



God's Reign
and
People's Rule

Constitution, Religion and
Identity in Palestine

Edited by Mitri Raheb



2009

Editorial Notes

Proceedings of the

4th Intercultural Conference,

organised by the International Center of Bethlehem,

August 26th – September 1st 2007

God's Reign and People's Rule:

Religious Communities, Political Entities and Civil Societies in Palestine.

The frontispiece is the logo of this gathering.

Aphorisma Publisher House wishes to express special thanks to Till Magnus Steiner, a theologian, born 1984, who studied Roman-Catholic theology in Bonn and Jerusalem and participated in the conference. He worked as the editorial staff, running behind the authors and bringing the pieces of this book together.



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As a member of the **Diyar Consortium**, the ICB is a Lutheran-based, ecumenically-oriented institution, having a proactive role in shaping the future of the local community.

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God's Reign and People's Rule.

Constitution, Religion and Identity in Palestine

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Editorial Remarks

Render to Caesar the things that are Caesar's, and to God the things that are God's." This sentence, spoken out by the Markain Jesus (Mk 12:17) isn't as clear as it seems on the first sight: What does this sentence mean? What exactly belongs to the Caesar and what to God? The answers to this question have been legion.

The Markain Jesus says this sentence after he has been asked: *Is it lawful to pay taxes to Caesar, or not? Should we pay them, or should we not?*" From the historical perspective the Markain Jesus' instruction represents the political wisdom of a minority seeking protection against government and the larger society. His answer to this question isn't an answer but a prudent evasion. However, this evasion is until today a challenge.

The first part of the sentence is opposed to any belief in an essentially theocratic state; the autonomy of the civil authority is even recognized. But already the Greek philosopher Aristotle (384-322 B.C.) wrote about this autonomy in his *Politeia*, that there is always a tendency inherent in civil authority to reach beyond its appointed function – a tendency that leads to self transcendence (*Politeia* III, vii, 7).

As the second part of the sentence puts it, the autonomy of the civil authority is always a relative autonomy. There is not one authority. Mk 12:17 leaves room for the discernment as to when the claims of the Caesar and God conflict and when they do meet. A complete separation of religion and politics is out of the perspective of a believer impossible – as Gandhi said it once, that who believes religion is separable from politics understand neither one. Because religion is comprehensive, therefore it cannot avoid politics.

That is brought to the point, when looking at Islam. In Islam, faith is not simply a matter of orthodoxy but also orthopraxy. Thus, in the Muslim understanding of the meaning and purpose of faith, religion cannot be separated from social and political life. The word *'Islam'* means in Arabic *'submission'*. A Muslim is one, who submits himself to the will of God, seeking to follow and actualize God's will in history on the individual and social level. But also the Islam doesn't give just one answer about the question, how to define the relation between God and his will – God's reign – and the political life of men – People's rule.

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God is calling for liberation

Randall Bailey
Responses to Sacred texts and
Dynamics of Oppression

Allan Callahan:
African American Slavery and the Bible

Lectures given on the occasion of the
4th Intercultural Conference, August 26th – September 1st 2007
organised by the International Center of Bethlehem,
God's Reign and People's Rule:
Religious Communities, Political Entities
and Civil Societies in Palestine

About the Authors:

Randall Bailey, is the Andrew W. Mellon Professor of Hebrew Bible at the
Interdenominational Theological Center in Atlanta, GA. He received the
BA from Brandeis University, the MA in Social Service Administration from
the University of Chicago, the MDiv from Candler School of Theology
and the Ph.D. in Old Testament from Emory University.

Allan Callahan, after graduating from Princeton with a bachelor's degree in the
Study of Religion, he took masters and doctoral degrees at Harvard University
in the Study of Religion specializing in New Testament and the
history and literature of Early Christianity.



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Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3). (3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time”.

¹⁰⁹ Cf. *Erik Franckx*, *The Direct Application of International Law in the Belgian and Russian Municipal Systems of Law: A Comparative Analysis*, in: Erik Franckx/Stefaan Smis (editors), *The Reception of International Law in Central and Eastern Europe*, Antwerp 2002, 45.

