

**Title:**

Fighting With Faith: *The Role of Religion in Dealing with Modern Conflict*

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**Abstract:**

Though current modes of cultural and ethnic asymmetrical conflict may seem novel, they universally draw on something far older and far more ingrained in man's ancient roots: his faith in and relationship with the divine. Perhaps uniquely among cultural factors, religion is a single consistent issue latent in almost all contemporary intractable conflicts. If properly deployed, the symbols, language, and meanings of religious traditions may prove as powerful in resolving conflict as they have been in fueling it. How can those interested in healing these wide cultural schisms employ the power of religion in a restorative resolution process? This essay attempts to begin answering this question by identifying several models of inter-religious conflict, drawing on contemporary examples to illustrate the strengths and weaknesses of each understanding. It focuses on the tendency of existing descriptive understandings to fuse items of true religious disagreement with other items of disagreement that are more appropriately classified as social, political, or psychological. It contends that such composite grievances are contextualized by combatants as part of religious narratives of persecution and struggle. Addressing these situations requires a significant departure from negotiation orthodoxy. Negotiators are advised to use religious argument to counter attempts to place the locus of contemporary conflict within a larger religious narrative of cosmic struggle. To do this, negotiators should concede that many religious differences are necessarily irreconcilable, while recognizing that parties can still work to transcend irreconcilable difference in pursuit of shared goals or religious values.

**Fighting With Faith:**  
*The Role of Religion in Dealing with Modern Conflict*

By Sean P. McDonnell\*

“The will of God prevails. In great contests each party claims to act in accordance with the will of God. Both may be, and one must be, wrong. God cannot be for and against the same thing at the same time.”

-ABRAHAM LINCOLN <sup>1</sup>

***Background - A ‘New’ War.***

Today’s world is an arena of largely unprecedented armed conflict, both in the costs exacted and the modes by which that conflict is pursued. There can be no doubt that modern warfare has the potential to inflict exceptional harm, both to combatants and civilians caught in a conflict’s wake.<sup>2</sup> But it is more than just the potential scale of modern conflict that is unprecedented. It is also who fights and why.

In the era following September 11, 2001, and the subsequent American invasions of Iraq and Afghanistan, a new type of war -- or at least a new way of describing conflict with clear religious and ethnic implications -- has captured the collective attention of scholars and politicians.<sup>3</sup> In homage to Professor Huntington’s famous work, many academics now refer to

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<sup>1</sup> William Peterfield Trent et al., *THE CAMBRIDGE HISTORY OF AMERICAN LITERATURE*, Part II, 373 (1921).

<sup>2</sup> See Mary Kaldor, *NEW AND OLD WARS* (1999) (referring to the steady increase in ratio of civilian-soldier deaths since World War I); see also Anthony Dworkin, “The Middle East Crisis and International Law,” *Crimes of War Project*, July 18, 2006, available at <http://www.crimesofwar.org/onnews/news-middleeast.html> (referring to the growing civilian death toll in the Middle East crisis).

<sup>3</sup> See e.g. Bradley Graham & Josh White, “Abizaid Credited with Popularizing the Term ‘Long War’,” *WASHINGTON POST*, A08 (Feb. 3, 2006). In an effort to distinguish the United States’ effort to confront Islamic terrorism, President George W. Bush and his senior officials began referring to American military and security action as part of the “War on Terror” in 2001. By 2006, that nomenclature expanded to include terms like “The Long War” and the “Global War on Terrorism.” As one senior Joint Staff officer put it, “What we decided was, it’s a good way of highlighting the idea that this war is likely to take awhile and will require both the commitment of significant resources and the resolve of the American people.” See also George Bush, *Speech on War on Terror at National Endowment for Democracy* (Oct. 2, 2005), available at <http://www.whitehouse.gov/news/releases/2005/10/20051006-3.html>. President Bush and other prominent American

this new type of war as a ‘*clash of civilizations*’ in its international incarnation, particularly when pursued between Western secular states and Islamic jihadist groups.<sup>4</sup> Similar types of quarrels are called ‘*ethnic conflict*’ when occurring within regional or state boundaries.<sup>5</sup>

Scholars and policymakers invented these terms to signify the novelty of this emerging form of conflict, distinguishing it from traditional interstate conflict paradigms because these new wars are fought by new and disparate players. The traditional players, sovereign states, now contend with disaggregated outlaws and loosely affiliated movements with names that are both familiar and cryptic: the Tamil Tigers, Hezbollah, Hamas, the Irish Republican Army (IRA), Al Qaeda, Abu Sayyaf, Ansar al-Islam, and so on... “Although these groups cannot kill on the scale that governments with all their military power can, their sheer numbers, their intense dedication, and their dangerous unpredictability have given them influence vastly out of proportion with their meager military resources.”<sup>6</sup> The governments that fight these groups call these new combatants *terrorists*.<sup>7</sup> Those who sympathize with their political and religious programs call them heroes and martyrs.<sup>8</sup>

This last point brings this essay to its focus. “The idea of martyrdom is an interesting one. It has a long history within various religious traditions, including Christianity. Christ himself was a martyr, as was the founder of the Shi’i Muslim tradition, Husain. The word

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politicians also made frequent reference to the religious nature of the conflict, terming Muslim terrorists as elements of “evil Islamic radicalism,” “militant Jihadism,” or “Islamofascism.”

<sup>4</sup> Samuel Huntington, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996). This term frequently refers to international asymmetrical conflict between Western states and non-Western religious or ethnic paramilitary networks, which in practice are sometimes difficult to distinguish from regional or intrastate conflicts. The ideological and operational ties between Islamic international terrorist movements of varying stripes and the regional struggle for Palestinian autonomy is an illustrative example.

<sup>5</sup> Chester A. Crocker, “How to Think About Ethnic Conflict” (The 1999 Perlmutter Lecture on Ethnic Conflict), available at <http://www.peace.ca/ethnicconflict.htm>. The term ‘Ethnic Conflict’ is generally used indiscriminately to describe varying levels of intrastate conflict waged by groups with opposing tribal, political, or religious affiliations.

<sup>6</sup> Mark Juergensmeyer, *TERROR IS THE MIND OF GOD*, 5 (2000).

<sup>7</sup> See United States Department of State, “Foreign Terrorist Organizations,” FACT SHEET, Office of Counterterrorism (2005).

<sup>8</sup> Bernard K. Freamon, “Martyrdom, Suicide, and the Islamic Law of War,” 27 *FORDHAM INT’L L.J.* 299 (2003).

*martyr* comes from the Greek term for ‘witness,’ such as a witness to one’s faith.” In English, a martyr is one who “voluntarily suffers death as the penalty of witnessing to and refusing to renounce a religion.”<sup>9</sup> However novel the current modes of cultural and ethnic asymmetrical conflict may be, they universally draw on something far older and far more ingrained in the human experience, something in man’s ancient roots: his faith in and relationship with the divine. Perhaps uniquely among cultural factors, religion is the single consistent issue latent in almost all contemporary intractable conflicts. It is one of the factors that makes these conflicts intractable. If, as Professor Freeman wrote, “[r]eligion is the mother of war,”<sup>10</sup> then the *clash of civilizations* is only the most recent descendant in a grotesque family line reaching back into antiquity.

The ideological vernacular of cultural conflict around the world is the language of religiosity. Theological argument is employed on all sides of contemporary conflict, as justification, as claim of right, as recruiting propaganda, and as political dialogue.<sup>11</sup> Even in secular cultures, religion provides the lens through which modern cultural conflict is viewed.<sup>12</sup>

If religion is a primary sustaining factor in most of the intractable cultural conflicts that exist today, better understanding its role promises to be an important first step in resolving these conflicts in the future. If properly deployed, the symbols, language, and meanings of religious traditions may prove as powerful in resolving conflict as they have been in fueling it. The

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<sup>9</sup> MERRIAM-WEBSTER DICTIONARY (2007).

<sup>10</sup> See Freeman, *supra* note 8, at 299.

<sup>11</sup> Religious language so often fuels and sustains ethnic conflict that several human rights commissions have specifically targeted religious hate speech as incitement to genocide. See Joshua Wallenstein, “Punishing Words: An Analysis of the Necessity of the Element of Causation in Prosecutions for Incitement to Genocide,” 54 STAN. L. REV. 351, 381-383 (2001).

<sup>12</sup> James Carroll, “The Bush Crusade,” THE NATION (September 20, 2004). (“The President, at a moment of crisis, defines the communal response. A few days after the assault, George W. Bush did this. Speaking spontaneously, without the aid of advisers or speechwriters, he put a word on the new American purpose that both shaped it and gave it meaning. “This crusade,” he said, “this war on terrorism.” Crusade. I remember a momentary feeling of vertigo at the President’s use of that word, the outrageous ineptitude of it. The vertigo lifted, and what I felt then was fear, sensing not ineptitude but exactitude.”)

question is: How can those interested in healing these wide cultural schisms employ the power of religion in a restorative resolution process? Specifically in the context of negotiation, this possibility raises further interesting questions. Can religious ideals be invoked to promote cooperative postures? Should religious arguments be engaged in their own terms? Can competing religious arguments be deployed to undermine "extremist" religiosity? Can issues of religious principle be politically or economically co-opted?

Many of these questions have not been adequately addressed in the literature of either religious or conflict-studies scholarship.<sup>13</sup> This may be, in part, because the notion that religion can be employed with positive effect in any arena has become something of a controversial position. The unprecedented threat that violent religious extremists pose to liberal Western societies has triggered a secular intellectual backlash. As Sam Harris writes in his recent bestselling work, *The End of Faith*, "We can no longer ignore that many of our neighbors believe in the metaphysics of martyrdom... because our neighbors are now armed with chemical, biological, and nuclear weapons. There is no doubt that these developments mark the terminal phase of our credulity. Words like 'God' and 'Allah' must go the way of 'Apollo' or 'Baal,' or they will unmake our world."<sup>14</sup> Prominent thinkers like Harris and others<sup>15</sup> now advocate for the complete excision of faith from modern life. The central evil, they posit, is not violent religious extremism, but religion per se. These thinkers conceive of religious belief as necessarily an irrational, unexamined, and static exercise. They characterize faith as an inherently intolerant

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<sup>13</sup> See Marc Gopin, *HOLY WAR, HOLY PEACE: HOW RELIGION CAN BRING PEACE TO THE MIDDLE EAST*, 4 (2005) ("Religion and culture unquestionably play a critical role in numerous conflicts, all the way from interpersonal to global conflicts. The challenge is trying to tease out the subtle way in which religion and culture interact with conflict. The latter is an enormously complex subject almost completely neglected by students of conflict.")

<sup>14</sup> Sam Harris, *THE END OF FAITH*, 14 (2004).

<sup>15</sup> See e.g. Richard Dawkins, *THE GOD DELUSION* (2008); Also Cristopher Hitchens, *GOD IS NOT GREAT: HOW RELIGION POISONS EVERYTHING* (2007).

form of self-delusion or blind scriptural literalism.<sup>16</sup> They demean religious moderation as "simply a capitulation to a variety of all-too-human interests that have nothing, in principle, to do with God."<sup>17</sup> What's more, they claim moderates pose a great societal harm because the tolerance they espouse "does not permit anything very critical to be said of religious literalism."<sup>18</sup>

As an initial observation, whatever philosophical value these arguments may have, they provide absolutely no practical basis for making policy or addressing the religious conflicts going on in the world today. "Despite the complaints of its most ardent despisers, religion is not going away."<sup>19</sup> If abandoning faith is the only solution, there is no solution. Out of a world population of roughly 6.7 billion people, fewer than 750 million claim no belief in God or attachment to any particular faith.<sup>20</sup> It seems exceedingly unlikely that the remaining 5.9 billion of us will simply relinquish our deepest held beliefs in response to abstract arguments.<sup>21</sup> The more likely outcome of the intellectual assault on faith is the further inflammation of religious tensions, perceived persecution among believers, and a widening disconnect between the secular and religious worlds.

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<sup>16</sup> See e.g. Harris, *supra* note 14, at 13 ("Intolerance is thus intrinsic to every creed... Certainty about the next life is simply incompatible with tolerance in this one.")

<sup>17</sup> *Id.* at 20-21 (Moderation "has nothing underwriting it other than the unacknowledged neglect of the letter of divine law.")

<sup>18</sup> *Id.* at 20-23 (Harris adds "To speak plainly and truthfully about the state of our world – to say, for instance, that the Bible and the Koran both contain mountains of life-destroying gibberish – is antithetical to tolerance as moderates currently conceive it.")

<sup>19</sup> Gustav Niebuhr, *BEYOND TOLERANCE: SEARCHING FOR INTERFAITH UNDERSTANDING IN AMERICA*, xx (2008).

<sup>20</sup> Phil Zuckerman, *Atheism: Contemporary Rates and Patterns*, *THE CAMBRIDGE COMPANION TO ATHEISM* (Martin et al.) (2005). Dr. Zuckerman looked at polling and survey data from every country in the world and totaled the number of non-believers in the 50 most populous nations with the highest rate of atheism and agnosticism. Based on statistical analysis of this sample, he concluded the number of people worldwide who claim no connection to any faith nor specific belief in God is somewhere between 500 million and 750 million.

<sup>21</sup> I question whether the secularist arguments are at all times reasonable arguments or whether they don't admit a form of secular fundamentalism that is as dangerous and intolerant as religious fundamentalism, but for my purposes here I'll give them the benefit of the doubt.

Worse than the probable alienation of religious groups resultant from the adoption of *secular extremism*, the categorical abandonment of religion would force would-be peacemakers to ignore some of the most developed philosophical tools for conflict resolution known to human understanding. The most fundamental conceptions of justice,<sup>22</sup> human dignity,<sup>23</sup> and peace itself are all rooted in religious text and thought.<sup>24</sup> When scholars characterize religion as fundamentally intolerant because of the absolute nature of religious claims, they debase a universal valuation of peace, empathy, and human flourishing that exists in the same traditions. In one breath, scripture tells us “the Lord is a warrior”;<sup>25</sup> in the next, “blessed are the peacemakers, for they shall be called sons of God.”<sup>26</sup> How believers make sense of these competing values cannot be reduced to rote literalism.

