discourse

May 15–17, 2012

23–25 Iyar, 5772

Academic Supervisors

Prof. Yedidia Z. Stern

Prof. Hanoch Dagan

Prof. Shahar Lifshitz

The International Conference on
The Role of Religion in Human Rights Discourse
is a project of IDI's
Human Rights and Judaism Project

Project Directors
Prof. Yedidia Z. Stern
Prof. Hanoch Dagan
Prof. Shahar Lifshitz

Research Team
Rabbi Dr. Yehuda Brandes, Researcher
Rabbi Shay Piron, Researcher and Chair of the Annual Professional Conference
Dr. Benny Porat, Researcher
Dr. Avishalom Westreich, Researcher
Neriah Cohen, Research Assistant

Advisory Council
Co-Chairs
Justice Aharon Barak
Justice Meir Shamgar

Members
Professor Gabriella Blum
Professor Ya'akov Blidstein
Dr. Arye Carmon
Rabbi Shlomo Dichovsky
Rabbi Eliyahu Bakshi-Doron
Professor Ruth Gavison
Rabbi Avi Gisser
Professor Mordechai Kremnitzer
Professor Suzanne Last-Stone
Rabbi Israel Meir Lau
Professor Fania Oz-Salzberger
Rabbi Professor Daniel Sperber

IDI gratefully acknowledges the generous support of an anonymous donor operating in Israel, the American Friends of IDI, and The David Berg Foundation of New York

Panel 1: Freedom of Religion

Equal Membership, Religious Freedom, and the Idea of a Homeland

Christopher L. Eisgruber and Lawrence G. Sager

Many conceptions of religious freedom (including our own previous work) incorporate principles requiring that states provide equal rights and status to people of different faiths and ethnicities. Such conceptions appear inconsistent with the practice of any state that privileges a specific relationship to religion—such as, for example, Israel's commitment to be a Jewish state or France's commitment to a secular national identity. In this paper, we examine whether the idea of a homeland provides a way to reconcile a limited set of ethnic or cultural preferences with the demands of a robust equality principle. We elaborate the idea of a homeland as promising not only secure refuge but also cultural community. We also suggest how equality principles generate limits on what a homeland may offer to its people and obligations that a homeland must honor with regard to minorities resident within it. We use this account of equality and the idea of a homeland to analyze human rights controversies in Israel. More broadly, we develop a preliminary taxonomy of equality-respecting regimes—using as examples idealized forms of America's liberal pluralism, Israel's Jewish state, and France's robust commitment to secularity—with the hope of explaining why general principles of religious freedom may apply differently to different polities.

Religion in Politics: Rawls and Habermas on Deliberation and Justification

Prof. Menachem Mautner

Two distinct concepts are relevant to our understanding of the political: "deliberation" and "justification". I shall argue that John Rawls's discussion of "public reason" in *Political Liberalism* fails to adequately distinguish between the two concepts. Following that failure, a series of writers has understood Rawls to mean that his concept of public reason amounts to the exclusion of religious discourse from political deliberation. I shall argue that Rawls's concept of public reason has to do with justification, rather than with deliberation, and in any event, drawing on Habermas, Waldron and other writes, religious discourse should play important role in political deliberation.

Three Conceptions of Religious Freedom

Prof. Kenneth Marcus

This conference paper will examine the similarities, differences and substantive ramifications among individualist, institutional and ethno-religious approaches to religious freedom in American legal and political thought. In American constitutional discourse, two conflicting ideas of religious freedom have enjoyed prominence since the colonial era. The first, dominant, Protestant-inspired notion, defends the right of individual conscience against governmental infringement. By contrast, a second conception, more closely related to Catholic interests and ideology, has supported the prerogatives of religious institutions as against either individuals or the state. This idea of religious freedom is also deeply rooted in American constitutional thought, and it received important recent vindication, for example, in the 2012 U.S. Supreme Court case of *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC.* Many of the fissures in American constitutional thought can be explained in terms of the frictions between these two fundamentally different conceptions, which may be described respectively as individualist versus institutionalist. There is, however, a third approach, equally important to American law although more closely associated with Equal Protection jurisprudence, which concerns the protections that members of ethno-religious groups require from discrimination or animus based on such group membership. The need for this approach arises from the existence of non-Christian groups, such as Jews and Sikhs, who face religious violations that are different in character from those which primarily concern Protestants and Catholics. This paper will argue that a complete account of religious freedom must fully address individual, institutional and ethno-religious rights. Moreover, the importance of these three, distinct forms of religious freedom has further implications for the way in which religious conflicts are resolved, such as the need to appreciate that standards for assessing religious interests must be formulated in a way that respects the fundamentally different claims which faith traditions make upon the concept of freedom.