¹¹⁰ For more details on Article 68 of the Belgian Constitution in respect to international treaties, before amendments to the Constitution in 1993, cf. *Andre ALEN*, *Treatise on Belgian Constitutional Law*, Deventer 1992, 246-249.

¹¹¹ Cf. Article 167 of the Belgium Constitution as amended in 1993, http://www.oeffre.unibe.ch/law/icl/be00000.html#A004_, visited on September 21st, 2000. (*Document Status: February 1st, 1994*). Article 167 has not been amended since 1993. The last amendment introduced to the Constitution was on December 17th, 2002, which took effect on January 31st, 2003. For the most recent updated version of the Belgian Constitution in French, Dutch and German cf. http://www.senate.be/senbeldocs/constitution/const_fr.html, visited on March 31st, 2003. In practice, the Belgian Government does not always respect the constitution by not introducing some international treaties to the Parliament even though it signed them. After the approval of the Parliament, these treaties have to be ratified by the King in order to be in force. Cf. a Newspaper article, *De Standaard* (Flemish Newspaper), *Oude Akkoorden in Prullenmand* (Old Agreements in Bin), of August 17th, 2004.

CONSTITUTION OF THE STATE OF PALESTINE

(Chapter 1 & 2)

Third Draft, - 7 March 2003, revised in March 25, 2003

CHAPTER ONE GENERAL FOUNDATIONS OF THE STATE

ARTICLE (1)

The State of Palestine is a sovereign, independent republic. Its territory is an indivisible unit based upon its borders on the eve of June 4, 1967, without prejudice to the rights guaranteed by the international resolutions relative to Palestine. All residents of this territory shall be subject to Palestinian law exclusively.

ARTICLE (2)

Palestine is part of the Arab nation. The state of Palestine abides by the charter of the League of Arab States. The Palestinian people are part of the Arab and Islamic nations. Arab unity is a goal, the Palestinian people hopes to achieve.

ARTICLE (3)

Palestine is a peace loving state that condemns terror, occupation and aggression. It calls for the resolution of international and regional problems by peaceful means. It abides by the Charter of the United Nations.

ARTICLE (4)

Jerusalem is the capital of the state of Palestine and seat of its public authorities.

ARTICLE (5)

Arabic and Islam are the official Palestinian language and religion. Christianity and all other monotheistic religions shall be equally revered and respected. The Constitution guarantees equality in rights and duties to all citizens irrespective of their religious belief.

ARTICLE (6)

The Palestinian flag, motto, seals, emblems, and national anthem shall be determined by law.

ARTICLE (7)

The principles of Islamic Shari'a are a major source for legislation. Civil and religious matters of the followers of monotheistic religions shall be organized in accordance with their religious teachings and denominations within the framework of law, while preserving the unity and independence of the Palestinian people.

ARTICLE (8)

The Palestinian political system shall be a parliamentary representative democracy based on political pluralism. The rights and liberties of all citizens shall be respected, including the right to form political parties and engage in political activity without discrimination on the basis of political opinions, sex, or religion. The parties shall abide by the principles of national sovereignty, democracy and peaceful transfer of authority in accordance with the Constitution.

ARTICLE (9)

Government shall be based on the principles of the rule of law and justice. All authorities, agencies, departments, institutions and individuals shall abide by the law.

ARTICLE (10)

All activities of the Palestinian public authorities shall, in normal and exceptional circumstances, be subject to administrative, political, legal and judicial review and control. There shall be no provision of law which grants immunity to any administrative action or decision from judicial supervision. The state shall be bound to compensate for damages resulting from errors, and risks resulting from actions and procedures carried out by state officials in the pursuit of their duties.

ARTICLE (11)

The independence and immunity of the judiciary are necessary for the protection of rights and liberties. No public or private individual shall be immune from executing judicial rulings. Any act of contempt of the judiciary shall be punishable by law.

