

## **Human Rights Education in Social Context, The Case of Palestine**

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Effective delivery of human rights education across difference starts with an examination of human rights philosophies and a conscious connection of philosophy to social context.<sup>1</sup> Using Palestine as its backdrop, this paper suggests that a particular understanding of human rights education as hermeneutic dialogue can best respond to educational endeavours that engage colonialist contexts through an anti-colonialist lens.

### **The Rule of Law, Dispossession and Justice**

Law has something of an ambiguous and uncomfortable existence in Palestine. On the one hand, law represents an instrument of humiliation and colonialism. Using law as a primary instrument of control over decades, foreign states have sought to both perpetuate and legitimize their domination over Palestine and its people through a process of “lawfare” or “the resort to legal instruments, to the violence inherent in the law, to commit acts of political coercion, even erasure.”<sup>2</sup> During the mandate period, for example, British authorities presented colonial law as “benign and neutral” by constructing a “colonial-type legal education, uniquely adapted to legitimize British colonial legal policy in Palestine at the time.”<sup>3</sup> Such legitimizing efforts often presented the rule of law as objective, beneficial, neutral, transferable, “civilizing” and a “natural” part of development. In the process, however, law was harnessed to dispossession and control over the indigenous population.

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<sup>1</sup>I have drawn upon my experiences as co-Director of *Karama*, The Initiative on Judicial Independence and Human Dignity, in Palestine to reflect on effective teaching across difference. *Karama* is a partnership between The Institute of Law at Birzeit University and The Faculty of Law at the University of Windsor.

<sup>2</sup> Jean Comaroff and John L. Comaroff, *Law and Disorder In The Post Colony* (University of Chicago Press, 2006) 30.

<sup>3</sup> Jeremy Forman and Alexandre Keda, “Colonialism, Colonization, and Land Law in Mandate Palestine: the Zor al-Zarqa and Barrat Qisarya Land Disputes in Historical Perspective” in *Theoretical Inquiries In Law* (July 2003).

The Israeli occupation of the West Bank and Gaza Strip adopted the colour of law as justification for its own control and dispossession. The occupation experience has been well documented by various Palestinian and international commentators with Raja Shehade's book, *Occupier's Law*, remaining one of the best chronicles of how Israeli authorities regulated virtually every aspect of Palestinian individual and collective lives through lawfare. The occupation's devastating socio-economic impact on Palestinian development has also been well documented.<sup>4</sup>

After the election of a Hamas majority to the Palestinian Legislative Council, the international community imposed sanctions against the Palestinian Authority and generally justified these sanctions as the unavoidable application of national anti-terrorism laws crafted to denounce and prevent violence against civilians. Sanctions inflicted their own silent form of violence, "a different kind of war"<sup>5</sup> against the Palestinian people. The economic fallout was devastating and the sanctions added insult to injury because they were directed against an occupied population that should have been able to seek protection from the international community. Against this context, human rights efforts funded or otherwise associated with "Western" organizations lost significant credibility.

Law and legal education have become disassociated from justice in Palestine and are sometimes regarded, to an extent, as instruments of oppression rather than forces that support human rights and dignity. Yet, there is a strong desire for the rule of law and access to justice as a means to individual and collective security. Having endured lawlessness and anarchy for years and increasingly concerned that disputes are solved through violence and corruption, Palestinians want to live within a state where no one is above the law and where all are secure in the knowledge that they are considered equal in dignity and in rights. Human rights and human rights education, properly conceived and delivered, therefore remain high priorities for the justice sector.

### **Human Rights Education, Colonialism and Cultivating Legitimacy**

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<sup>4</sup> See for example Amira Hass, *Drinking The Sea At Gaza: Days and Nights In A Land Under Siege*, Translated by Elana Wesley and Maxine Kaufman-Lacusta (Holt, 1999).

<sup>5</sup>Hans C. Van Sponeck, *A Different Kind of War: The UN Sanctions Regime in Iraq* (Berghahn Books, 2006).

Before engaging in human rights education, it is important to contemplate the normative conceptual framework through which the entire education enterprise will be funnelled. Relativism is beyond consideration not only because it constitutes, in Charles Taylor's phraseology, "a pretend act of respect," but also because it appears inherently inconsistent with cross-cultural and/or international education endeavours in so far as relativism's fundamental premise is that people cannot speak to each other across difference. Universalism holds an immediate but ultimately incomplete appeal. It adopts a normative stance which can respond effectively to "state of exception"<sup>6</sup> practices and discourses that routinely deny human rights to a specific group and thereby dehumanize that group but nonetheless rationalize the repeated denial as exceptional or extraordinary. However, universalism can cajole actors into diminishing differences and believing that they operate within an apolitical framework which, in the colonialist manner, invites assumptions of neutrality, masks power and imposes agendas through claims to sameness.

Various scholars have sought to dissolve the universalist-relativist divide by redefining the debate.<sup>7</sup> Proponents of this position aim to move beyond an understanding of universalism that pits international law versus local values. Culture/local, on this view, does not represent an exception of international law's universality. Rather, culture or the local pervades universality. Some have applied this principle to specific contexts while the doctrinal manifestation of this position can be found in the principle that states have an obligation of ends but not an obligation of means.<sup>8</sup> The challenge in developing human rights content and methodology across contexts is to consider how and under what circumstances the obligation of means might differ while meeting the same ends. Can, for example, the concept of human dignity have different content in different contexts without collapsing into relativism? How do we agree upon content across differences, or, indeed, is agreement desirable or even possible?

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<sup>6</sup>Giorgio Agamben, *State of Exception* (University of Chicago Press, 2005).

<sup>7</sup>See for example Abdullahi An-Na'im (ed.), *Human Rights in Cross-Cultural Perspective: A Quest for Consensus* (Pennsylvania: University of Pennsylvania Press, 1992) and Abdullahi An-Na'im, "Cultural Transformation and Normative Consensus on the Best Interests of the Child" in *The Best Interest of the Child: Reconciling Culture and Human Rights* (Oxford: Clarendon Press, 1994) 62.

<sup>8</sup> See for example The Committee on Economic, Social and Cultural Rights, *General Comment No. 9: The Domestic Application of the Covenant* E/C.12/1998/24.CESCR.

My own thinking in this area has been influenced by Hans Georg Gadamer's hermeneutics which posits all acts of understanding (and hence education) as situated acts which take place and are shaped by local contexts. Yet, one can transcend the local through authentic engagement with another. Ultimately, Gadamer's work represents an invitation to humility derived from an awareness of historicism. Both the notion that one can capture transcendental truth and the claim that one can create it *ex nihilo* symbolize arrogance. Instead, one can seek to cultivate truth/meaning/understanding through engagement with other perspectives. In this way, both scepticism or cultural relativism and imperialism are avoided. The possibility of working towards shared truth remains, thereby ousting scepticism. Even though meaning derives from its time and place, it can be shared across time and space, thereby ousting cultural relativism. At the same time, one side of the equation – self versus other – does not seek prominence. On the contrary, engagement through difference requires that both self and other expose themselves to risk and change, thereby seeking to avoid imperialism. Ultimately, this means that one enters educational encounters in different contexts by regarding the experience as a process which involves self-discovery as well as the potential to impact others rather than conceiving of it as a package to be delivered from one location to another.