Panel 2: Freedom from Religion

Political Liberalism, Religious Liberty, and Religious Establishment

Prof. Richard Arneson

Can a just state have a religious establishment? In such a regime, either some state policies are justifiable, if at all, only by appeal to religious doctrines, or the state promotes some religious doctrines, or their adherents, over others (or both). A religious establishment might be nonsectarian, promoting bland doctrines or favoring the religious over the nonreligious. Religious establishment is a common practice in modern democracies. According to some political theorists, the just state must be neutral with respect to all controversial ways of life and conceptions of the good including religious ways and conceptions. The neutral state adopts only policies that none can reasonably reject and refrains from promoting some controversial ways of life and conceptions of the good over others. This essay argues against the comprehensive state neutrality doctrine and also against the idea that religious establishment might be just.

Freedom from Religion

Prof. Avihay Dorfman

In a previous essay, I have argued that the Free Exercise clause—and freedom of religion, more generally—is best explained by reference to a republican ideal of political legitimation. In the present paper, I seek to address the theoretical and doctrinal questions pertaining to the possible unity of the Free Exercise and the Establishment Clauses—and freedom *of* religion and freedom *from* religion, more generally—in the light of that republican ideal. I take particular issue with a familiar argument, according to which freedom-of-religion and freedom-from-religion are conceptually and normatively distinct. I seek to refute this argument, showing that these two forms of freedom are in fact surface manifestations of a similar political ideal of democratic self-governance. The Free Exercise clause protects freedom of religion, whereas the Establishment clause protects freedom from religion. I further demonstrate the doctrinal implications of the argument to the contemporary religion jurisprudence of the U.S. Supreme Court. My overall ambition in this paper, therefore, is to offer a unified theory of the two Clauses that could underwrite sectarian toleration among free and equal citizens of a democratic order.

From Damnation to Domination to Dignity: Religion within Rights-Based Democracy

Prof. Lorraine Weinrib

The modern constitutional state is rights-based. It protects the autonomy and equality of the individual, not to privilege deracinated beings but to support human flourishing, including flourishing that takes place within the privacy of the family, the embrace of religious and community life and/or the vitality of an open and democratic public sphere. In the aftermath of WWII, this protection became the primary obligation of states to preclude repetition of the horrific repudiation of the individual, of the family, and of religion and nationality in the Holocaust. The modern constitutional state progressively displaces modes of governance and social ordering inconsistent with the postwar commitments to autonomy and equality in a variety of formal and informal ways, including judicial development of unwritten constitutional norms, entrenchment of new or renovation of old written constitutions, and adherence to international human rights law. Individuals and groups that feel threatened or stand to lose considerable privilege resist the transition in the name of tradition and religious obligation. Their claims to co-opt the engines of the modern state, however, although promoted in the name of religious freedom, actually assert religious establishment. Of particular importance is the resistance to the changes that the modern constitutional state precipitates in family law, education and the public sphere. Given the shared principles and methodologies under Canadian and Israeli rights-protection, I analyze the constitutional response to this resistance under the *Canadian Charter of Rights and Freedoms, 1982.*

Panel 3: Religion as a Source of Human Rights

The Role of Religion in Debates over the Meaning of "Human Dignity" in Human Rights Discourse

Prof. Christopher McCrudden

There is a well-recognised role that organized religions played in the post-Second World War development of international human rights protections. One of the problematic aspects of this protection is the extent to which there appears to be disagreement over the basic question of what underpins these human rights. Increasingly, "human dignity" has been drawn on to fulfill this role. But "human dignity" is a concept with strong resonances in political, philosophical, legal, and theological understandings of human rights. What, if any, is the religious understanding of "human dignity" and what role, if any, does it play in the development of legal interpretation of human rights.