Understanding the spectrum of faith requires a far more nuanced treatment than it tends to receive at the hands of secular scholars. Application of religion to resolve conflict first requires recognition of a more complex conception of faith and its role in conflict situations. Protestant theologian and philosopher Reinhold Niebuhr captured the complexity this way: “The religious sense of the absolute qualifies the will-to-live and the will-to-power by bringing them under subjugation to an absolute will, and by imparting transcendent value to other human

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<sup>22</sup> See e.g. Koran 5.8. (“Be upright for Allah, bearers of witness with justice, and let not hatred of a people incite you not to act equitably; act equitably, that is nearer to piety, and be careful of (your duty to) Allah; surely Allah is Aware of what you do.”); Koran 60.8 (“Allah does not forbid you respecting those who have not made war against you on account of (your) religion, and have not driven you forth from your homes, that you show them kindness and deal with them justly; surely Allah loves the doers of justice.”)

<sup>23</sup> See e.g. Genesis 1:27 (“So God created man in his own image, in the image of God He created him; male and female He created them.”) Mathew 22:37-40 (“Love the Lord your God with all your heart and with all your soul and with all your mind. This is the first and greatest commandment. And the second is like it: Love your neighbor as yourself. All the Law and the Prophets hang on these two commandments.”)

<sup>24</sup> See e.g. James 3:13-18 (“Who is wise and understanding among you? Let him show it by his good life, by deeds done in the humility that comes from wisdom. But if you harbor bitter envy and selfish ambition in your hearts, do not boast about it or deny the truth. Such “wisdom” does not come down from heaven but is earthly, unspiritual, of the devil. For where you have envy and selfish ambition, there you find disorder and every evil practice. But the wisdom that comes from heaven is first of all pure; then peace-loving, considerate, submissive, full of mercy and good fruit, impartial and sincere. Peacemakers who sow in peace raise a harvest of righteousness.”)

<sup>25</sup> Exodus 15:2-3. (“The Lord is a Warrior. The Lord is His name.”)

<sup>26</sup> Matthew 5:9.

beings, whose life and needs thus achieve a higher claim upon the self.”<sup>27</sup> In short, absolute religious claims on divine understanding or immortality tend simultaneously to compel conflicting impressions of religious supremacy and universal valuations and respect for other human persons. This duality explains why faith is applied as an instrument of human collaboration at least as often as it is used as a basis for conflict. It also helps explain why the greatest voices for peace in the modern era -- from Badshah Khan to Rev. Martin Luther King, Jr.<sup>28</sup> to Pope John Paul II to Mohandas Gandhi to Desmond Tutu to the Dalai Lama -- all emerge from religious traditions. Rather than ignoring faith, negotiators in religious conflicts should use a sophisticated and nuanced understanding of religious teachings, argument, and history to shift the emphasis from narratives of persecution and struggle to core religious principles of life, peace, and dignity.

The answer to the problem of religious violence is not simple and it will not be settled here. This essay instead attempts to jumpstart the much-needed conversation of how to move forward by identifying several helpful -- though necessarily simplistic -- models of inter-religious conflict, drawing on contemporary examples to illustrate the strengths and weaknesses of each understanding. It then focuses on the tendency of these descriptive understandings to fuse items

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<sup>27</sup> See Niebuhr, *supra* note 19 at xxxi.

<sup>28</sup> Perhaps more than any other person of his day, King anticipated the restorative power of faith in conflict. He also emphasized the personalization of opponents to combat hatred derived from fear and ignorance. He referred to this personalizing process in the language of his religious training: ‘the triumph of love over hatred.’ His speech at New York’s Riverside Church, *Beyond Vietnam: A Time to Break Silence* (April 4, 1967), is remarkable, but by no means atypical. (“This is a calling that takes me beyond national allegiances, but even if it were not present I would yet have to live with the meaning of my commitment to the ministry of Jesus Christ. To me the relationship of this ministry to the making of peace is so obvious that I sometimes marvel at those who ask me why I am speaking against the war. Could it be that they do not know that the good news was meant for all men -- for Communist and capitalist, for their children and ours, for black and for white, for revolutionary and conservative? Have they forgotten that my ministry is in obedience to the one who loved his enemies so fully that he died for them? What then can I say to the "Vietcong" or to Castro or to Mao as a faithful minister of this one? Can I threaten them with death or must I not share with them my life? ... This I believe to be the privilege and the burden of all of us who deem ourselves bound by allegiances and loyalties which are broader and deeper than nationalism and which go beyond our nation's self-defined goals and positions. We are called to speak for the weak, for the voiceless, for victims of our nation and for those it calls enemy, for no document from human hands can make these humans any less our brothers.”)



of true religious disagreement with other items of disagreement that are more appropriately classified as social, political, or psychological. It contends these composite grievances are contextualized by combatants as part of religious narratives of persecution and struggle.

Narratives of struggle and goals of universal peace exist side by side in most religious traditions.<sup>29</sup> Understandings of contemporary life experience in the context of these traditions – rather than static – is the product of elaborate and evolving conceptions of these often conflicting narratives and goals. In this context, it seems at least possible that the affirming aspects of religious traditions could be deployed to defeat destructive religious violence. It also seems possible that skillful shifting of emphasis from narratives to immediate outcomes could extract some of the most toxic elements from religious conflict.

Based on this contention, the essay suggests that resolutions of such multifaceted conflicts depend on a process that directly confronts items of genuine religious difference. The goal of such a process should be to shift the frame of discussion to tolerable outcomes that honor religious principle, while extracting conflict from its locus in religious narrative.

While social, political, economic, or psychological motivations for conflict are undoubtedly impacted by religious mores, assigning a core religious value to such motivations hardens religious combatants into uncompromising positions. The spiritualization of conflict makes compromise a moral impossibility, as combatants come to view concession as an affront to core sacred values. The goal of the negotiator must be to reverse this process, by challenging the incorporation of contemporary conflict into a larger narrative of spiritual struggle. This cannot be done simply by negating core religious concepts, however. It requires an ability to recognize and acknowledge genuine religious principles and inconsistencies, a willingness to

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<sup>29</sup> See e.g. Koran 95-101 (God has given *those that fight* with their goods and persons a higher rank than those that stay at home. God has promised *all* a good reward; but far richer is the recompense of those who fight for Him.”) (emphasis added).

confront value judgments on these core issues, and a skillful shifting of emphasis to the day-to-day realities of conflict (i.e. death and suffering) that generally cannot be reconciled with the core religious goals implicated.

In the end, this article is a plea for engagement in the search of truth; not the truth of God or the afterlife, but the truth about ourselves. Religious adherents, non-adherents, and negotiators engaged in rebuilding communities fractured by religious violence must be willing to candidly discuss what they believe, what they seek, and why. They must do this even with the knowledge that the stories they tell will be impossibly contradictory. The hope of this engagement cannot be to resolve these differences – for that may never be – but only to transcend them. Only then, might those who fight in the name of God recognize that it is only the *fight itself*, not God, which is served by the continuation of religious violence.

### **Understanding Religion in Conflict - *Models and Limitations*:**

It is exceedingly difficult to capture the essence of religious conflict. While the faith of combatants impacts enumerable armed conflicts, the manifestations and roles of religion vary widely. Defining and distinguishing the important elements is tricky.<sup>30</sup> As such, scholarly discussion of religion in conflict necessarily tends to speak either in generalities meant to apply to all fights in all places or in terms so specific to particular conflicts as to be inapposite in similar situations.<sup>31</sup> Constraints on resources for research and inherent limitations on our ability

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<sup>30</sup> See e.g. Nathan Glazer, "Book Review: Understanding Ethnic Conflict," 86 COLUM. L. REV. 427, 427 (1986) ("Scholars who deal with ethnicity always seem to get bogged down in definitions and classifications: what is ethnic, is it different from race or religion, how about Northern Ireland, what are the varieties of ethnic conflict and contact situations, and so on.")

<sup>31</sup> See Nicholas Sambanis, "Do Ethnic and Nonethnic Civil Wars Have the Same Causes?" 45 JOURN. OF CONFLICT RESOLUTION, 259 (2001) (Sambanis shows that the literature has treated civil war as an aggregate category and has not considered if identity, meaning ethnic or religious, wars have different causes than nonidentity wars. He then argues that this is an important distinction and that identity wars are due predominantly to political grievance rather than lack of economic opportunity.)

to understand such complexities make it difficult to adequately discuss both the commonalities of all religious conflicts and the infinite distinctions in various historical and cultural situations. Our ability to gather empirical information to augment our understanding of how religious faith practically shapes the actions of religious adherents is also limited.<sup>32</sup> The importance of religion as simultaneously a social and personal phenomenon, while unquestioned, is difficult to quantify.

Despite the limitations, however, I propose three general models for understanding and digesting religious conflict. While undoubtedly oversimplifications to some extent, these models accurately represent some common strains in contemporary understandings of religious conflict and impulses of those actively engaged in conflict resolution.<sup>33</sup> I will call these models (1) the ‘*artifice*’ model, (2) the ‘*fundamentalist*’ model, and (3) the ‘*hybrid*’ model. An examination of these models illustrates the extreme confusion of items of core religious value and other tangential issues, impacted by religious mores, in forms of conflict. This confusion -- and the very real feelings of religious misunderstanding and vitriol that result from it -- is a fundamental problem facing those who deal in religious conflict. It is rarely clear where the religious motivations for conflict end and the political (or other nonreligious) motivations begin. Each model attempts to address this definitional problem differently, emphasizing either the political elements of the conflict or the psychological traits of the combatants.

As we’ll see, current modes of understanding and resolution-seeking tend to take the religious elements of conflict as given, but prefer to avoid confrontation on religious issues directly. Instead, observers frequently attempt to understand religious conflicts in less value-

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<sup>32</sup>See e.g. William H. Swatos, Jr. et al., *Psychology of Religion*, ENCYCLOPEDIA OF RELIGION AND SOCIETY (1998), (“Much of the empirical research within measurement schools [which dominate academic study of religion and psychology] is essentially correlational, making causal relationships difficult to establish.”)

<sup>33</sup> I do not claim that the list of models produced here is exhaustive or even that it is significantly better than any other descriptive attempt. I use them because I believe these models provide a relatively accessible spectrum for definition and analysis.

laden terms: socioeconomic, political, or psychological. The proposed models reflect this impulse. As we'll see this impulse compels a fundamental failure of the existing approaches. Failure to address religious claims directly has as its consequence a failure to frankly and honestly educate the parties about opposing religious beliefs, exacerbating religious misunderstanding and permitting the dehumanization of religious *others* to go unchecked.

The first descriptive model, the artifice model, views religion as essentially a justification for conflict that has deeper political or economic motivations, whether known or unknown to the combatants themselves. In this way, conflicting religious convictions are understood to correlate with distributive issues in a given conflict. Religion is both separable from worldly distributive issues and nonessential as a component of conflict resolution. Religion is largely viewed as a tribal marker providing a somewhat simplistic common vernacular for voicing more complicated systematic grievances. Conflicts are understood as primarily economic or political in nature with religion deployed to explain a conflict in absolutist terms, to motivate sustained energy from combatants, or to lend a patina of moral superiority to a given cause.<sup>34</sup> To one informed by the artifice view, whatever the claims of terrorists, the root of religious terrorism is actually poverty or social inequity.<sup>35</sup> The cure is economic development.<sup>36</sup> Religion is largely reduced to a method of argument, or a shared trait that helps identify a group with a deeper systematic social concern.

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<sup>34</sup> See Sambanis *supra* note 31, at 429. ("Many of the proposals [for reducing ethnic conflict] have a distinctly rationalistic and materialistic bias. For example, it has been argued that, to solve ethnic problems, policymakers should "organize rewards in such a way that everyone will have expectations of increasing gains...For present purposes, the important point is the assumption that ethnic conflict is motivated by rational calculations of gain.")

<sup>35</sup> See e.g. Kevin Fandl, "Terrorism, Development, & Trade: Winning the War on Terror Without War," 19 *Am. U. Int'l L. Rev.* 587 (2004); But see Alan Krueger and Judy Maleckova "Education, Poverty, Political Violence, and Terrorism: Is There a Causal Connection?," NBER Working Paper No. 9074 (2002) (finding only attenuated and unpredictable correlations between support for terrorism and education and socioeconomic condition of respondents).

<sup>36</sup> C. Raj Kumar, "Global Responses to Terrorism and National Insecurity: Ensuring Security, Development and Human Rights," 12 *ILSA J INT'L & COMP L* 99 (2005).

By contrast, the fundamentalist model views the religious combatant as utterly shaped by his religious worldview, with altered or limited capacity for rational decision making.<sup>37</sup> In this model, conflict is chiefly driven by a desire to preserve a religious identity and a perception that the identity is under threat.<sup>38</sup> The fundamentalist views the world as a perpetual and absolute conflict between the faithful and the heretical.<sup>39</sup> Again religion acts a sort of code for tribalism, for group identity, but here the adherent is seen as suffering from a kind of paranoid persecution complex, rather than poverty. The fundamentalist's faith acts as a kind of cognitive limitation, preventing him from seeing the world through an alternative frame. Under this model, there can be no resolution that is not grounded in the recognition of the fundamentalist's religious identity. In the artifice model, religion is ancillary. In the fundamentalist model, religion is relevant in the context of the adherent's understanding of himself. To challenge the fundamentalist's beliefs is to challenge the fundamentalist himself. Such beliefs can admit no disagreement whatsoever, whether that disagreement be rooted in textual, traditional, or rational argument.