ARTICLE (12)

Palestinian nationality shall be regulated by law, without prejudice to the rights of those who legally acquired it prior to May 10, 1948 or the rights of the Palestinians residing in Palestine prior to this date, and who were forced into exile or departed there from and denied return thereto. This right passes on from fathers or mothers to their progenitor. It neither disappears nor elapses unless voluntarily relinquished. A Palestinian cannot be deprived of his nationality. The acquisition and relinquishment of Palestinian nationality shall be regulated by law. The rights and duties of citizens with multiple nationalities shall be governed by law.

ARTICLE (13)

Palestinians who left Palestine as a result of the 1948 war, and who were denied return thereto shall have the right to return to the Palestinian state and bear its nationality. It is a permanent, inalienable, and irrevocable

right. The state of Palestine shall strive to apply the legitimate right of return of the Palestinian refugees to their homes, and to obtain compensation, through negotiations, political, and legal channels in accordance with the 1948 United Nations General Assembly Resolution 194 and the principles of international law.

ARTICLE (14)

Natural resources in Palestine are the property of the Palestinian people who will exercise sovereignty over them. The state shall be obligated to preserve natural resources and legally regulate their optimal exploitation while safeguarding Palestinian religious and cultural heritage and environmental needs. The protection and maintenance of antiquities and historical sites is an official and social responsibility. It is prohibited to tamper with or destroy them, and whoever violates, destroys, or illegally sells them shall be punishable by law.

ARTICLE (15)

The state strives to achieve a clean, balanced environment whose protection shall be an official and societal responsibility. Tampering with it is punishable by law.

ARTICLE (16)

The economic system in Palestine shall be based on the principles of a free market economy, and the protection of free economic activity within the context of legitimate competition. The law shall protect private property, which may not be expropriated or seized except for public benefit in accordance with the law, and in return for a just compensation. Expropriation may only be carried out by judicial order.

The state may establish public companies legally, without prejudice to the system of free market economy.

Article (17)

The state shall strive to promote social, economic and cultural growth and scientific development of the Palestinian people with due consideration to social justice and the provision of assistance to the more deserving, especially those who suffered during the national struggle.

ARTICLE (18)

The state of Palestine shall abide by the Universal Declaration of Human Rights and shall seek to join other international covenants and charters that safeguard human rights.

CHAPTER TWO
GENERAL RIGHTS, LIBERTIES AND DUTIES

ARTICLE (19)

Palestinians are equal before the law. They enjoy civil and political rights and bear public duties without discrimination. The term 'Palestinian' or 'Citizen' wherever it appears in the constitution refers to both, male and female.

ARTICLE (20)

Human rights and liberties are binding and must be respected. The state shall guarantee religious, civil, political, economic, social and cultural rights and liberties to all citizens on the basis of equality and equal opportunity. Persons are not deprived of their legal competence, rights and basic liberties for political reasons.

ARTICLE (21)

Every Palestinian who has reached the age of eighteen years shall have the right to vote in accordance with the provisions of the law. All those who bear Palestinian nationality shall have the right to enter presidential elections and/or House of Representatives membership and/or assume a ministerial or judicial position. The law regulates age and other prerequisites to accede to those posts.

ARTICLE (22)

Women shall have their own legal personality and independent financial assets. They shall have the same rights, liberties, and duties as men.

ARTICLE (23)

Women shall have the right to participate actively in the social, political, cultural and economic aspects of life. The Law shall strive to abolish restraints that prevent women from contributing to the building of family and society. The constitutional and legal rights of women shall be safeguarded; and any violation of those rights shall be punishable by law. The law shall also protect their legal inheritance.

ARTICLE (24)

Children shall have all the rights guaranteed by the "Charter of the Rights of the Arab Child".

ARTICLE (25)

The right to life is guaranteed by the Constitution.

ARTICLE (26)

Individuals shall have the right to personal safety. Physical or psychological torture of human beings, as well as their inhuman treatment and subjection to harsh, undignified and humiliating punishment is prohibited. Those who

plan, perform, or take part in such actions, shall be deemed criminal and are punishable by law and their crime shall not lapse by prescription. Confessions proven to be extorted under duress or serious threat shall not be considered proof of guilt. Those who carry out such actions will be prosecuted.