Glory of God and Human Dignity: Between Dialogue and Dialectics

Dr. Itzhak Brand

Respect for human beings is one of the cornerstones in the edifice of human rights. It falls into two categories: one is honor, which is based on social status or function and is a hierarchical, non-egalitarian concept. The second is dignity, which is based on each person's innate human worth and is an ethical and egalitarian concept. Peter Berger defines the former as referring to a person's external attributes, with a vertical human and societal expression; the latter, he says, refers to a person's innate attributes and is expressed horizontally. Berger maintains that honor is a conservative, religious concept, while dignity is a modern, liberal one.

Berger's definition of religious honor or respect generally corresponds to that of the Jewish religion. Most respect-oriented terms that appear in the Bible are vertical and external and refer to God or to those of high social rank. It is true that talmudic halakhah mandates respect for human dignity, which includes respect for the body—whether of a corpse or a person. The standard explanation of this obligation, however, is based on the fact that humankind was created in the image of God (similarly, respect for rabbis and kings is equated with respect for God). Thus human dignity is based on God's glory; that is, even horizontal human dignity originates from the vertical concept of honor. This in turn reinforces the obligation to respect human

dignity. From a theological standpoint, the Other is identified with God. This is the background for the halakhic dictum, “Great is human dignity, in that overrides a negative precept of the Torah.”

The identification of human dignity with God’s glory has another implication, however: if human dignity derives from God’s glory, respect for human dignity must necessarily be curbed when it conflicts with respect for God. For instance, halakhah places limits on sinners’ right to respect. Moreover, the Babylonian Talmud weakens the principle, “Great is human dignity, in that it overrides a negative precept in the Torah,” with a countervailing principle, namely: “There is no wisdom, nor understanding, nor council against the Lord” (Prov. 21:30); “whenever the Divine Name is being profaned, honor must not be paid to one’s teacher” (Sanhedrin 82a). These principles understand human dignity not as an independent value, but rather as one that derives its validity from God’s glory; therefore, human dignity cannot override respect for God.

The religious status of the human right to respect and dignity is, therefore, ambiguous. On the one hand, theology reinforces this right by codifying it as a religious obligation. On the other hand, religious law is not prepared to grant humanity the upper hand, as a rival to God, as it were. The Babylonian Talmud expresses this inherent contradiction in its main discussion of human dignity (Berakhot 19b–20a). The discussion begins from the law that obligates a person who is standing in a public place clad in a garment made of sha’atnez (containing both wool and linen) to remove it then and there, in front of all the people standing around. Despite this breach of human dignity, the Talmud prefers to uphold the halakhah, citing the principle, “There is no wisdom, nor understanding, nor council against the Lord.” From this point, the talmudic discussion proceeds through five stages. Each one begins with the halakhic stipulation that human dignity overrides the standard halakhah (stage 1 of the dialectic). For instance, it is deemed permissible for priests to be ritually defiled by contact with the dead in order to show respect for a mourner who is returning from the cemetery; so too, nazirites are allowed to become ritually impure in order to bury a *meit mitzvah* (a corpse for which there is no one else to tend to). Each of the five instances continues the oscillation between the pole of human dignity and the antipode (stage 2 of the dialectic), overruling the deviation from standard halakhah because of the principle that “There is no wisdom … against the Lord.” In each example, the conclusion aims to achieve an equilibrium (stage 3 of the dialectic); but this point is not fixed and varies among the five examples: in the earlier ones, the value of upholding halakhah is predominant and human dignity overrides only “weak” halakhot (i.e., minor rabbinical prohibitions). In the later examples, though, the trend goes in the opposite direction: human dignity is presented as such a strong value that it can override even major halakhot (i.e., certain Torah prohibitions).

The talmudic attempt to characterize the halakhic status and identity of human dignity and respect for God leads to several conclusions:

First, the opposing values (human dignity and respect for God) are in dynamic competition. Second, there is an attempt to diffuse the tension and show how the two values complement each other. Third, the two types of respect for human beings—horizontal and vertical—are not distinguished. That is, respect for corpses is not differentiated from the honor owed to kings; respect for mourners is presented in the same category as the honor accorded to sages. In other words, the horizontal and vertical types of respect for humans are intertwined. Fourth, the power of human dignity is variable, oscillating between the capacity to override only a "weak" halakhah and the ability to take precedence even over a "strong" halakhah.