There is also a hybrid of these two models available, based on a recognition that, in isolation, both the artifice view and the fundamentalist view are insufficient. Real life and real people are simply too complicated. Most religious combatants are neither pure economic benefit-maximizers nor irrational zealots. Like all humans, they must make their decisions on a continuum of value, constantly balancing a valuation of their competing spiritual and worldly priorities. Whenever possible, they will stake out positions that satisfy both religious and practical interests. If we imagine that purely sociopolitical conflicts exist on one end of the spectrum and purely ideological identity-based conflicts are on the other, most conflicts will

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<sup>37</sup> C. William Thomas, "Gurus and Guerillas: Religious Fundamentalism and Dispute Resolution," 4 HARV. NEGOTIATION L. REV. 115, 135-139 (1999)

<sup>38</sup> Id. at 121-122.

<sup>39</sup> Id. at 125.

exist somewhere between the two poles. These are captured by a hybrid conception. As we'll see a hybrid conception can allow negotiators to use the best tools from both models. This gives negotiators in religious conflict a variety of approaches in different scenarios.

But these tools for understanding, while powerful, still seem insufficient. The negotiator's arsenal still seems to be missing something. I believe it is this: We must recognize and confront both that there are quintessentially *religious* elements of conflict and that these items may be objects of *fundamental, irreconcilable, religious difference*. As the following discussion illustrates, the artifice tendency deals with irreconcilable religious positions by ignoring them. The fundamentalist tendency sees conflicting principles not in the faiths themselves, but in the internal understandings of some fringe sects. In this way, the fundamentalist model shifts the focus to symbolism and identity, but similarly ignores the central problem of conflicting demands of genuine religious conviction. Neither provides a framework for taking on conflicting religious claims directly. There is simply no clear understanding of how to address the problem of irresolvable, contradictory religious claims head on.

It seems time that observers of religious conflict finally concede the reality; that there may simply be no way of adequately resolving competing religious claims. That does not necessarily mean, however, that all situations of religious conflict are hopeless. On the contrary, recognizing the centrality, if irreconcilability, of genuine religious disagreement is perhaps the important missing component in normative approaches to constructing resolutions. While it may be difficult to candidly acknowledge irreconcilable religious positions, negotiators should not fear a process of direct religious exchange and engagement. As King said, "when the issues at hand seem as perplexed as they often do in the case of...dreadful conflict we are always on the

verge of being mesmerized by uncertainty; but we must move on.”<sup>40</sup> The admission that religious views are incompatible but warrant exploration anyway puts the onus on the negotiators and parties to examine exactly what the core beliefs in question are. It compels an assessment of religious goals, a process of mutual religious education, and a determination of whether the status quo of violence is less compatible with religious values than peaceful engagement.

It sounds trite, but it is true. Only once we fully and candidly discuss those things that make us different may we be free to discover how much makes us the same. In the end, placing the emphasis on identifying and understanding religious values compels a process of discovery and communication that may allow parties to simply “move on,” beyond religious differences. If nothing else, a process of frank goal-based religious dialogue increases the opportunity for religious knowledge to be exchanged. That exchange invites the discovery of common ground and the cessation of violence. It challenges the “caricatures” and “blanket characterizations” that reinforce dehumanizing conceptions of opposing religious traditions.<sup>41</sup> As Mark Juergensmeyer said profoundly in his seminal study of religious militancy, “It is difficult to belittle and kill a person who one knows and for whom one has no personal antipathy.”<sup>42</sup> The identification of shared goals and irreconcilable positions involves a process of shared religious discovery that may begin the process of peaceful engagement, allowing warring religious parties to truly get to *know* one another without personal animus. The first-hand knowledge gained through this process can act to counter the religious tendency to view nonbelievers as a threatening and inhuman object of a cosmic spiritual struggle.

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<sup>40</sup> See King, *supra* note 28 at 1.

<sup>41</sup> See Juergensmeyer, *supra* note 6, at 172-174.

<sup>42</sup> *Id.* at 174.

### **The Artifice Model - *Purchasing Religious Resignation:***

The artifice model tends to devalue the legitimacy of purely religious claims and minimizes faith's role in conflict resolution. Under this conception, conflict resolution demands that issues of religious principle and symbolism be subordinated to the material concerns of contending parties: market access, aid or subsidy, land distribution, etc. The devaluation of the spiritual in negotiations is generally defended as realistic and pragmatic. As Woodrow Wilson said, "Witness the fact that in the Lord's Prayer, the first petition is for daily bread. No one can worship God or love his neighbor on an empty stomach."<sup>43</sup> The Bible says man cannot live on bread alone,<sup>44</sup> but that implies that man cannot live without bread whatever else he may need. A restorative process that draws on this understanding attempts to focus on the bread only, to narrow the scope of the argument to the political and economic realities of the conflict. It avoids stoking religious fervor by shifting emphasis to those items that are tangible, distributable, and divisible; things that tend to be familiar and comfortable to most secular negotiators. While this shift can be successful in certain circumstances, the approach misunderstands or willfully ignores the frequent centrality of religion in conflict scenarios. As a result, such an approach may either fail to address the central problem, risking resurgent violence, or miss other opportunities for closure presented by religious dialogue.

Under the artifice conception, the contending parties may describe their conflict as stemming from conflicting religious principles, but these claims are treated as either disingenuous or unhelpful. A resolution may pay lip service to the religious tones of a disagreement, but it must be based on the hard and fast realities of the material world. Borders must be drawn. Security must be provided for. Resources must be distributed. Religion

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<sup>43</sup> Woodrow Wilson, Speech in New York City (May 23, 1912).

<sup>44</sup> Luke 4:4; Deuteronomy 8:3.



becomes important only as a barrier to be overcome or as a characteristic to identify the groups presenting territorial, political or economic claims.

This emphasis on economic liberalism, religious pluralism, and political democratization carries a whiff of Western ethnocentrism. It reflects an implicit theory of politics that “proceeds from the assumption that all states [and peoples] share a common agenda of goals – reinforcing the perception of the universality of Western values.”<sup>45</sup> One of the artifice model’s weaknesses is that it begins with these shared goals as assumed first principles. It does not accommodate itself well to the conflicting values claimed by religious parties. While it may indeed be true that divergent peoples share common goals, the process of identifying (also known in negotiation parlance as *naming* and *claiming*) these shared goals should be party-driven rather than imposed by a presupposition of the approach itself.

The precepts of the artifice model largely emerge from attempts to explain the rapid rise and proliferation of ethnic and cultural conflict in emerging states following the experience of colonialism.<sup>46</sup> The principles were forged in the “crucible of Western experience,”<sup>47</sup> drawing primarily on a historical interpretation of Europe’s medieval history of religious violence. There are many critical-theory scholars who suggest that this European experience understands religious or ethnic-based conflict as essentially primitive.<sup>48</sup> The provisions of the “modern” (meaning secular and democratic) nation-state and the free-market economy are seen as the remedy to the somewhat archaic problem of religious violence. In the historical narrative, these

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<sup>45</sup> Abdul Aziz Said, “Precept and Practice of Human Rights in Islam,” 1 *UNIVERSAL HUMAN RIGHTS* 63, 64 (1979).

<sup>46</sup> See e.g. Samir Amin, *IMPERIALISM AND UNEQUAL DEVELOPMENT*, 31-236 (1977)

<sup>47</sup> See Said, *supra* note 45, at 64.

<sup>48</sup> See e.g. Fernando Henrique Cardoso, “Dependency and Development in Latin America,” 74 *NEW LEFT REV.* 83 (1972); Theotonio Dos Santos, *The Structure of Dependence*, 60 *AMER ECONOMIC REV.* 231, 231-236 (1970); Andre Frank, *CRITIQUE AND ANTO-CRITIQUE: ESSAYS ON DEPENDENCE AND REFORMISM* (1984).

institutions are credited with stabilizing Europe's schism between Protestant and Catholic Christians following the Reformation (in all but a few hotspots like Northern Ireland).

Public attitudes, particularly in Europe, seem to indicate an inverse relationship between the perceived importance of religious values and the prevalence of material wealth. With the notable exception of the United States, where almost 60 percent of the public says religion plays an important role in their lives, publics in wealthier nations tend to place lesser importance on religion.<sup>49</sup> A Pew Global Attitudes study found that, excluding the US, negative views about religion's importance statistically correlated with increases in annual per capita income.<sup>50</sup>

Partially as a result, the artifice approach suggests that peace between competing religious cultures will be the inevitable result of economic development and shared prosperity. Religious violence is seen as an attempt to articulate complaints arising from complex economic and social systems. Religious principles are seen merely as providing a convenient justification for violent political action, deployed to energize religious-minded combatants and to lend a patina of moral authority to their cause.

Understandings of religious violence as actually motivated by deeper discontent at economic or political power disparities are frequently presented in Western media and scholarship. For instance, in September 2008, groups of Hindu villagers in Orissa and across eastern India suddenly began massacring their Christian neighbors, ransacking their homes, and demolishing their churches. To the New York Times, the violence "appear[ed] to have been fueled, at least in part, by discontent at a time when the gap between India's haves and have-nots

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<sup>49</sup> Pew Global Attitudes Project, *AMONG WEALTHIER NATIONS...US STANDS ALONE IN ITS EMBRACE OF RELIGION*, (2002).

<sup>50</sup> *Id.*

is growing.”<sup>51</sup> In an article that described the destruction of churches and the rape of a nun by a Hindu mob, the Associated Press opined, “Much of the bitterness here is rooted in competition between two groups struggling at the bottom of India’s social spectrum... The two have long competed for land, and more recently for jobs and school seats reserved by the government for the disadvantaged.”<sup>52</sup> The analysis also suggested the familiar narrative that opportunistic elites were stirring up religious fervor for their narrow political gain. “The Hindu right-wing has long stirred up religious resentments as a way to shore up its voter base — and Orissa, as people here quickly point out, is expected to hold elections early next year.”<sup>53</sup> In the story as told by the Western media, religion is presented as an abstract and neutral component of the conflict, compared with the ‘real’ and demonstrable political and economic motives for conflict. The religious claims deployed by the combatants go almost entirely unexamined. Religion is not understood as a devotion and commitment that shapes the acts of its adherents, but as a sort of tribal marker of groups acting for other purposes.

It is easy to understand why minimizing items of religious principle holds appeal for secular Western observers. For one, the emphasis on political or economic factors explains why other Hindus aren’t similarly attacking Christians en masse. In this way, dodging a direct confrontation of the religious claims posed by the attackers also avoids anything that could be taken as a criticism of the Hindu faith in aggregate.

Avoiding the religious claims allows the observer to take a value-neutral view toward the faith espoused, permitting a focus on more resolvable worldly issues. There are good reasons supporting this impulse. The will of God cannot be known with certainty, though all parties will

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<sup>51</sup> Hari Kumar and Heather Timmons, “Violence in India is Fueled by Religious and Economic Divide,” NEW YORK TIMES (Sept. 3, 2008).

<sup>52</sup> Tim Sullivan, “Christians face attacks in eastern India,” ASSOCIATED PRESS (OCT. 25, 2008).

<sup>53</sup> Id.

surely assert that they know His will and that it happily coincides with their position.<sup>54</sup>

Religious claims therefore present little opportunity for negotiation. First, they cannot be disproved. Faith, by its definition, neither needs nor succumbs to evidence. Second, religious claims frequently present zero-sum outcomes. Almost every religion claims to be the one true faith, positing the truth of its claims to the exclusion of all others.<sup>55</sup> Third, these claims are extremely subjective and are unlikely to persuade other parties. The persuasive power of moral and religious argument is highly dependant on shared cultural norms, traditions, and understandings – qualities that are generally absent from interfaith and intercultural conflict. When parties make competing claims based on religious beliefs, heritages, or traditional practices that other parties are likely to view as illegitimate, the zone of possible agreement is so small as to be nonexistent.

The secular solution to the religious loggerhead is to declare all religious claims of equivalent value -- negating each -- and to focus on the more tangible and divisible issues. This solution is especially appealing to those of us from pluralistic societies, where respect for the private beliefs of others is cultivated and religious confrontation is stigmatized.<sup>56</sup> In societies where faith is conceived of as an intimate personal choice rather than an overt public or identifying act that binds an individual to a particular community with particular goals, there is an understandable reluctance to engage others in direct religious dialogue. The proselytizer is

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<sup>54</sup> See Alan Dershowitz, *RIGHTS FROM WRONGS: A SECULAR THEORY ON THE ORIGINS OF RIGHTS*, 78 (2004) for a similar argument against a divine or natural-law basis for human rights. (“There are no divine laws of morality, merely human laws claiming the authority of God...Any attempt to build a jurisprudence on the word of God or the workings of nature must fail, because neither God nor nature speaks with one voice capable of being heard or understood by humans.”)

<sup>55</sup> Martin Dworkin, “Disagreement: The Situation of Reason,” *SCIENTIFIC MONTHLY* (1952). (“Each religion makes claims upon its adherents which render the possibility of truth in other faiths at best a purely intellectual construction...There can be no salvation outside a faith the essence of which is precisely that it is the one true faith.”)

<sup>56</sup> See Daniel O. Conkle, “Secular Fundamentalism, Religious Fundamentalism, and the Search for Truth in Contemporary America,” 12 *J. LAW & RELIG.* 337, 340-343 (1995-1996) for a description of the barriers to religious discourse in secular society that Conkle believes result from a cultural “secular fundamentalism.”

seen as a nuisance, usurper, and hypocrite. In these societies the topic of personal faith, if not religion as an abstract concept, is often viewed as off limits in the public realm. The natural impulse of the secular pluralist confronted with parties' conflicting and deeply held issues of faith is to take religion off the table completely.