ARTICLE (27)

Scientific or medical experimentation on a human being without his prior legal consent is forbidden. No surgery, medical examination, or treatment shall be performed on a person, except in accordance with the law. The law shall govern the transplant of organs, cells and other, new scientific developments, consistent with legitimate, humanitarian purposes.

ARTICLE (28)

Every person has the right to freedom and personal safety. Such right may not be violated, except in cases and in accordance with procedures stipulated by law. A person may not be arrested, searched, imprisoned or restrained in any way, except by order of a competent judge or public prosecutor in accordance with the law. This is to safeguard the security of the society. A person shall be immediately informed of the offense with which he is charged in a language he can understand and is henceforth entitled to a lawyer and shall be immediately brought before the competent judicial authority. The law shall define the conditions of provisional detention. Any person illegally arrested, imprisoned, or restrained shall be entitled to compensation.

ARTICLE (29)

The accused is innocent until proven guilty by a fair trial wherein he shall be afforded the guarantees of self defense. The accused shall be granted all guarantees necessary for his self defense, pro se, or through the assistance of an attorney of his choice in a public hearing. If he cannot afford one, the court will appoint him a lawyer free of charge.

ARTICLE (30)

Detainees and those deprived of liberty shall be treated humanely and with dignity. In executing sentences, the basic global principles approved by the United Nations for the treatment of prisoners shall be considered. In the sentencing of minors and in the execution thereof, their reform, education and rehabilitation shall be considered.

ARTICLE (31)

Citizens shall have the right to choose their place of residence and to travel within the state of Palestine. No person may be denied the right to travel from Palestine except by a legally issued court order. Likewise a Palestinian may not be deported or prevented from returning to his country, and may not be extradited.

ARTICLE (32)

A foreign political refugee who legally enjoys the right of asylum may not be extradited. The extradition of ordinary foreign defendants shall be governed by bilateral agreements or international conventions.

ARTICLE (33)

Litigation is a right guaranteed to all by the state. Each individual shall have the right to resort to his natural judge to defend his rights and liberties, and to receive compensation for a violation thereof. The law shall regulate the procedures for litigation in a manner that ensures a speedy disposition of cases without prejudice to the rights of litigants. In the event of a judicial error, the state shall be obligated to compensate the damaged party. The law shall govern the conditions and procedures thereof.

ARTICLE (34)

There shall be no crime or punishment except as stipulated by law. No sentence shall be executed except by judicial order. Punishment shall be personal and the individual may not be punished more than once for the same offence. Collective punishment is prohibited. Parity shall be considered between crime and punishment. There can be no punishment except for acts committed after a law has come into effect. The law shall regulate, in non-criminal cases, the retroactivity of laws.

ARTICLE (35)

The private life of every person, including family matters, residences, correspondence and other means of private communication, shall be protected and may not be infringed upon except by court order and within the limits of the law. Any consequence of the violation of this Article is null and void, and those who are harmed as a result thereof shall be entitled to compensation.

ARTICLE (36)

Freedom of religion and religious practice is guaranteed by the Constitution. The state shall guarantee access to holy shrines that are subject to its sovereignty. The state shall guarantee to followers of all monotheistic religions the sanctity of their shrines in accordance with the historic commitment of the Palestinian people and the international commitments of Palestine.

ARTICLE (37)

Freedom of thought shall be guaranteed. Individuals shall have the right to express their opinions and publicize them in writing, speech, art, or other means of expression within the provisions of the law. The law may only apply minimal restrictions on the practice thereof so as to safeguard the rights and liberties of others.

ARTICLE (38)

The right to publish newspapers or other means of the media is universal and guaranteed by the constitution. Financial sources for such purposes shall be subject to legal control.