Overall, one might say that the relationship between these values is one of simultaneous harmony and friction: harmony, because the ultimate source of human dignity is God's glory; friction, because human dignity seeks to take precedence over His glory. Religion, therefore, serves a dual and dialectical role vis-à-vis the right to respect: it buttresses and strengthens this right on the one hand, yet weakens and curbs it on the other hand. These conflicting roles stem from their common source: the identification of human dignity with God's glory. While this identification strengthens human dignity, it is also liable to compromise respect for God; and this is why it must be restricted.

There are two antithetical explanations for this dialectic:

1. The conflict is not internal; rather, it is the result of friction between two rival systems, theology and halakhah (similar to the tension between mythology and kabbalah on the one hand and ritual and halakhah on the other, which G. Scholem expounded in great detail). Theology spurs human beings to attempt to resemble God in His holiness. The point of departure of halakhah, in contrast, is the master-slave relationship between God and human beings; thus, halakhah aims at the sanctity of asceticism and the erection of boundaries between God and man.
2. This conflict is a theological paradox, inherent and innate to the creation of the world, especially of man: God created the world to fill a "vacuum," by means of His power and presence. The relationship of dependency and autonomy between God's works and the Creator is therefore woven into the very fabric of creation (as Rabbi Nachman of Bratslav explains). Human beings, too, are fashioned in the image of God and made in His likeness. On the one hand, they aspire to be His double—God's shadow, as it were. On the other hand, they are autonomous and endowed with free choice, which makes them, as it were, a god for themselves. This

theological paradox almost ineluctably generates mutual jealously between human beings and God. Human jealousy is the source of the “strong” form of human dignity, while God’s jealousy hedges that and underlies the “weak” right to respect.

The Jewish Tradition as a Source for the Right for Political Participation: Contribution and Challenges

Dr. Haim Shapira

The Jewish tradition has developed a notion that every member of the community has a right to participate in public decision-making. This notion is expressed clearly in the principle of majority rule, which has developed gradually. Its foundations are found in the Talmudic period but its full development was reached in the high middle ages. Since then it became a main principle of the Jewish political theory and practice.

The status of the right for political participation in the Jewish tradition may explain the acceptance of democratic principles among Jews in modern times and especially in the state of Israel. The social and political conditions of Israel in its first years could not ensure the creation and maintenance of a stable democracy. The fact that democratic principles are rooted deeply in the Jewish tradition made an important contribution to the development of Israel's democracy. The contribution of the Jewish tradition is not merely an historic artifact but rather continues to play a role in the acceptance of Israel political structure.

Nevertheless, the right for political participation as was shaped and recognized by the Jewish tradition is as yet deficient, and is not fully compatible with the form of this right in democratic countries. The main deficiency is the lack of consistent commitment to the principle of equality for all members of the community or for all citizens of the state. The main reason for this deficiency is hidden in the transition from community to a state, which was not fully acknowledged by halakhic authorities. Some authorities who did respond to this challenge prove the feasibility and viability of creative interpretation of the ancient tradition.

"Have you murdered and also taken possession?" (I Kings 21:19) On the gains and losses that form the basis of a discussion of human rights grounded in the Bible

Dr. Gili Zivan

In my lecture, I will explore the question whether it is worthwhile to base the discussion of human rights on religious conceptions, while focusing in particular on the attempt to base the discussion of such rights on the Bible. At first glance, it seems that there is nothing better than grounding a claim in a discussion of human rights on the basis of ancient statements possessing religious authority: See, even God is concerned with the rights and dignity of the weak! But a second look at the issue raises questions, both from the side of the defenders of human rights, and from the side of those believers who view the Bible as the Word of God.

I will try to exemplify both the power of basing a discussion of human rights on the Bible, as well as its costs, through an examination of the story of "Naboth's vineyard," in I Kings 21. This story limiting the power of the king tries to subject him to biblical law and to defend the individual citizen whose rights have been trampled. It is a story that at its source possesses a clear religious message, but that can also be suitable to ground our conception in a discussion of human rights, the separation of powers, criticism of government, etc. The question of the translation from religious language to the secular language in the discourse of rights of course exists also in reference to biblical commands that defend the widow, the orphan and the sojourner, and in connection with the words of the prophets who cry out against social injustice and the exploitation of the weak in society, who are frequently quoted to support humanistic concepts. Therefore, the choice of the story of Naboth's Vineyard in the Book of Kings is only an example that illustrates a general principle.