A negotiation process informed by this impulse allows parties to recognize their shared material interests without forcing them to address issues of religious principle. As George Mitchell, chief mediator of the Good Friday Peace Accords in Northern Ireland, said, "The aspirations of people the world over are the same. To satisfy those aspirations they need work .... Fathers and mothers must be able to satisfy the economic needs of their families: housing, food, health care, education, recreation. They also have to be able to satisfy their own emotional need for productive work, for self-respect, for meaning in their lives."<sup>57</sup>

In Northern Ireland at least, a focus on shared benefits from economic prosperity has proved to be the bedfellow of peace, each fueling the other. As Mitchell suggests, economic growth in Northern Ireland buoyed the peace process throughout the 1990s, as warring Catholics and Protestants recognized that "increased political stability [could pay] economic dividends" for both communities.<sup>58</sup> Increased stability led to greater market confidence and investment. New economic growth, market access, and employment opportunities sapped religious discontent, particularly among young Protestant and Catholic men.<sup>59</sup> Likewise, the rapid emergence of the "Celtic Tiger" economy in Ireland eased (mostly Protestant) Unionist tensions about the danger

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<sup>57</sup> George J. Mitchell, *MAKING PEACE*, 11-12 (1999)

<sup>58</sup> Orla Ryan, "Northern Ireland's Economic Fears," *BBC NEWS* (June 22, 2001) ("Throughout the 1990s, Northern Ireland has enjoyed one of the fastest economic growth rates of any region in the UK. Unemployment is currently at its lowest levels since records began. It has fallen from a peak of 17.2% in 1986 to 6.2% in June 2001, 1.6% below the European Union average of 7.8%. Increased social and economic confidence has been behind the 40% rise in house prices seen since 1996...During 1999, the number of visitors increased by 19% to 1.65 million while revenues increased at a similar rate to £265m."); *See also*, Denis O'Hearn, "Peace Dividend, Foreign Investment, and Economic Regeneration: The Northern Irish Case," *SOCIAL PROBLEMS* (2000).

<sup>59</sup> James Carroll, "How Peace Arrived in Northern Ireland," *BOSTON GLOBE* (May 21, 2007).

posed by the, predominantly Catholic, Irish Republic. “To Unionists, previously deeply fearful of the Republic, this evidence of huge economic competence melted a conviction that getting closer to the Republic would spell collapse for the North too.”<sup>60</sup>

The ongoing rebuilding of Northern Ireland has taken on a decidedly “modern,” pluralistic (and religiously agnostic) tone in the wake of the region’s economic resurgence. Where the conflict was once described as “a religious war [and] a throwback to the savagery of the seventeenth century,”<sup>61</sup> Northern Ireland is now a thoroughly religiously integrated society.<sup>62</sup> Unionist leaders, who once used slogans like “Home rule is Rome rule” to slur Catholic papal allegiance, now serve in the same government as Catholic members of Sinn Fein, the political arm of the recently disarmed Irish Republican Army.<sup>63</sup>

As the process in Northern Ireland shows, focusing on the economic rather than religious elements of a conflict can put the emphasis on the immediate shared interests of the parties. Satisfying those shared interests often depends on restoring political stability and economic vitality to divided communities. This restoration turns on the cessation of violence and the willingness of religious combatants to completely set aside ideological differences. When shared material interests are made first principles, a rational calculation frequently leads parties to an abandonment of religious violence.

The success of the secular peace process pursued by Mitchell and others in Northern Ireland also illustrates the potential of simply devaluing religious differences in certain situations, at least when there are so many other issues that bind warring parties in a community.

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<sup>60</sup> James Robbins, “Northern Ireland’s Best Chance for Peace,” BBC NEWS (May 8, 2007)

<sup>61</sup> See Lawrence J. McCaffrey, “Irish Nationalism and Irish Catholicism: A Study in Cultural Identity,” CHURCH HISTORY 524, 525 (1973).

<sup>62</sup> B. Murtagh, “Northern Ireland life and times survey: Research update,” JOINT RESEARCH PROJECT BETWEEN QUEEN’S UNIVERSITY-BELFAST AND THE UNIVERSITY OF ULSTER (2002) (Describing dramatically increased religious diversity in employment and recreation in Northern Ireland).

<sup>63</sup> See McCaffrey, *supra* note 61, at 525.

Devaluing religious claims can open up more opportunities for compromise. Of course, such a process can only succeed if the parties accept its faith-neutral valuation and rationally calculate the material costs of conflict and the benefits of agreement.

The difficulty comes when the common costs and benefits are less obvious or pronounced, or the spiritual and worldly calculations of combatants vary widely. It is the nature of faith that different believers will be less compromising than others. There will always be some elements whose ardor will not be purchased with economic or political gains, those for whom issues of religious principle represent greater relative value than political stability or economic prosperity. The artifice model's failing is that it overlooks these constituent elements and provides no real proscription for the consideration of religious claims in any context. In fact, success under this model is presumed to depend on the rational willingness of parties to completely devalue religious arguments in favor of rational economic calculation. That presumption cannot be adequate in a world where religious convictions persist so strongly despite a multitude of rational reasons to jettison them in given situations.

Neglecting uncompromising constituent groups in religious conflict can prove fatal to a brokered resolution and dangerous to the agents who engage in negotiation. As peace talks develop between more compromising political leaders on either side of a religious conflict, unyielding believers will seek to change "facts on the ground"<sup>64</sup> and may make drastic attempts to recapture the negotiation agenda. The artifice tendency gives little guidance to negotiators on how to deal with fervent religious constituencies in these situations.

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<sup>64</sup>Robert Mnookin, "Discord 'Behind The Table': The Internal Conflict Among Israeli Jews Concerning The Future Of Settlement In The West Bank And Gaza," 2005 J. DISP. RESOL. 11, 14 (2005); The term "creating facts on the ground" was used to describe the early Zionist strategy of establishing a Jewish presence through pioneering settlements in order to push out the future borders of a yet to be established Jewish state. *See generally* Abraham D. Sofaer, *Jewish Law and the Middle East Peace Process*, 21 LOY. L.A. INT'L & COMP. L. REV. 313, 319-20 (1999).

The history of failed negotiations between Israel and the Palestinian entity demonstrates the power of relatively small religious constituencies to thwart agreements they find unsatisfactory. In examining why a peace agreement remains elusive when he believes the basic contours are well known and a deal would benefit most Palestinians and Israelis, Professor Mnookin posits that the religious motivations driving the Israeli settlement movement are potentially the greatest barrier to resolving the conflict.<sup>65</sup> “For some religiously observant Israelis this [settlement] project was meant to guarantee the fulfillment of a messianic desire to include within the Jewish state the cradle of "Eretz Yisrael" [*literally* ‘the land of Israel’ and, by extension, ‘Greater Israel’] -- biblically significant parts of the ancient Jewish land.”<sup>66</sup>

The religious settlers’ continued efforts undermine the credibility of the Israeli government and import new domestic political costs into the government’s negotiation calculus. Despite promises of monetary compensation for removal, a government imposed moratorium on new settlements, and a forced removal of settlers from Gaza, Israeli settlers continue to expand existing settlements and establish new outposts largely undeterred, some in the hope of fulfilling their messianic vision.<sup>67</sup> Contrary to the artifice model’s presumption, many settlers have refused to concede points of religious principle for economic considerations. That refusal has hindered the peace process.<sup>68</sup> Thus far, more moderate or secular Israeli officials have shown some political will to confront religious settlers to force a religiously neutral solution, but ideologically-driven resistance to those efforts is spreading, even within Israel’s own military.<sup>69</sup>

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<sup>65</sup> Id.

<sup>66</sup> Id.

<sup>67</sup> Scott MacCleod, “The Last Middle East Peace Conference?” TIME (Nov. 25, 2007). (“Israeli settlements in the West Bank have proceeded apace, while, until recently, Israeli leaders seemed inclined to unilaterally decide the borders and other unresolved issues.”)

<sup>68</sup> See Mnookin, *supra* note 64, at 14-20.

<sup>69</sup> Steven Erlanger, “Israeli police and troops evict Jewish settlers from Hebron,” INTERNATIONAL HERALD TRIBUNE, (Aug. 7, 2007). (“But more than the evacuation, Israelis on Tuesday debated the meaning of the refusal of a group of religious soldiers who decided to disobey orders to participate in the operation. Members of a program that allows



Similar ideological schisms have undermined the negotiating authority of religiously moderate Palestinian factions, most notably that of Palestinian Authority President Mahmoud Abbas, who has struggled to retain control of the PA and the Fatah Party he leads.<sup>70</sup> Increasingly power has shifted to less compromising religious extremists, inside Hamas, in insurgent factions of Fatah, and among foreign sympathizers with the Palestinian cause (particularly in Syria, Lebanon, and Iran), greatly complicating any way forward on that side of the conflict.<sup>71</sup> If the history of the region is any indicator, a religiously neutral solution in the Middle East is not probable.

The Middle-Eastern conflict gave rise to another tragic example of the effectiveness religious constituents in derailing agent-level negotiations on Nov. 4, 1995, when Yigal Amir, a “radical” Orthodox Jew and Israeli citizen, gunned down Israeli Prime Minister Yitzhak Rabin.<sup>72</sup> Like many other religiously-motivated Zionist Jews, who believe in Israel’s divine right of return to the biblical borders of the Davidic Kingdom, Amir viewed his Prime Minister’s willingness to discuss ceding part of that land to Muslim authority as sacrilege.<sup>73</sup> Following Rabin’s death, the peace process stalled and Amir was imprisoned.<sup>74</sup> “Israeli ultra-nationalists” have campaigned vigorously for Amir’s release ever since, and his wife was quoted in a prominent Israeli

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them to serve in the army and also study in yeshivas, or religious schools, these soldiers consulted their parents and rabbis, who counseled many of them to call in sick or to otherwise refuse orders to evacuate the settlers. These rabbis say, as they did over Gaza, that it is wrong to evict a Jew from his home in any part of the Biblical land of Israel... The liberal Haaretz newspaper warned that the "ideological refusal to evacuate settlers is no longer a marginal phenomenon," suggesting that more parents and more rabbis are telling their students to refuse, with support from some conservative politicians.”)

<sup>70</sup> See e.g. Steven Erlanger, “Main Palestinian Faction Splits Sharply Ahead of Election,” *NEW YORK TIMES* (Dec. 15, 2005);

<sup>71</sup> See e.g. Jeffery Goldberg, “Why Israel Can’t Make Peace with Hamas,” *New York Times* (Jan. 13, 2009) (“What a phantasmagorically strange conflict the Arab-Israeli war had become! Here was a Saudi-educated, anti-Shiite (but nevertheless Iranian-backed) Hamas theologian accusing a one-time Israeli Army prison official-turned-reporter of spying for Yasir Arafat’s Fatah, an organization that had once been the foremost innovator of anti-Israeli terrorism but was now, in Mr. Rayyan’s view, indefensibly, unforgivably moderate.”)

<sup>72</sup> Benny Morris, “After Rabin,” 25 *JOURN. OF PALESTINE STUDIES* 77 (1996).

<sup>73</sup> See H.S. Haddad, “The Biblical Bases of Zionist Colonialism,” 3 *JOURN. OF PALESTINE STUDIES* 97-113 (1974).

<sup>74</sup> See Morris, *supra* note 72, at 77-80.

newspaper saying he “sacrificed himself for the sake of his people.”<sup>75</sup> Rabin’s assassination, like the assassination of Egyptian President Anwar Sadat at the hands of Muslim extremists in 1981, shows how far religious constituent elements will go to derail agreements that they feel inadequately address their religious concerns.<sup>76</sup>

As these examples show, for at least some constituent groups, disputes are indeed driven by religious principle and identity rather than political or economic issues. Perhaps predictably then, there is little empirical evidence to support any presumption in favor of socioeconomic causes of and solutions to conflict. What anecdotal evidence there is seems to support the contrary conclusion, that “economic advantages and education, in and of themselves, are insufficient remedies for the causes of religious violence.”<sup>77</sup> As has been pointed out by Huntington, Harris, and other scholars, “religious fundamentalism in the developing world is not, principally a movement of the poor and uneducated.”<sup>78</sup>

The dearth of empirical support for presumptions favoring economic solutions to religious violence should be troubling to those who would subscribe to the artifice view. In fact, most contemporary social and psychological studies “suggest people will reject material compensation for dropping their commitment to sacred values and will defend those values regardless of the costs.”<sup>79</sup> “Taboo tradeoffs,” such as those that involve monetizing sacred values, are most likely to illicit moral outrage and hardening of religious positions, “especially from those whose conception of political justice or religious authority has been most directly

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<sup>75</sup> HAARETZ WIRE SERVICE, “Rabin assassin’s wife: Yigal Amir sacrificed himself for the sake of his people,” (Oct. 29, 2007).

<sup>76</sup> See Morris, *supra* note 72, at 77.

<sup>77</sup> See Harris, *supra* note 14, at 32.

<sup>78</sup> *Id.* *citing* Huntington, *supra* note 4.

<sup>79</sup> Scott Atran and Jeremy Ginges, “How Words Could End a War,” *NEW YORK TIMES* (Op-ed) (Jan. 25, 2009); *see also* Scott Atran, *TALKING TO THE ENEMY* (2009).

challenged.”<sup>80</sup> There is also some rather convincing evidence that offering only political or market-based solutions may further exacerbate religious tensions, particularly where a concentrated religious minority maintains meaningful economic power. “The argument is straightforward. Liberalization provides even greater advantages to those who already have market skills: the politically disfavored minority, who then become even richer relative to the poorer majority. Democratization creates political competition for the votes of the majority - providing opportunities for demagogues to exploit resentment against the market dominant minority. The result is backlash.”<sup>81</sup>

As the growing body of empirical evidence demonstrating the common insufficiency of purely economic or social solutions shows, the flexibility and focus offered to negotiators by simply ignoring religious claims is often offset by the limited opportunity to do so successfully. At least some -- and probably most -- religious combatants will simply not acknowledge a process that does not consider religious elements of the disagreement. The artifice conception provides few tools for dealing with faltering economic solutions in the wake of this reality or uncompromising believers attempting to derail faith-neutral compromises. The artifice approach fails to recognize that some ideological conflicts are simply outside the scope of purely political or economic solutions and require a religious or cultural component. Attempting to deemphasize religious elements in these cases may allow religious issues to remain unaddressed, retaining inflammatory potential, prolonging conflict, and increasing grievances between parties.