ARTICLE (39)

Freedom of the press, including print, audio, and visual media, and those working in the media, is guaranteed. The media shall freely exercise its mission and express different opinions within the framework of society's basic values, while preserving rights, liberties and public duties in a manner consistent with the rule of law. The media may not be subject to administrative censorship, hindrance, or confiscation, except by court order in accordance with the law.

ARTICLE (40)

Journalists and other citizens shall have the right of access to news and information with transparency in accordance with the law.

ARTICLE (41)

Citizens shall have the right to live in an atmosphere of intellectual freedom; participate in cultural life; cultivate their intellectual and innovative talents; enjoy scientific and artistic progress; and protect their moral and material rights, which may be the product of scientific, artistic or cultural effort in a manner consistent with society's basic values and the rule of law.

ARTICLE (42)

Education is an individual and social right. Education is compulsory at least until the end of the elementary level. Education shall be guaranteed by the state in public schools, institutions, and other establishments until the end of the secondary level. The law shall regulate the state's supervision of its performance and curricula.

ARTICLE (43)

Private education shall be respected, provided that schools, institutions and private educational centers. The law shall regulate the state's supervision of its curricula.

ARTICLE (44)

The state shall uphold the independence of institutions, universities and research centers that have a scientific purpose. The law shall regulate the supervision thereof in such a manner so as to safeguard the freedom of scientific research and innovation in all fields. The state shall, within its capabilities, strive to encourage, support and protect them.

ARTICLE (45)

The law shall regulate social security, disability and old age pensions, support to families of martyrs, detainees, orphans, those injured in the national struggle, and those requiring special care. The state shall guarantee them- within its capabilities- education, health and social security services and shall give them priority in employment opportunities in accordance with the law.

Article (46)

The state shall organize health insurance as an individual right and a public interest. It shall guarantee, within its capabilities, basic health care for the indigent.

ARTICLE (47)

Through a housing policy founded on collaboration of the state, private sector and banking system, the state shall seek to provide adequate housing to every citizen. In cases of war and natural disasters, the state shall also seek, within its capabilities, to provide shelter to the homeless.

ARTICLE (48)

The state shall guarantee family, maternal and child care. It shall care for adolescents and the youth. The law shall regulate children, mother and family rights in accordance with the provisions of international agreements and the 'Rights of the Arab Child' charter. In particular, the state shall seek to protect children from harm, harsh treatment, abuse, and from any work that would endanger their safety, health and education.

ARTICLE (49)

Public property shall be safeguarded and regulated by law so as to guarantee its protection and for it to serve the people's public interest. The law shall regulate the 'Waqf' [religious endowments] organization and management of its properties and assets.

ARTICLE (50)

Private property is protected by law. General confiscation of private property is prohibited. Confiscation of private property is allowed for public interest and in cases allowed for by law against fair compensation. Law regulates real estate ownership by foreigners.

ARTICLE (51)

Employment is a right of all citizens. The state shall seek to provide work opportunities to the capable through its development and construction plan, with the support of the private sector. The law shall regulate work relations in such a manner so as to guarantee justice for all and provide for

the protection and security of workers. Work may not be forcibly imposed on citizens. The law shall regulate adequate remuneration for compulsory work. Workers shall have the right to establish unions and professional associations at work.

ARTICLE (52)

The right to protest and strike shall be exercised within the limits of the law.

ARTICLE (53)

Citizens shall have the right to assume public office, on the basis of competence, merit and equal opportunity in accordance with the requirements of the law.

ARTICLE (54)

Based on constitutional rules and legal provisions, every citizen shall have the right to express his views in referenda and elections and run for election or nominate a person who meets electoral requirements.

ARTICLE (55)

All citizens shall have the right to partake, individually or collectively, in political activities, including: The right to form political parties and/or subscribe thereto, and/or withdrawing there from in accordance with the law; Formation unions, societies, associations, fraternities, assemblies, clubs, and institutions and/or subscribe thereto and/or withdraw there from in accordance with the law. The law shall govern the procedures for acquiring its legal personality.