I will offer 3 readings:

A first reading takes the text only in its religious meaning, and therefore is not relevant to the topic I am discussing, namely, basing the discussion of rights on biblical religious foundations. An approach such as this is not willing to cross over from one language game (in Wittgenstein's meaning) to another. There are clear advantages to this ideological purity, but there are also losses, such as detachment and the irrelevance of the biblical text to the experience of secular citizens' lives, and

the other losses related to the discussion of human rights, that I will talk about in my lecture.

A second reading completely reduces monotheistic religious values to the values of human rights. This reading also suffers from a number of serious failures. Religion loses its independent standing and constitutes only an ancient linguistic surplus to modern liberal ideas. In the critical spirit of Leibowitz, one can also claim that in this approach, religion loses its independent standing as a perspective on the absolute, transcendent God, who does not depend upon ethical rationalization.

A third reading that I will offer recognizes the religious foundation of the text, but consciously seeks to transfer it (in part) also to the realm of the discourse on human rights, on the basis of an awareness of both the costs of the move and an acknowledgment of its incompleteness and sometimes also its lack of consistency. Such a reading, on the one hand, is based on the tremendous power in the use of the biblical story to ground the discussion of rights, but on the other hand, it does not ignore the difficulties in adopting a biblical theological discourse as the basis of the liberal discourse about human rights. (So for example, we must ask about our relationship to the biblical commandments that do not support the discourse of human rights, and instead oppose it, such as the command to destroy idolaters, to wipe out Amalek and annihilate the seven Canaanite nations, or the relation of the Bible to people with homosexual tendencies, etc.).

I will claim that only an interpretation that is **self-conscious**, namely, that recognizes the **partial and complex** transference that is made from religious discourse to secular discourse about rights, and the reverse (the transference from secular to religious discourse), can cope with the difficulties that the second reading raises, and yet can profit from the mutual enrichment possible between the religious and secular language games that the first reading forfeits.

From Duties to Rights

Prof. Shalom Rosenberg

Some of the not numerous works that dealt with 'rights' in Jewish halakhic texts presented the thesis that these sources only recognized the concept of duties, and didn't acknowledged the concept of rights, or at least didn't use it. I think that this negative generalization is incorrect. There are legal fields where the concept of right is essential, and it was accepted, by all sages in an explicit or implicit way. However there is partial truth in the negative position. My presentation will try to show the possibility of reading the classical texts as implying that duties – not all of them – generate rights. This construction was used by R. Samson Raphael Hirsch in his classification of the Mitzvot, and in his interpretation of them.

This "generative" interpretation is crucial for the interpretation of Emmanuel Levinas' conception of rights and has – in my opinion – interesting philosophical consequences.

Human Rights in Islam

Qadi Iyad Zahalka

At the basis of Islam lies the philosophical concept that the human being is superior to all other creations in the universe. The reason for this is that God created the human being as His earthly substitute, thus elevating Man's status and consequence (Surah Al-Baqara 2:30). God even commanded the angels to prostrate themselves before Man as a sign of his superiority (Surah Al-Baqara 2:34). Thus, according to Muslim religious thinking, Man has a certain status which is reflected in his rights.

These rights, conferred upon Man by Islam, are absolute, and are entrenched within the foundations of the religion. This is in contrast to human rights in modern thought, international law and the law of individual states, which are relative, dependant on legislative bodies, and liable to change due to the circumstances of any particular case.

Yet, the concept in Western philosophy and law, developed in the medieval period, is compatible with the Islamic concept in the sense that human rights are imparted upon human beings in view of their humanity, and are not the result of any law or treaty.

The aim of Islamic law is the upholding of five objectives for humanity: to safeguard the Islamic faith, to safeguard the life of man, his intellect, his posterity, and his wealth. Therefore, all Sharia'h laws are derived from these five Sharia'h objectives.

Thus, the Sharia'h guarantees the dignity of man, while preserving his faith, life, freedom, thought, wealth, and posterity. Human rights in Islam also require behaving in an equal manner among people and the only measure for preference is the level of one's religious devotion (Surah Al-Hujurat 49:13). God created all human beings, male and female, as equals, with no supremacy of one over the other, and determined that human beings will be divided by peoples and tribes so that they may know one another without giving preference to any.