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<sup>80</sup> Philip Tetlock et al., “The Psychology of the Unthinkable,” 78 J. OF PERSONALITY AND SOC. PSYCH. 853, 865 (2000)

<sup>81</sup> Tom Ginsburg, “Democracy, Markets and Doomsaying: Is Ethnic Conflict Inevitable?” 22 BERKELEY J. INT’L L. 310 (2004)

## The Fundamentalist Model - *Faith as Irrationality*:

The fundamentalist model for understanding religious conflict is largely derived from a new and growing body of scholarship based on the sociological and psychological study of religious extremists. The descriptive and normative arguments emerging from this scholarship tend to be very narrowly focused on sectarian communities with extreme religious views. The term *fundamentalist* itself is replete with its own misleading connotations and ambiguities,<sup>82</sup> but scholars tend to define fundamentalism as "the affirmation of religious authority as holistic and absolute, admitting of neither criticism nor reduction; it is expressed through the collective demand that specific creedal and ethical dictates derived from scripture be publicly recognized and legally enforced."<sup>83</sup> The model contends that subscribers to this theory of absolute religious authority tend to view the world differently and make decisions based on fundamentally different rationality calculations than moderate or secular parties.<sup>84</sup>

Because of the different cognitive wiring of fundamentalists, orthodox negotiation methods that seek to uncover deeper interests or principles behind a party's positional stance tend to fail in resolving religious disputes.<sup>85</sup> Orthodox negotiation, like that informed by the artifice model, assumes "the basic problem in negotiation lies not in conflicting positions, but in the conflict between each side's needs, desires, concerns, and fears."<sup>86</sup> The problem with applying an orthodox approach to fundamentalists is that religious "positions" and "interests" are often indistinguishable and immutable. "Religious fundamentalist ideologies revolve around

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<sup>82</sup> See Bernard Lewis, *THE CRISIS OF ISLAM: HOLY WAR AND UNHOLY TERROR* (2003) (The term *fundamentalism* was originally coined to describe American Protestants who subscribed to strict literal biblical interpretation, and application of the term in other religious traditions can be misleading.)

<sup>83</sup> Thomas, *supra* note 37, at 119 *citing* Bruce Lawrence, *DEFENDERS OF GOD: THE FUNDAMENTALIST REVOLT AGAINST THE MODERN AGE* 27 (1989).

<sup>84</sup> See Thomas, *supra* note 37, at 135.

<sup>85</sup> See Roger Fisher & William Ury, *GETTING TO YES* (1981), the seminal work describing orthodox negotiating theory.

<sup>86</sup> *Id.* at 140.

symbols, assumptions, and rules that can materialize into positional demands. More frequently than in disputes involving only non-fundamentalists, these surface manifestations of underlying interests (such as the need to preserve group identity) are not subject to compromise.”<sup>87</sup>

Fundamentalist identity is often based on a deliberate rejection of a secular and pluralist mode of rationality.<sup>88</sup> Consequently, the fundamentalist as “non-rationalist, may be incapable of abandoning an ideologically mandated adversarial stance.”<sup>89</sup>

The fundamentalist model offers programmatic advice to secular negotiators on how to engage with fundamentalist religious parties. Briefly these are: 1) rehumanizing the fundamentalist group by breaking down stereotypes, 2) adopting policies that respect the collective identity of the fundamentalist group, 3) engaging fundamentalist leadership to identify areas of flexibility, 4) recognizing that fundamentalists are guided by a particular form of rationality that differs from their own, 5) maintaining sensitivity to symbolism and manipulating it to de-escalate tensions and facilitate compromise, 6) appealing to moderate elements of the movement or organization in an attempt to weaken support for extremist leadership.<sup>90</sup>

The sensitivity toward religious symbolism and values recommended by the fundamentalist view stands in stark contrast to the ambivalence toward religion of the artifice conception. Still, however, religion is treated as important solely to the extent that it provides an avenue for the psychosocial manipulation of religious adherents. Religion’s centrality to conflict is again limited to its use as a tribal marker. Negotiators are advised to be generally accommodating of what the model interprets as the fundamentalists’ desire to be viewed as a unitary community of faith, completely distinct from and untainted by the larger world. Directly

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<sup>87</sup> See Thomas, *supra* note 37, at 137.

<sup>88</sup> *Id.* at 120. (“Fundamentalism can also be understood as a set of strategies employed by a religious group seeing itself as under siege by secular modernity.”)

<sup>89</sup> *Id.* at 138.

<sup>90</sup> See Thomas, *supra* note 37, at 117-118.

confronting the reasonableness of ideological demands or addressing potentially conflicting issues of religious principle is to be strongly eschewed.

The fundamentalist model has much to be commended, not the least of which is its basis in a rigorous sociological study of religious adherents and their communities. Its considered advice and its emphasis on distinguishing between discrete religious subgroups are highly salient at a time when scholarship that assumes monolithic faith traditions or that rails against religion per se is en vogue. The model's warnings about the danger of neglecting religious symbolism are also prescient and timely. There are numerous contemporary instances of ill-advised neglect or disregard for religious symbolism or identity that have exacerbated ideological conflict.

For example, in June 1984, the Indian government launched a raid against the Golden Temple of Amritsar, the most sacred site in the Sikh religion. A group of extremist Sikh separatists had used the shrine as a base of operations for armed insurrection, in an attempt to gain independence for the Sikh area of the Punjab. The raid, which came on a Sikh holy day, destroyed several sacred Temple buildings and killed more than a thousand innocent Sikhs who were attending services.<sup>91</sup> Following the attack, Sikh members of the Indian military, believing their government was waging a war on their faith, abandoned their posts.<sup>92</sup> The country plunged into wide-spread violence as Sikh deserters battled with their former comrades. In October of 1984, Indian Prime Minister Indira Gandhi was assassinated by two Sikh bodyguards as she walked through her garden, ostensibly in reprisal for the attack on the holy shrine.<sup>93</sup> Gandhi's death initiated a wave a religious rioting, in which more than 2,000 Sikhs were killed.<sup>94</sup>

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<sup>91</sup> Ram Narayan Kumar, *The Sikh Unrest and the Indian State: Politics, Personalities and Historical Retrospective* 159-79 (1997).

<sup>92</sup> *Id.* at 175.

<sup>93</sup> BBC News, "Indian Prime Minister Shot Dead," (October 31, 1984), Available at [http://news.bbc.co.uk/onthisday/hi/dates/stories/october/31/newsid\\_2464000/2464423.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/october/31/newsid_2464000/2464423.stm).

<sup>94</sup> Inderjit Singh Jaijee, "Punjab 1984-1994," in *POLITICS OF GENOCIDE* 30, 31 (1995).

Religious tension continues to this day and violence is commonplace in the region. The example illustrates just how costly disregard for religious symbolism can be to both sides of a confrontation, often exacerbating conflict and resulting in a vicious cycle of violence.

Much to its credit, the fundamentalist model does not see religious conflict as a primitive expression of outrage or dissatisfaction at being left behind the pace of *modern* (meaning liberal, secular, and democratic) advancement. Rather religious animosity toward secularism or other faith traditions is viewed as a considered act of response to either perceived religious antagonism -- as was the apparent case for most Sikhs who took up arms against the Indian government -- or a pluralistic worldview whose ambivalence toward faith offends religious sensibilities.

To resolve this perceived persecution and to avoid insensitive religious confrontation, the fundamentalist conception's ideal solution to religious conflict is a negotiated agreement that permits and encourages the withdrawal of fundamentalist communities from pluralistic society.<sup>95</sup> According to the fundamentalist notion, religious differences may not be subject to compromise, but at least they might be contained if the ultra-religious are granted enclaves (physical and psychological) of noninterference from secularism or opposing traditions.<sup>96</sup>

As we'll see in the subsequent discussion of Al-Qeada, the belief that protective enclaves will suffice to satisfy fundamentalist impulses may be a convenient device to circumvent direct confrontation of irreconcilable religious positions, but it has no basis in the claims actually made by many fundamentalists. The most virulent forms of violent fundamentalism today are not violent solely because of perceived persecution, but because they seek to impose their religious worldview on a massive scale. They seek to persecute others.

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<sup>95</sup> See Thomas, *supra* note 37, at 122, *citing* Emanuel Sivan, *The Enclave Culture*, in *FUNDAMENTALISMS COMPREHENDED* (1994). ("In other words, fundamentalists seek to establish an "enclave" protected by a "wall of virtue" and based on specific, central beliefs separating the saved from the damned, the free from the enslaved.")

<sup>96</sup> *Id.*

The narrative of struggle is a two-way street. It involves not only the resistance of believers in the face of irreligious onslaught, but the ultimate triumph of believers and the subjugation of their would-be oppressors. This religious ‘will-to-power,’ as Niebuhr called it, cannot be co-opted by the creation of protective enclaves as envisioned by the fundamentalist model. Enclaves may only reinforce the perceived divisions between the community of believers and the infidels. The religious impulse to dominate can only be transcended with the believers’ realization that it is subject to a greater ‘absolute will’ and that the absolute will extends divine benevolence beyond the boundaries of any individual community of faith. This recognition appears to depend on collaborative interactions between faith communities; on tearing down the walls around spiritual enclaves rather than building them up.

Thus, while the fundamentalist model succeeds in focusing to an extent on the religious context of disagreement, like the artifice model, it largely fails to recognize the complexities and inherent contradictions at work within the religious traditions to which extremists ascribe. Because it fears that any process of religious inquiry may be seen as invasive, the conception advises against challenging religious adherents to address the internal contradictions of their faith, in their own religious terms. The conception assumes the immutability of religious identity, and fails to account for the fact that a sense of religious identity is potentially motivated by the adoption of internal compromises, either explicit or tacit, on the apparent contradictions endemic to all faiths.

Its treatment of the fundamentalist group’s relationship with majoritarian religious views, and its neglect of the political nature of this relationship, is especially problematic. The model views the fundamentalist group as a discrete sect, within a larger religious tradition but totally distinct in its positions and interests from the larger tradition. While it is worthwhile to



understand that fundamentalists exhibit sociological traits that are distinct from the merely religious,<sup>97</sup> it is folly to ignore that fundamentalist movements both inform and are informed by the larger religious traditions from which they spring.

Religious extremism does not exist in a vacuum. Fundamentalists make claims upon entire religious traditions, not only their myopic view of religious practice. Fundamentalists from all faiths describe their project as the coalescence of believers around support for their own outlier position. In short, fundamentalists often seek religiously-motivated expansion rather than insulation. The goal is not a protected enclave but a remade world, in which the moderate and secular are elided into a fundamentalist vision.<sup>98</sup> For this reason, the model's ultimate solution of providing enclaves of noninterference is simply incompatible with the essential goal of many religious fundamentalists, which is establishing the primacy or monopoly of their own peculiar belief system.

Fundamentalists make claims upon majoritarian religious tradition because, though they frequently root their claimed legitimacy in a static textual literalism, they also seek to dominate evolving religious interpretations. All religious positions are subject to interpretation. Pure textual literalism is simply insufficient as a sole basis for religious position taking. As has been pointed out in other disciplines, words cannot have sufficient meaning to inform positions in changing circumstances if they are divorced from context and not subject to applied interpretation.<sup>99</sup> Because religious life necessarily requires those who were not a direct party to

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<sup>97</sup> See Thomas, *supra* note 37, at 117.

<sup>98</sup> See F. Gregory Gause III, "Can Democracy Stop Terrorism," *FOREIGN AFFAIRS* (September/October 2005), for a description of the religious goals of Islamic fundamentalist and the inadequacy of political solutions in addressing those goals. ("Al Qaeda and like-minded groups are not fighting for democracy in the Muslim world; they are fighting to impose their vision of an Islamic state. Nor is there any evidence that democracy in the Arab world would "drain the swamp," eliminating soft support for terrorist organizations among the Arab public and reducing the number of potential recruits for them.")

<sup>99</sup> See e.g. Hans-Georg Gadamer, *TRUTH AND MEANING* 625 (1993) ("It is not the case that first there are naked things "out there" which are subsequently given a certain coloring by our "subjective" and circumspective

divine revelation to find meaning in an ancient story of that revelation – a story that has generally been frequently retold -- and to apply that meaning in the context of contemporary life, religious positions necessarily evolve from complex interactive processes. These processes are similar to those described by Professor Fuller. “If I attempt to retell a funny story which I have heard, the story as I tell it will be the product of two forces: (1) the story as I heard it...[and] (2) my conception of the point of the story, in other words my notion of the story as it ought to be... These two forces, then, supplement one another in shaping the story as I tell it... The two are inextricably interwoven, to the point where we can say that “the story” as an entire reality embraces both of them.”<sup>100</sup>

Religious positions then emerge from a two-level negotiation of sorts. They frequently begin with sacred text, but understandings of that text are subsequently informed by the community of believers and their perceptions of the rest of the world. On one interpretive level, religious positions emerge from a continuous internal discussion among believers about how to interpret the demands of their faith and how to apply those interpretations to contemporary life. They emerge as a social consensus. On another level, religious positions are simultaneously influenced by ongoing external interactions with other religious traditions or secular traditions. Often the meaning of faith is defined by what separates its adherents from non-believers; as

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understanding. On the contrary, what is primarily there is precisely our involvement in the world, which takes the form of interpretive projects... [Consequently a] person who is trying to understand a text is always projecting. He projects a meaning for the text as a whole as soon as some initial meaning emerges in the text.”)