ARTICLE (56)

Every individual shall have the right to organize private meetings in accordance with the law, and without the presence of the police. Every individual shall have the right to assemble and organize public meetings, and to demonstrate peacefully with others without bearing arms. The exercise of those two liberties may not be restrained except as mandated by law, consistent with measures acceptable in democratic society and constitutional rights and liberties.

ARTICLE (57)

Every individual shall have the right to address the public authorities, and to present petitions and grievances in writing.

ARTICLE (58)

Basic rights and liberties may not be suspended. The law shall regulate those rights and liberties that may be temporarily restricted in exceptional circumstances in matters related to public security and national safety purposes. The law shall penalize the arbitrary use of power and authority.

ARTICLE (59)

Any violation of the basic general rights and liberties guaranteed by the Constitution or the law, shall be considered a crime. All civil and criminal lawsuits arising as a result thereof shall not lapse by prescription. The state shall guarantee a just compensation for those who have been harmed.

ARTICLE (60)

An independent general organization shall be legally set up, composed of unofficial legal and political personalities who truly believe in the rights of the citizen and would volunteer for its defense. The organization shall be concerned with monitoring the state of the rights and liberties of the citizens, for which purpose it shall have the competence to obtain official information responsibly and with transparency.

Its employees shall be responsible for any misuse of the information they obtain in matters other than those stipulated by their incorporating law. The organization shall have the right to receive grievances from the citizens concerning the actions of the institutions of the state's authorities which illegally breaches the rights and basic liberties of the citizen. It shall have the right to suggest ways to improve the performance of the departments of the state with respect to protecting the rights and liberties of the citizens. It shall submit its proposals and reports on matters within its supervisory and developmental competence to the House of Representatives and the president of the state.

ARTICLE (61)

The state shall assume responsibility for the safety of persons and property. It protects the rights of every citizen within the state and abroad.

ARTICLE (62)

Defending the nation is sacred duty and serving it is an honor for every citizen. It shall be regulated by law. Individuals and groups may not bring or bear arms, nor may they illegally possess arms in violation of the provisions of the governing law.

ARTICLE (63)

The payment of taxes and general dues is a duty regulated by law.

The Battle over Islam

Ibrahim M. Abu-Rabi', Hartford

In one of his outstanding chapters on the link between the growth of civilization and the cultivation of scientific research in all fields of knowledge, Ibn Khaldun,¹ the Arab historian of the fourteenth century, argues that the scientific mind is the product of a sedentary civilization. However, when a civilization experiences an absence of group feeling (*'asabiyyah*), scientific research tends to deteriorate. This is what happened in Muslim Spain in the twelfth and thirteenth centuries to the extent that the classical Islamic science of jurisprudence became "an empty institution among them [Spaniard Muslims], a mere shadow of its real self."² Ibn Khaldun is primarily concerned about a scientific discourse in philosophy, history, and the traditional sciences as a means of keeping Muslim culture dynamic and vital. He is also concerned with enhancing the role of the intelligentsia in society. For this kind of scientific culture, he says, endowments and years of study are needed. Sedentary life provides the context for such scientific pursuits.

Ibn Khaldun's proposition of creating a scientific discourse in the Muslim world is on the whole still valid in contemporary Arab or Muslim contexts. It is true that scientific knowledge has greatly proliferated since the fourteenth century and that the Muslim world has for a long time ceased to be the center of civilization for a long time. However, Ibn Khaldun's remarks help us to understand the position of the 'traditional Islamic sciences' in the modern educational systems of Arab and Muslim nation-states in the twentieth century. One may well agree with Ibn Khaldun that the practitioners of the traditional sciences are "dull or at any rate did not try not to be dull." Various reasons account for this.

The theoretical treatment of Islam in either Western or Islamic literature has been conspicuously meager. At best, Islam is an object of ideological disagreement between different authors and has proven to be the Achilles' heel of modern theoretical reflection. Perhaps a scientific definition of Islam is an impossibility. In a controversial little book on "The Modernization of Modern Islamic Thought," 'Abd al-Majid al-Charfi of Tunisia advocates the need to