Equality, decency, and justice are obligatory by Muslims also toward non-Muslims (Surah Al-Mamtahanah 60:8), and all are bound by law. Islam also equates men and women, and states that privileges given to men over women are only due to religious obligation conferred on the men, and for functional equality between man and woman.

Islam also guarantees freedom of thought and expression, declaring that if a person thinks, speaks or acts against religion, his punishment will be meted out by the hand of God, not man (Surah Al-Baqara 2:256).

Panel 5: Religion and Human Rights on the Ground

Religious Discrimination in the European Union and Western Democracies, 1990 to 2008

Dr. Jonathan Fox with Dr. Yasemin Akbaba

This study focuses on exploring the variation in the treatment of religious minorities in the West using a special version of the Religion and State--Minorities round 2 (RAS2-M) dataset. The extent and causes of religious discrimination against 113 religious minorities in 36 democracies in the European Union (EU) and the West from 1990 to 2008 are analyzed in three stages. First, we examine the mean levels of religious discrimination on a yearly basis. Second, we inspect the extent of each of the 29 specific categories of religious discrimination. Finally, we look at the causes of religious discrimination, using OLS multiple regressions for 1990, 1996, 2002, and 2008 in order to assess whether the relationships found in the bivariate analysis are present and consistent over time. The analysis compares theories related to securitization of Islam in the West and defense of culture argument. This defense of culture argument is not incompatible with the securitization argument. Contrary, it is possible the cultural challenges can facilitate the securitization process. It is also possible for both processes to be occurring simultaneously. Therefore we do not suggest that two processes are mutually exclusive, but intend to analyze variation in treatment of religious minorities in the West with guidance of two theoretical frameworks. We find that Muslim and Christian minorities suffer from the highest levels of discrimination in the EU and Western democracies. Not surprisingly, states with high levels of religious legislation—indicating that they strongly support religion—are also associated with high levels of religious discrimination. Although there are findings consistent with both theories, largely findings are more consistent with the defense of culture argument.

The Legal and Constitutional Establishment of Islamist Extremism in Indonesia: Political Implications for Preserving Liberal Democracy in Islamic Societies

Dr. Micha'el M. Tanchum

Since Indonesia's transition to democracy culminating with the country's first presidential elections of 2004, Islamist extremists have been using legal and constitutional mechanisms to constrain the definition of Islam, undermine the discourse of human rights, and deny Muslims the freedom to practice Islam according to their own beliefs. This paper will analyze the on-going legal and constitutional developments in Indonesia form 2002 to 2011, particularly the democratic government's responses to Sunni sectarian challenges by Islamist extremists. The analysis will explore the impact of the government-sponsored *Majelis Ulama Indonesia* (The Council of Indonesian Clerics, or MUI) in constructing a constitutional definition of Islam.

Shortly after the 2004 elections, the MUI declared the heterodox Islam practiced by the Ahmadiyya to be a non-Islamic religion. Eventually, the government of Indonesia banned the Ahmadiyya from practicing their religion altogether and this ban was upheld in Indonesia's Constitutional Court in 2010. Similarly, Sunni sectarian challenges are now increasingly aimed at Indonesia's Shia minority. More broadly, the MUI issued a ruling that declared interpretations of Islam that employ principles of liberalism or notions of pluralism likewise to be non-Islamic beliefs.

Through its analysis of how Sunni Islamist extremism has been able to create structures of political opportunity to constrain an individual's right to practice Islam, the paper will suggest the central importance of a national discourse of intra-religious accommodation to establish a foundation for the development of religious liberty and civil society in newly democratizing Muslim societies.