<sup>100</sup> Lon Fuller, *LAW IN QUEST OF ITSELF*, 8-9 (1940). Fuller goes on to add more that is relevant for our purposes. (“Indeed, if we look at the story across time, its reality becomes even more complex. The “point” of the story, which furnishes its essential unity, may in the course of retelling be changed. As it is brought out more clearly through the skill of successive tellers it becomes a new point; at some indefinable juncture the story has been so improved that it has become a new story. In a sense, then, the thing we call “the story” is not something that is, but something that becomes; it is not a hard chunk of reality, but a fluid process...”)

against the *other*.<sup>101</sup> The intensity and frequency of these comparisons and interactions is heightened in periods of conflict, as is the tendency to misinterpret these interactions and the threat posed by the *other*. “Warfare organizes people into a ‘we’ and a ‘they,’ and it organizes history into a storyline of persecution conflict, and the hope of redemption, liberation, and conquest.”<sup>102</sup> The violent fundamentalist seeks to use spiritual war simultaneously to exploit genuinely held fears of the *other* and to dominate liturgical social consensus.

In their religious project, fundamentalists frequently try to impose their worldview on intrafaith dialog and to monopolize religious conversation, attempting to speak as the august voice of an entire religious tradition. Fundamentalist movements, particularly those capable of engaging in protracted military conflict with sophisticated states, also generally rely on sympathetic elements of majoritarian religious traditions for support, haven, recruitment, and resources.<sup>103</sup> Rather than existing outside the fabric of mainstream religiosity, fundamentalism is a strand woven through a larger cloth. To accentuate his own relative power and aggrandize his worldview, the fundamentalist plays upon the fears and warps the interpretive processes of the larger faith tradition of which he is a part.

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<sup>101</sup> Regina Schwartz, *THE CURSE OF CAIN: THE VIOLENT LEGACY OF MONOTHEISM*, x (1997) (“[Religious] narratives have become the foundation of a prevailing understanding of ethnic, religious, and national identity as defined negatively, over against others. We are ‘us’ because we are not ‘them.’ Israel is not-Egypt.”)

<sup>102</sup> See Juergensmeyer, *supra* note 6, at 169-170.

<sup>103</sup> See Daniel Byman et al., *TRENDS IN OUTSIDE SUPPORT FOR INSURGENT MOVEMENTS* (2001).

### *The Unique Problem of the Al-Qaeda: Development of a Hybrid Model*

Any discourse on religious violence would be remiss to not confront directly the problem posed by Islamic Jihadists following the model of Al-Qaeda. The program of these Jihadists seems unique even in the history of religious violence, because it so totally confuses political and religious claims, because its goals entail sweeping societal reformation, and because it has been unrelenting in its tendency toward violence.<sup>104</sup> The emergence of composite political and religious Jihadism as a perceived mortal threat to the secular world has necessitated a hybridized understanding that views religious violence as simultaneously social, economic, political and deeply dogmatically ideological. The teachings of Osama bin Laden, the purported spiritual leader of Al Qaeda, support a hybrid understanding of the fundamentalist's designs on dominating religious and secular traditions and the interwoven political and religious motivations for these designs. The vision of Bin Laden and his collaborators is not simply the achievement of Israeli, American, or Western noninterference in the Muslim world. It is the consolidation of the Islamic community of believers under the governance of a singular extremist perspective. "We have one religion, one God, one book, one prophet, one nation," bin Laden told Al Jazeera in October 2001. "Our book teaches us to be brothers of a faith. All the Muslims are brothers... We speak about the conscience of the nation; we are the sons of the nation. We are brothers in Islam from the Middle East, Philippines, Malaysia, India, Pakistan and as far as Mauritania."<sup>105</sup>

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<sup>104</sup> Major Joshua Kastenberg, "The Use of Conventional International Law in Combating Terrorism," 55 A.F. L. REV. 87, 101 (2004) ("Each major world religion has a core constituency of possible terrorist groups. However, since World War II, fundamentalist Islamic movements have emerged in the forefront of those groups willing to engage in acts of terrorism...[the goals of which] include gross societal change, rather than national self-determination, which is often the goal of non-religious-based forms of terrorist organizations.")

<sup>105</sup> Tayseer Alouni, "Interview with Osama bin Laden," AL JAZEERA TELEVISION, Translated and Rebroadcast on CNN (Feb. 5, 2002). Available at <http://archives.cnn.com/2002/WORLD/asiapcf/south/02/05/binladen.transcript/index.html>.

Like so many Western scholars, Bin Laden too believes in the clash of civilizations.<sup>106</sup> He asserts that the Koran foretells a final reckoning between the forces of a unified Muslim world and the forces of the Christians and Jews (the United States, Europe and Israel by proxy). The inevitability of the conflict itself is an article of faith, allegedly drawn from the most sacred Islamic scripture. This interpretation seeks to delegitimize moderate Muslim leaders, who might provide a competing religious frame. It entrenches the bellicosity of the fundamentalist movement as a matter of ideological principle. It positions Bin Laden and his cohorts as the lone legitimate authority and defender of the Muslim faith in a perceived onslaught by the destructive forces of Western pluralism. It reinforces a collective theological identity, a sense of virulent external threat, and the promise of divine deliverance. “There will come some deceiving times where the liars will be believed and the truthful won't be believed. That's the situation in the Arabic world with its great leadership. They are lying to people. But God's relief and victory is coming soon.”<sup>107</sup>

Bin Laden's claims are undoubtedly the product of a fringe religious viewpoint, but his goal is the domination of a larger mainstream religious discourse. In this sense, his project is simultaneously religious and political. The marginalization of moderate viewpoints serves two ends: the aggrandizement of his particular religious vision and the entrenchment of his own political authority as the source of that vision. It would appear then that he is not driven singularly by some alternative spiritual worldview, but that he has quite rationally staked out a position where his religious priorities and his worldly political interests coincide, allowing him to

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<sup>106</sup> Id. (“No doubt about that: The book mentions this clearly. The Jews and the Americans made up this call for peace in the world. The peace they're calling for is a big fairy tale. They're just drugging the Muslims as they lead them to slaughter. And the slaughter is still going on. If we defend ourselves, they call us terrorists. The prophet has said, "The end won't come before the Muslims and the Jews fight each other till the Jew hides between a tree and a stone. Then the tree and stone say, "Oh, you Muslim, this is a Jew hiding behind me. Come and kill him." He who claims there will be a lasting peace between us and the Jews is an infidel. He'll be denouncing the book and what's in it.”)

<sup>107</sup> Id.

maximize his potential win-set. Bin Laden's position is therefore vulnerable from two fronts: Another party could attempt to demonstrate that his claims are religiously illegitimate, or another party could attempt to demonstrate that his position to make such claims is politically untenable.

The religious combatant's best possible alternative to negotiated agreement is typically protracted violent conflict. Religious ideology is often employed to minimize the losses inherent in this alternative, both the suffering of the combatant and the feeling of humanity lost by inflicting suffering upon others, by promising eternal reward for the suffering or retributive faithful and elevating the spiritual importance of their material sacrifice.<sup>108</sup> Religious justifications are also used to harden extremist positions by making them articles of faith.<sup>109</sup> The effectiveness of belief in these uses can be minimized by sowing doubt in the reliability of extremist promises and positions. Competing religious arguments can be deployed to engage extremist views on their own terms and to dissuade believers of, if not the rightness of extreme positions, the need to employ violence to obtain religious goals.

Bin Laden's statements betray his sensitivity to ecclesiastical criticism that threatens his religious and political credibility. Responding to Muslim clerics who say religious terrorism violates the precepts of Islam, Bin Laden said, "I say it is permissible in law and intellectually, because those who spoke on this matter spoke from a juridical perspective... They spoke of evidence that the Messenger of God forbade the killing of women and children. This is true... However, this prohibition of the killing of children and innocents is not absolute. It is not absolute." Bin Laden's claims are simultaneously religious, legal, and political. They can be rejected on all of these grounds. The validity of his interpretation rests on his asserted religious

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<sup>108</sup> Silvio Ferrari, "Individual Religious Freedom and National Security in Europe After September 11," 2004 B.Y.U. L. REV. 357, 358 (2004) ("In many cases, hope of a supernatural reward makes "religious" terrorists indifferent toward their own lives; they are prepared to die because they are persuaded God will reward their sacrifice with eternal life") (Citation Omitted)

<sup>109</sup> See Thomas, *supra* note 37, at 137.

and political authority. As Bin Laden himself seems acutely aware, that authority can be challenged in either a religious or political context.

The most effective potential challenge to absolutist claims like those presented by bin Laden would engage the argument on both religious and political grounds simultaneously. In fact, there appears to be a movement of internal challenge on these very grounds emerging from within the extremist fringe that Bin Laden occupies. Al Qaeda's willingness to kill to accomplish its religious and political program, particularly its willingness to kill other Sunni Muslims (other believers), has generated a schism among the Jihadist movement.<sup>110</sup> This is not a debate between moderates and fundamentalists, but a debate within the fundamentalist community itself, between believers who share religious interpretations and programs.<sup>111</sup> They differ not in their commitment to a religious and political program, but on the extent to which they view violence as an acceptable means of pursuing that program. Those who oppose the unnecessary killing of fellow Sunnis root this conviction in their religious faith. At its core, this disagreement is based on questions and doubts about the religious and political legitimacy of Al Qaeda to claim divine understanding and to justify its costly political actions by that understanding. The issue is whether the level of suffering imposed is a tolerable means of attaining the religious goals sought. As the schism shows, fundamentalists from the same tradition can and do disagree about the value of violent struggle, not necessarily because they are more or less 'moderate' but because they interpret the commands and limitations of their faith

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<sup>110</sup> Even Kohlmann, 'Jihadists Turn Against Al Qaeda,' Transcript of Counterterrorism Foundation (Sept. 23, 2008), available at [http://counterterrorismblog.org/2008/10/transcript\\_of\\_event\\_the\\_jihadi.php](http://counterterrorismblog.org/2008/10/transcript_of_event_the_jihadi.php) ("Arguably over any other issue, the predominant topic of discussion, controversy—and often schism—within the Salafi-Jihadi discourse has revolved around the justifications for deliberately killing other Sunni Muslims, including both innocent civilians and competing mujahideen fighters.")

<sup>111</sup> Id. ("Indeed, there was once a time when Al-Qaida in Iraq could successfully portray itself as the obvious patriotic bulwark for innocent Sunnis against the conspiracies of Western "crusaders" and Iranian-backed death squads. The prevailing conditions only improved for Al-Qaida during the Sunni-Shiite bloodshed that took place throughout 2006, when it seemed as if the Sunni community was facing an existential threat.")

differently. These types of internal disagreements deserve further exploration by observers of conflict that we may better understand the opportunities presented by this incredibly intricate process of religious position taking.

The hybrid model draws on the artifice model and softens the fundamentalist model's presumption of religious "non-rationality" by empowering observers to examine the traditional political interests implicated by such quarrels.<sup>112</sup> The model recognizes the fundamental conflation of worldly and spiritual interests in religious conflicts. It recognizes that often political interests run parallel to ideological interests in religious disputes, with neither one clearly dominant or with different interests dominating at different times. Likewise, the hybrid model attempts to correct the fundamentalist model's policy of 'respect for collective religious identities' to the extent that policy limits exploitation of ideological and political fissures within a religious tradition. Viewing communities of faith as monolithic groups plays into the hands of fundamentalists, who often see their project as achieving a coalescence of believers. If negotiators instead recognize that extremist religiosity is but one voice in a larger political dialogue within a heterogeneous religious tradition, they may indeed find a deeper, richer or more complex set of interests informing fundamentalist positions. This recognition may be an important factor in facilitating effective engagement with religious fundamentalists.

Exploiting the legitimacy vulnerabilities of religious extremists also involves the deployment of economic and political solutions to separate extremists from moderates.

Mainstream believers may be inclined to support extremists in religious conflict if they see

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<sup>112</sup> In a Machiavellian sense all 'political interests' can generally be reduced to a desire to preserve and maximize power. Religious conflict often coincides with territorial disputes involving issues of autonomy, interference, and separatism. In these conflicts, ideological claims are often advanced by parties to justify the relative power sought by movements or leaders in relation to other political actors. The actors these claims are directed against are most often believers with competing religious interpretations or secular political and economic traditions that present their own competing visions and narratives.



violence as the only means of achieving shared ideological or political goals. For example, many moderate Arab Muslims disagree with the civilian-targeting tactics and quasi-religious justifications employed by Hamas or Hezbollah but sympathize with the political goal of an autonomous and free Palestinian state.<sup>113</sup> As a result they are more inclined to tolerate or support violence by these factions. By incorporating moderate elements into non-violent processes that address their underlying political goals, negotiators can siphon off support for the outlier positions of extremists. The adequacy of non-violent political outlets and opportunities that permit the free expression of religious goals is key to recapturing mainstream religious dialogue from extremist control.

Once marginalized from mainstream sympathies, extremist groups tend to wither or to turn on the moderate elements that have forsaken them.<sup>114</sup> When extremist groups resort to targeting moderate elements of their own religious tradition, their perceived legitimacy declines quickly with real consequences for their external support and relative power. When violence no longer discriminates between believers and nonbelievers, those combatants with lesser tolerances for the use of violence frequently fragment from the militant movements they once supported.<sup>115</sup> Using both religious and political tactics to foster and exploit fragmentation within a religious

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<sup>113</sup> See Simon Haddad and Hilal Khasham, "Islam and Terrorism," 46 *JOURNAL OF CONFLICT RESOLUTION* 812 (2002) (Showing that support for events of civilian targeting correlate with extreme religious viewpoint and age); Majid Al-Haj et al, "Arab and Jewish Attitudes," *J. 37 JOURNAL OF CONFLICT RESOLUTION* 619, 621 (1993) ("The vast majority of Arabs support the creation of a full-fledged Palestinian state alongside the state of Israel...")

<sup>114</sup> See Ethan Bueno de Mesquita, "Conciliation, Counterterrorism, and Patterns of Terrorist Violence," 59 *INTERNATIONAL ORGANIZATIONS* 145 (2005) for a description of how and why extremist elements of terrorist movements garner power from moderate movements and target moderate elements who resist.