A Consideration of the Tension between Religious Freedom and Noise Laws: Sabbath Calls in Multicultural Society

Prof. Alison Dundes Renteln

The human right to religious freedom is recognized as being of great importance in most legal systems around the world. Despite its significance, members of religious minorities sometimes experience difficulties when they attempt to follow their traditions. When public policies appear to prohibit their religious practices, the government will have to adjudicate these matters, and members of religious

minorities may feel compelled to ask for exemptions from general policies. In this paper I take stock of the main arguments for and against making exceptions for minority groups as part of a theory of maximum cultural accommodation. After a consideration of these general arguments, I turn to controversies in which advocates request exemptions from environmental laws. In particular, I analyze the extent to which Sabbath calls merit exemptions from noise ordinances. While regulating excessive levels of noise is ostensibly a legitimate governmental objective, environmental policies may be enforced in ways that constitute a substantial interference with religious life. This analysis of the interrelationship of environmental law and religious freedom has implications for the resolution of disputes in countries such as Switzerland and the United States where Jewish and Muslim communities have encountered hostility to their efforts to worship in accordance with their religious laws. Ultimately, I ask whether compromises can be found that guarantee the right to religious freedom without undermining nuisance laws.

Panel 6: Religion and Gender

Judaism, Gender and Human Rights

Dr. Ronit Irshai

This lecture explores whether religious perceptions can serve as a source for human rights or rather serves to deny them. I claim that a religion operating under the presumption that a person needs to sacrifice his moral intuitions in order to be grasped as a servant of God, together with a strong essentialist ideology, can result in the violation of human rights. The case study for my claim will be women's rights in Judaism. I hope to demonstrate that both essentialism and the prevailing "sacrificial imperative" in contemporary Judaism can circumvent the Aristotelian definition of equality, resulting in the violation of women's rights. Since according to the Aristotelian principle equal treatment means "different treatment for the different," this obscures how this kind of religious ideology indeed discriminates against women.

Multiculturalism on Multiple Fronts: CEDAW, International Norms, and Benign Neglect

Prof. Ruth Halperin-Kaddari and Marsha Freeman

The multicultural debate that has occupied international and local attention for some decades has intensified with recent shifts in international and domestic politics. Scholarly writing on the matter tends to distinguish between international and sub-national settings of the multicultural situation and resulting dilemmas, the former sometimes being analyzed in terms of cultural relativism. The CEDAW Convention review process and the CEDAW Committee's ongoing dialogue with States parties to the Convention provide a unique context in which the multicultural dilemma (in all its settings) is addressed, yet surprisingly little academic attention has been given to it thus far.Based on our experience, as a current member of the CEDAW Committee (R.H.K.) and as a long-term observer and contributor to its work from the perspective of civil society (M.A.F.), we have noted that in its dialogues with States, the Committee may be employing different standards of reference to different multicultural settings. The Committee has become increasingly forceful in demanding adherence to international human rights norms by States in which communities claiming divergence from international norms on the basis of religion, culture, or custom—the international multicultural situation— make up the majority of the population. States in which communities calling for divergence from international human rights standards are a minority, offering the subnational multicultural setting, have historically appeared to largely ignore their international human rights commitments in dealing with those communities. We aim to determine whether the CEDAW Committee in its dialogue with those States and in the formal Concluding Observations, inadvertently reinforces this position, by not demanding the same degree of adherence that it demands from States in which "exceptionalist" communities are the majority. If that is indeed the case, the task will then be explaining the apparently different attitudes.

Panel 7: On the Possibility of Dialogue

Human Rights, the Tension between Religion and State and the Anti- Political Critique

Dr. Avinoam Rosenak and Dr. Alick Isaacs and Sharon Leshem-Zinger

My paper addresses itself to the common ground of the three panels at our conference. I will set forth a possible alternative which has not been discussed to date, not theoretically nor as a practical conception.

The first panel raises the question: to what extent – if at all – does religion deserve the defense of human rights given to others institutions and ideologies, and what price does religion pay to acquire it?

The second panel deals with the nature of the potential threat that religion poses to human rights. Does the state have the duty to incorporate religion into its fabric of human rights, and under what conditions?

The third panel raises the question: can religion provide a fruitful framework and suggest rich sources to anchor and buttress human rights, and what the price will be paid by human rights because this incorporation.

My paper, as I said, points to the political and cultural assumptions which are at the root of the three questions raised above.

Behind all three panels there lies the assumption that we are in a conflict between "the state" on the one hand, and "religion" as a political institution which thrive on power. We are standing here, so it is said, between two political systems. Each of them - in turn – gives the right of existence to the other system under strict conditions which reflect their suspicion of the other.

I will point to the dimension of violence that form the basis of these discourses and the questions alluded to above.