<sup>115</sup> See Thomas Friedman, "Watch the Sunni Tribes," *NEW YORK TIMES* (August 29, 2007). A timely example is the realignment of many Sunni tribes in contested areas of Iraq with the American military presence in opposition to the forces of Al Qaeda in Mesopotamia. The Sunni tribesmen had previously violently resisted the American presence in conjunction with Al Qaeda fundamentalists. The Al Qaeda-Sunni alliance lasted until Al Qaeda began to aggressively impose its religious vision on more moderate tribal leaders, resulting in several armed clashes that caused Sunni leaders to turn to American authorities for help. As Thomas Friedman described it, "Ironically, a key reason violence appears to be trending lower here is because Al Qaeda's "surge" in 2006 so frightened Iraq's more moderate, occasionally whisky-drinking Sunni tribal leaders — the backbone of the Sunni community here — that they became willing to work with the Americans just when the U.S. surge was taking off."

tradition seems to be the most prudent strategy for secular and moderate groups embroiled in religious conflict. These tactics undermine support for extremist positions, decrease extremist bargaining power, and degrade extremist alternatives to negotiated resolution of conflict. They incorporate moderate elements into non-violent processes and help force even extreme elements to the table.

The hybrid model compensates for the shortcomings of the others to an extent. While the artifice model seems to overvalue political and economic factors, the fundamentalist model tips too far in the other direction by unnecessarily limiting the application of traditional negotiating tools and methods in a religious conflict paradigm. As the discussion of Bin Laden's brand of Islamic fundamentalism shows, even in the most seemingly absolutist circumstances, religious and political interests often coincide within a single position. These positions, however, are rarely clear and the line separating divine and worldly programs is often indistinct, even to the combatants themselves.<sup>116</sup> The concurrence of religious principles and political legitimacy interests presents unique vulnerabilities in extremist religious positions and opportunities for negotiators. To seize these opportunities, negotiators should take care to identify where parties' priorities fall on the spectrum of ideological and material interests. They should assess how priorities differ among factions within religious groups and traditions. Once negotiators can accurately assess fissures within a religious community based on the relative valuation of material and ideological interests, they can use that information to affect religious parties' bargaining power and alternatives to negotiated agreement.

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<sup>116</sup> See Peter Bergen, in 'Jihadists Turn Against Al Qaeda,' supra note 110, at 110, ("We know what these groups are against but what are they for? There is no al Qaeda minister of employment, Al Qaeda school, or Al Qaeda social welfare organization. There is not a category of government they have said they are not against, Russia, China, the West, Israel, Shiites and so on. Because of this problem they can't turn themselves into [legitimate] political movements.")

### *The Missing Component: Transcending Irreconcilable Difference*

Combining the best of the fundamentalist research, artifice understandings, and traditional negotiating strategies arms negotiators with a significant battery of tools to be deployed in individual conflicts. Still, all of these tools seem to have proven insufficient for confronting the enormous and timeless problem of religious violence as a whole. We need only look across the panorama of suffering in the world today to view this inadequacy. Some element must still be missing. On the most basic level, all of the approaches here described are incapable of addressing and resolving the central problem of conflicting religious claims at the heart of these situations. The existing approaches, and perhaps rational thought more generally, are simply inadequate as a means of determining the rightness of existential religious claims. They inevitably will remain so, for as we have said, we simply cannot know the true will of God with certainty though many will undoubtedly claim that his will happily supports their position. The claims advanced by religious traditions, each of which asserts a claim to divine knowledge that is exhaustively and exclusively correct, are therefore frequently irreconcilable and irresolvable. It is time for students of conflict and the faiths to admit this limitation, and to move to address the problem accordingly.

As we have seen, the tendency to desire reconciled solutions is born of a negotiating orthodoxy designed to respond to secular conflict, conflicts that revolve around distributive issues or discrete goals underlying positional stances.<sup>117</sup> Some would try to force religious disagreements into that mold in order to employ the familiar tools. To some extent, that impulse can be limitedly successful, as in the example of Northern Ireland. Prosperity and improved material distribution can bring some measure of restoration to divided societies. Religious disagreements simultaneously encompass these issues occasionally. However, religious conflict

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<sup>117</sup> See Fisher, *supra* note 85, at 140

also has other sacred elements of core belief, which conventional paradigms do not and cannot account for. “[R]eligion does make a difference. Some of these differences are readily apparent – the transcendent moralism with which such [violent] acts are justified, for instance, the ritual intensity with which they are committed. Other differences are more profound and go to the very heart of religion. The familiar religious images of struggle and transformation – concepts of cosmic war – have been employed in this-worldly social struggles. When these cosmic battles are conceived as occurring on the human plane, they result in real acts of violence.”<sup>118</sup>

Popular conceptions reflect this understanding of a connection between religiosity and violence, although members of various faith groups tend to recognize proclivities toward violence in the religious traditions of others and not their own. According to the Pew Global Attitudes Project, respondents in the majority-Christian and secular countries of North America and Europe overwhelmingly felt that members of the Muslim faith were more prone to violence than others, while sizeable majorities in majority-Muslim countries in the Middle-East and North Africa believed members of the Jewish faith were especially prone to violence.<sup>119</sup>

Realizing the gap in understanding the connection between religious attitudes and violence, many observers have attempted to fill the void by proposing a new focus on religious psychology. Some of these observers suggest that creating enclaves of religious noninterference may provide a way to avoid addressing irresolvable religious claims. This solution too is insufficient. An understanding of religion that is rooted solely in the identity claimed by combatants unnecessarily limits the use of faith in peacemaking. Independent religious arguments must be developed and encouraged to undermine the competing narratives of extremists that aggrandize violent struggle. The religious authority of blood lust must be

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<sup>118</sup> See Juergensmeyer, *supra* note 6, at 10.

<sup>119</sup> Pew Global Attitudes Project, *ISLAMIC EXTREMISM: COMMON CONCERN FOR MUSLIM AND WESTERN PUBLICS, SUPPORT FOR TERROR WANES AMONG MUSLIM PUBLICS* (2005).

challenged, rather than accommodated. The proposed solution of protective enclaves also fails to account for religious programs that typically seek dominance rather than noninterference. Ultimately, segregating the faithful may be more likely to breed further suspicion and distrust than peace and noninterference.<sup>120</sup> This solution too gives too little attention to the essential problem, the core religious contradictions that fuel conflict.

A recent example illustrates both the centrality and irreconcilability of religious claims and the inadequacy of simply retreating to noninterference in certain situations. On September 30, 2005, twelve drawings depicting the Muslim prophet Mohammed appeared with an article in *Jyllands-Posten*, a major Danish newspaper.<sup>121</sup> The newspaper had solicited members of the Danish Newspaper Illustrators' Union to submit drawings of Mohammed "as they saw him."<sup>122</sup> In an excerpt on the front page, the newspaper reproduced one of the cartoons with a caption reading, in part, "Some Muslims reject modern, secular society. They demand a special position, insisting on special consideration of their own religious feelings. This is incompatible with secular democracy and freedom of expression, where one has to be ready to put up with scorn mockery and ridicule."<sup>123</sup> The cartoon that appeared on the front page depicted Mohammed "wearing a turban shaped like a bomb with a lit fuse."<sup>124</sup>

The accompanying article went on to refer to incidents where other publications engaged in self-censorship to avoid provoking the ire of Muslims.<sup>125</sup> It also described a meeting between the Danish Prime Minister and a prominent imam, where the cleric expressed concern about

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<sup>120</sup> See Gordon Allport, *THE NATURE PREJUDICE*, 42 (1954) (Describing the nature of in-group and out-group bias based on segregation and concluding, "Hostility toward out-groups helps strengthen our sense of belonging... The familiar is preferred. What is alien is regarded as somehow inferior, less 'good'...").

<sup>121</sup> Stephanie Lagoutte, "The Cartoon Controversy in Context," 33 *BROOKLYN J. INT'L L.* 379, 381 (2008).

<sup>122</sup> *Id.* at 382.

<sup>123</sup> Flemming Rose, "Muhammeds ansigt [The Face of Mohammed]," *Jyllands-Posten* (Sept. 30, 2005).

<sup>124</sup> BBC News, "Danish Muhammad cartoon reprinted," (Feb. 14, 2008), available at <http://news.bbc.co.uk/2/hi/europe/7242258.stm>.

<sup>125</sup> See Rose, *supra* note 124, at 1.

depictions of Islam in the media.<sup>126</sup> “The article opined that such incidents reflected a desire of some Muslims for special treatment, which presented a threat to the free exchange of ideas in the public forum.”<sup>127</sup> Though the article did not directly comment on the adjacent cartoons, a subsequent report of Denmark’s Director of Public Prosecutions stated that the juxtaposition of the article with the cartoons supported the basic assumption “that Jyllands-Posten commissioned the drawings for the purpose of debating, in a provocative manner, whether, in a secular society, special regard should be paid to the religious feelings of some Muslims.”<sup>128</sup>

The newspaper’s provocations elicited a response. Within a few days of publication, the cartoon illustrators began receiving death threats.<sup>129</sup> Danish authorities later uncovered an alleged conspiracy to murder one of the cartoonists, involving a Danish citizen and two Tunisians.<sup>130</sup> Danish Muslims protested in the streets and appealed to the diplomatic missions of Islamic states to take part in an official protest.<sup>131</sup> Ambassadors from Islamic countries responded by denouncing the “ongoing smear campaign in Danish public circles and media against Islam and Muslims” and requesting an urgent meeting with Danish political leaders.<sup>132</sup> The media storm soon “became a hurricane, and Denmark found itself in the middle of its biggest diplomatic crisis in recent memory.”<sup>133</sup> In Syria, Lebanon, and Iran, hoards of demonstrators took to the streets, attacking Danish embassies and diplomatic personnel and

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<sup>126</sup> Id.

<sup>127</sup> See Lagoutte, *supra* note 121, at 382.

<sup>128</sup> Director of Public Prosecutions (DPP), “Decision on Possible Criminal Proceedings in the Case of Jyllands-Posten’s Article ‘The Face of Mohammed,’ No. RA-2006-41-0151 (March 15, 2006). Available at

<sup>129</sup> See Lagoutte, *supra* note 121, at 383. (In a footnote, Lagoutte points out, “However, it was soon discovered that the threats had been sent by a seventeen-year-old boy who was mentally ill and could not be attributed to Muslim organizations.”)

<sup>130</sup> See BBC News, *supra* note 135.

<sup>131</sup> See Lagoutte, *supra* note 121, at 383

<sup>132</sup> Id.

<sup>133</sup> Id.

setting fires.<sup>134</sup> The Norwegian embassy in Syria was also burned.<sup>135</sup> Rioting resulted in scores of casualties, with protesters and police being killed and injured in clashes in Afghanistan, Somalia, Gaza, India, and Indonesia.<sup>136</sup>

The cartoon crisis had at its core conflicting narratives, pitting an absolutist Muslim prohibition on idolatry against an absolutist secular notion of free expression. Differences in how the Muslim and secular publics understood these cultural and religious narratives resulted in widely different views about blame and the cause of conflict. A “2006 survey in four Muslim countries [found large majorities] blamed Western disrespect for Islam. But in five Western nations, majorities attributed the controversy to Muslim intolerance of points of view other than their own.”<sup>137</sup>

While the position of Muslims in Danish society or relative disparities between Western and Muslim states may have supplied an informing context, the proximate cause of conflict was indisputably the clash of two incompatible ideologies, each with sacred value to its adherents. At the heart of the Muslim position was an inviolate religious prohibition against representations of human form, rooted in the religion’s strict view of idolatry.<sup>138</sup> The artistic depiction of Islam’s sacred prophet, particularly in a relatively disrespectful context, presented an unacceptable affront to this core religious belief. The newspaper’s position, defending the right to be offensive in a free exchange of ideas, was similarly rooted in a core human right of free

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<sup>134</sup> Anders Jerikow & Mille Rode, eds., *THE PROPHET AFFAIR*, 145-153 (2006)

<sup>135</sup> BBC News, “Muslim Cartoon Fury Claims Lives,” *WORLD NEWS* (Feb. 6, 2006).

<sup>136</sup> *Id.*

<sup>137</sup> Pew Global Attitudes Project, *GLOBAL PUBLIC OPINION IN THE BUSH YEARS (2001-2008) AMERICA'S IMAGE; MUSLIMS AND WESTERNERS; GLOBAL ECONOMY; RISE OF CHINA*, (2008).

<sup>138</sup> Terry Allen, *ANICONISM AND FIGURAL REPRESENTATION IN ISLAMIC ART* (1988) (“The traditional Muslim theological objection to images, which may have been observed more in the breach than in ordinary life, was eventually codified in a quite rigid form and extended to the depiction of all animate beings. It is captured in the prediction that ‘on the Day of Judgment the punishment of hell will be meted out to the painter, and he will be called upon to breathe life into the forms that he has fashioned; but he cannot breathe life into anything.... In fashioning the form of a being that has life, the painter is usurping the creative function’ of God.”)

expression viewed as largely inviolate in liberal society. These two values are fundamentally irreconcilable in this context. As such, the artifice view supplies very little guidance in this situation. There is no way to ignore the religious basis for conflict because it is the sole motivating cause.

The fundamentalist view is similarly unhelpful. The provocateurs in this conflict were not governed by a limited or alternate capacity for rationality. Instead, the publishers of Jyllands-Poste appear to have rationally and deliberately opted to initiate what they perceived as a needed conversation on the rights and duties of the press by assailing religious sensibilities. This example illustrates that it is not only the uber-religious who subscribe to absolutist positions and whose actions are often motivated by hypersensitive perceptions of persecution. Secularists too have the tendency to attach quasi-religious absolute values to the rights and privileges accorded in liberal society. “[T]here were several ways the [Danish] Prime Minister, the government, and the newspaper could have reacted, yet they chose to emphasize free expression to the exclusion of all other values as follows: 1) freedom of expression is absolute; 2) absolute freedom of expression is a pillar of Danish society and culture, and therefore self-censorship is unacceptable; 3) because freedom of expression is absolute, the Prime Minister and government cannot criticize newspapers and journalists for exercising it.”