Though it is possible to justify the necessity of the political framework, with all of its failings and its inclination to violence, I shall present a competing alternative. This alternative arises from a Jewish mode of discussion that points to various sources which have serious reservations about the use of violence in the name of religion.

I shall have recourse to sources from the Bible, Rabbinic (Talmudic) sages, Kabbalah and Philosophy. I will try to point to the religious and theological problem with the

political dimension and then to locate a Halakhic alternative to be found in Judaism which is here described as an open political structure. In this context we can rethink the basis of human rights under new cultural contexts.

These reflections are part of the "talking Peace" project of which I am one of the founders.

This project seeks – among other things – to sketch Jewish political theory, which can be different from commonly accepted political discourse; common political discourse which seems to have many obvious advantages but which exacts a high price.

Human Rights and Secularism: Between Universalism and Particularism

Dr. Shai Lavi

In recent years, the language of human rights has gained surprising popularity outside the liberal West and has become in the international political arena synonymous with justice. The growing universality of human rights discourse may be read as a clear sign of its success, but may equally suggest that the concept has been watered down and that its unique historic origins and philosophical commitments have been forgotten. The growing prevalence of human rights discourse among mainstream religious leaders as well as so-called fundamentalists may be taken as further evidence of this development.

The paper seeks to layout the secularist presuppositions of human rights. Secularism is here understood less as matter of belief (or its absence), and more as a set of practices, less as concerning the divine and supernatural (or its absence), and more as an attunement towards the natural world. Specifically, following Hannah Arendt, Talal Asad and Luc Boltansky, my interest lies in the emergence of empathy with distant suffering as constituting the secularist origins of human rights.

Once the secularist foundations of human rights are excavated, the final aim of the paper is to think critically of these foundations, and ask what, if anything, can be learned once we take into account their historical and philosophical particularly, rather than their universality.

The Interaction of Religion and Human Rights Discourses: Babel or Translation, Conflict or Convergence?

Prof. Suzanne Last Stone

This paper will discuss the challenge of squaring a global rights-based civilizational discourse with the local cultural reasoning of religion and, in particular, Judaism. Several of the discursive challenges are obvious: How does one bridge between a discourse of duties and one of rights? How does one bridge between a discourse dependent on viewing the individual as autonomous rather than heteronomous? Other discursive challenges have been less commented upon. I shall discuss at least the following two in my paper: First, the incontrovertible or absolute nature of human rights blurs the division between secular morality based on unaided reason and the realm of the sacrosanct, inviolable, or sacred occupied by religion. Does this create a basis for a common language of sanctity or does this lead, instead, to even more divisiveness, as adherents of religion perceive human rights discourse as imputing sanctity where it does not belong? Second, the discourse of human rights, with its close connection to the Kantian notion that we should treat others always as 'ends,' detaches human rights from the concept of desert. The human possesses rights by virtue of being human alone. I shall argue that those thinkers within the Jewish halakhic tradition who have most advanced a discourse of human rights, such as HaLevy, draw on a distinct tradition within Jewish legal thought which conceives of duties owed to others as conditioned on reciprocity. (cf. Bernard Williams' challenge to Kant). Finally, I wish to discuss whether religious and specifically Jewish religious discourse also can make a distinct contribution of its own to the discourse of human rights – at the level of discourse. We are caught within a paradox when we argue for the universality of human rights as we do so necessarily from within the particularity of a specific language, culture, and ethical idiom. Does Judaism provide a resource for dealing with this paradox, given its complex discourse of universalism and particularism?

From Collectivity to Individuality: The Shared Trajectories of Modern Concepts of ‘Religion’ and ‘Human Rights'

Prof. Leora F. Batnitzky

The paper will argue that the question of the role of religion in human rights discourse often reifies the categories of “religion” and “human rights” because the question itself does not adequately account for the fact that both categories are particularly modern inventions. These categories share a conceptual and historical trajectory that moves from a focus on the collective to the individual. While this analysis has important theoretical implications for how we might understand the modern categories of “religion” and “human rights,” it also has implications for appreciating some of the practical tensions that play out in some contemporary legal systems, especially those that seem to accommodate a kind of legal pluralism. To explore some of these tensions, the paper turns to a comparative analysis of the status of personal laws in Israel and India, as they do and do not cohere with contemporaneous notions of religion and human rights.