The insistence on absolutist positions blinded parties to intermediate postures and opportunities for engagement, collaboration, or transcending differences. For instance, the Danish government could have vigorously defended the right of the press to take provocative positions, but still criticized Jyllands-Poste for its deliberate and unproductive insensitivity to Muslim belief. Criticism of Jyllands-Poste could have easily been rooted in the same liberal values of pluralism and freedom (of religious practice free from bigotry) that the newspaper



invoked to defend its publication.<sup>139</sup> The government's immediate failure to develop a competing ideological argument was a missed opportunity. This failure undermined the government's position as an honest broker with Danish Muslims and complicated the issue politically. Had the Danish government criticized the newspaper (while honoring its right to publish) using the paper's own secular and pluralistic terms -- thereby shifting the frame away from a narrative of struggle against an *other* in defense of secular liberties toward a goal of a peaceable, tolerant, and cohesive society -- it may have initiated some much need introspection within the Danish polity about what the Danish liberal tradition actually valued and the best means of attaining those values.

The violent response by many Muslims was equally absolutist and culpable. Riots in Muslim countries accelerated the crisis, as it devolved from vigorous but nonviolent disagreement to open hostilities. The indiscriminant attacking of Danish diplomatic installations and persons, who had little or nothing to do with the publication, reflected an absolutist bias and an inability or unwillingness to understand the nuances of the conflict and Danish society. The violence was also self-defeating, as it tended to reinforce in the minds of many the most negative things implied by Jyllands-Poste about "some Muslims." Here too, a shift of frame from religious narratives of struggle in defense of the prophet to the goal at hand would have been helpful. The violence did not prevent or deter further depictions of Mohammed. In fact, it greatly increased public interest in the controversy, causing the cartoons to be reprinted by hundreds of publications in over 50 countries. In Denmark, other newspapers and television stations reprinted or broadcast the cartoons as an expression of solidarity with Jyllands-Poste and

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<sup>139</sup> See Lagoutte, *supra* note 121, at 401. ("Human rights, like freedom of expression, should not be reduced to absolutes. International human rights law is also based on the central value of respect for other human beings and on a common goal to ensure peace.")

to show they would not be intimidated by violence.<sup>140</sup> “[E]ven newspapers that were originally against the publication of the caricatures [were] now backing the campaign to defend freedom of speech.”<sup>141</sup> The initiation of violence supported the Danish narrative that free speech needed to be *defended*. Had the Muslim community instead responded to the publication with a frank but peaceful enunciation of its opposition and its sacred bases for its opposition, it seems likely that it could have made greater inroads against bigoted sentiment in Denmark and anti-Muslim depictions in the Danish press.

The fundamentalist model rightly observes that absolutism is often reactionary to perceived external threats to identity. But, as the Danish position shows, the application of this observation need not be limited to the religious fringe. It can apply with equal force to liberal-minded secularists. The prevalence and universality of absolutist argument undermines the contention that simple noninterference can solve these conflicts. Even in the secular enclave of Denmark, anxiety over a perceived onslaught against traditional liberalism -- manifested by *Jyllands-Poste*'s ridicule of a Muslim “desire for special treatment” that “threatened” free speech -- can spur inflexible confrontation. The extreme reaction of some Muslims was also rooted in a perceived persecution, based on interpreting the cartoons as a deliberate challenge to Islam. It was intolerable for Muslims living in the Islamic enclaves of Syria or Iran to admit such a challenge occurring anywhere in the world. Both sides of the conflict apparently sought to impose their position, either of respect for free expression or respect for the prophet, beyond their limited sphere of cultural control. The retreat to enclaves of noninterference is not capable of addressing the tendency of absolutist arguments to seek out confrontation with and subordination of competing narratives. It is impossible to permit the publishers to have their

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<sup>140</sup> See BBC News, *supra* note 124.

<sup>141</sup> *Id.*

worldview or Muslims to have their worldview without acknowledging that these worldviews will inevitably clash and some believers on each side will inevitably attempt to impose their views on one another.

As in the case of the Danish cartoons, negotiators are frequently confronted with this apparent impasse, which existing tools fail to resolve. Negotiators must address religious claims and narratives directly, while knowing full well that the claims advanced through these narratives will be hopelessly contradictory and irreconcilable. This can be an awkward position for negotiators trained in an orthodoxy that seeks zones of possible agreement. Religion often leaves little potential for compromise.

Nevertheless, negotiators should be willing to confront conflicting religious values head on, talking frankly and openly about the religious goals implicated and inviting the parties to do the same. This process of naming and claiming religious principle may lead parties to deeper introspection on the purposes served by violence, greater mutual understanding, and perhaps the realization of opportunities for collaboration and agreement on best outcomes (if not agreement on the beliefs and narratives that lead to those outcomes).

Shifting the emphasis from impossibly contradictory narratives to shared goals can be an important starting point for fostering mutual understanding and humanizing religious combatants. “Those who accept that their struggles are part of a great struggle, a cosmic war, know that they are part of a grand tale that will ultimately end triumphantly, though not necessarily easily or quickly... In the meantime, the story will involve sadness and travail.”<sup>142</sup> Effective negotiators must be prepared employ religious teachings and values that oppose unnecessary sadness, suffering, and travail to challenge the locus of contemporary worldly conflict within a narrative of epic struggle.

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<sup>142</sup> See Juergensmeyer, *supra* note 6, at 165.

Religious violence is based largely on an ability of certain adherents to discount the humanity of populations who do not ascribe to their religious worldview. By designating non-believers as *other* and locating present-day conflict in a historical narrative of struggle, believers are able to interpret the commands of faith that require respect for human personhood not to apply. The perpetrators of religious violence must be made to see their victims as fellow human beings, created and nurtured by the same omnipotent creator and worthy of the same respect. The process of engagement and discussion, even disagreeable discussion, can reaffirm the humanity of combatants to one another. In this way, re-humanizing opponents can implicate religious values of empathy, respect, and peace. Shifting the discussion to shared religious goals, such as the amelioration of suffering, can open opportunities for collaboration that may help parties move beyond irresolvable dogmatic differences.

Journalist and scholar Gustav Niebuhr observes that the process of interreligious collaboration constitutes a “quiet countertrend” already at work in a world where violence so often dominates religious consciousness.<sup>143</sup> “[This countertrend] directly challenges violence in God’s name, even if it doesn’t replace it... It is a new activity in our world, an entirely new phenomenon in our history. It is a social good, a basis for hope, and a tendency that ought to be nurtured and cultivated.”<sup>144</sup> As Niebuhr’s scholarship details, every day, somewhere, religious adherents place aside absolutist narratives and work with people with whom they disagree dogmatically toward common goals that are compelled by their mutual beliefs: toward peace, mutual understanding, and religious dialogue. This phenomenon is not based on the negation of core religious principle. It is based on embracing core religious principle. The major religious traditions all provide ample support, both in text and traditional practices for principles of

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<sup>143</sup> See Niebuhr, *supra* note 19, at xix.

<sup>144</sup> *Id.*

nonviolence, cooperation, and tolerance.<sup>145</sup> The phenomenon is not based on a policy of ignoring religious values, but confronting them. It does not call for a retreat to enclaves of noninterference, but direct and honest engagement.

Engagement transforms the struggle to *define* and *resist* the other into a struggle to *know* the other. If religion can be deployed so powerfully and positively in this context, there may hope that a religious solution to conflict exists. Further study of the development of interreligious collaboration is necessary to determine how the lessons from this phenomenon can be deployed in situations where people kill in the name of God.

We must finally concede issues of religious principle may be impossible to reconcile or ignore. What then is the point of religious negotiation? It is this: Peace does not necessarily require that parties agree to compromise on or ignore their differences. Instead, it requires that they *transcend* them.<sup>146</sup> While transcendence is an almost wholly unknown concept to modern social sciences,<sup>147</sup> it is fundamental to religious practice.<sup>148</sup> Negotiators should feel comfortable appealing for transcendence of religious differences on religious terms in language familiar to religious combatants. Where religious disagreement is rooted in understandings that surpass rational calculation, religious combatants must be willing (or coaxed) to accept that alternative narratives cannot be rationally fitted to their own. They must further accept that violence will not defeat a competing narrative. It will only breed more violence. A Jew and a Christian will

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<sup>145</sup> See generally Gopin, *supra* note 13, for an in-depth analysis of the religious arguments for peaceful coexistence from each of the three Abrahamic faiths.

<sup>146</sup> AMERICAN HERITAGE DICTIONARY (2008) (Describing *transcendence* as knowing that which is “beyond the limits of experience and hence unknowable.” It is also used to denote an understanding “above and independent of the material universe.”) I use the term to describe what King called ‘moving on,’ coming to the point where we realize that disagreement is inevitable, but violence in furtherance of disagreement is futile.

<sup>147</sup> See e.g. William R. Garrett, “Troublesome Transcendence: The Supernatural in the Scientific Study of Religion,” 35 *Sociological Analysis* 3, 167 (1974). [The scientific sociological approach to faith] “would not only deny that sociology can resolve the question of the ultimate ontological validity of all faith affirmations positing a supernatural “other,” but it would also urge that transcendence per se be bracketed out of sociological discourse...”]

<sup>148</sup> Paul Levesque, *SYMBOLS OF TRANSCENDENCE* 52 (1997) (Calling transcendence the possible “primary object” of religious practice.)

never agree on the divinity of Jesus Christ. They will similarly never agree on the various claims that emerge from this position, relating to salvation, proselytizing, or the role of faith in public life. For peace to endure, they need only agree that each Christian and Jew results from divine creation and that the destruction of that creation in each other will do nothing to resolve the apparent theological conflict. To reach this realization, they must be made to see the humanity in one another.

This is not simply joining hands and singing kumbaya. The process of learning to transcend difference must be based on religious discussion that implicitly honors the dignity of all faiths and persons involved, but it is also built on a forceful and direct confrontation of religious value and vigorous challenge to narratives of violence. “[T]he best of this work is not about erasing differences, but trying to understand and allow for them...As one Catholic theologian put it succinctly...: ‘Can one admit differences without being adversarial? Now that’s a radical thing in the world – that you’re not me, and I’m not you, but that doesn’t mean a threat.’”

The success of such a process depends on rooting dialogue in the religious values of all involved and explaining how coexistence is compatible with those values. A working model of the ability to transcend religious difference can be found in Israeli-Jordanian Peace Treaty of 1994, which addressed religious claims over the Muslim Holy Places on the Temple Mount.<sup>149</sup> The competing Jewish and Muslim claims to site are fundamental to both faiths and completely incompatible.<sup>150</sup> The agreement, which names Jordan as the sovereign administrator of the site, does not seek to resolve the competing religious claims for all eternity. It could not. Instead the

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<sup>149</sup> Menachem Klein, “The Future of Jerusalem: The Islamic Holy Places As a Political Bargaining Card,” 45 CATH. U.L. REV. 745, 745-750 (1996).

<sup>150</sup> Id. Some observant Jews believe that the rebuilding of the Holy Temple on the site is a necessary precondition for the coming of the messiah. The site is currently home to the Dome of the Rock, the third most holy site for Muslim, from whence Mohammed is believed to have ascended into heaven.

agreement acknowledges the centrality and legitimacy of both religious claims, though incompatible, and calls for further engagement with the goal of transcending those irreconcilable differences.

The tenor of the agreement is captured by the statement issued by King Hussein of Jordan just following the negotiation. “My religious faith demands that sovereignty over the holy places in Jerusalem reside with God and God alone. Dialogue between the faiths should be strengthened; religious sovereignty should be accorded to all believers of the three Abrahamic faiths, in accordance with their religions. In this way, Jerusalem will become the symbol of peace and its embodiment, as it must be for both Palestinians and Israelis when their negotiations determine the final status of Arab East Jerusalem.”<sup>151</sup> The agreement does not settle, as negotiators are wont to do, how to divide the Temple Mount because to Jew or Muslim the site is indivisible. Instead, the agreement only settles that this dispute is not worth killing over. That is enough.

Religious values are essential for the capacity of transcendence to have any meaning for parties in conflict. For that reason, negotiators must be willing to use religion as frequently and as powerfully as those who would use it as a sword to destroy the world. Secular thinkers seeking to solve the problem of religious violence would do well not to join religious extremists in thinking of conflict in absolutist terms. Religion itself must not be the enemy. It must be an opportunity. Those who would pit the modern liberal world against the religious world would deprive us of recognizing the internal intricacies and contradictions of faith that may very well prove essential in mitigating religious violence and marginalizing religious militants. This ‘new war,’ with its unprecedented scale and novel players may pose new challenges, but it does not mandate a retreat from nuanced analysis and complex problem solving.

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<sup>151</sup> See Klein, *supra* note 149, at 748

Negotiators called upon to address religious modes of conflict should be cognizant of the many challenges and opportunities. They should see faith as a powerful force for peace and understanding, as much as it is also frequently an obstacle to resolution. They should seek to understand and respect the beliefs of combatants, and to use those beliefs as necessary to compel mutual humanizing of combatants and to evoke cooperative postures. Most importantly, negotiators should appeal to religious sensibilities and draw on religious understandings of transcendence to overcome irreconcilable differences. As Pope John Paul II said, "Believers who feel that their faith is respected and whose communities enjoy juridical recognition will work with ever greater conviction in the common project of building up the civil society to which they belong."<sup>152</sup> There seems little chance that religion will ever cease to inform the human consciousness. If religious violence will ever cease to plague human society, it will be because believers learn to live with the differences that define them.

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<sup>152</sup> Pope John Paul II, Address of His Holiness Pope John Paul II to the Diplomatic Corps 7 (Jan. 13, 2003), available at [http://www.vatican.va/holyfather/john\\_paul\\_ii/speeches/2003/january/documents/hf\\_jp-ii\\_spe\\_20030113\\_diplomatic-corps\\_en.html](http://www.vatican.va/holyfather/john_paul_ii/speeches/2003/january/documents/hf_jp-ii_spe_20030113_diplomatic-corps_en.html).