

## Where Do Universal Human Rights Begin?

*The following talk was given by George Critchlow on April 25, 2006 at Temple Beth Shalom in Spokane, Washington in honor of Yom Hashoah, the annual remembrance of the Holocaust. Critchlow, an associate professor at Gonzaga University School of Law and a founder and former director of the Gonzaga Institute for Action Against Hate, was selected by the congregation to represent the “righteous gentile.”*

*Professor Critchlow would like to acknowledge the helpful ideas and background information presented at the Amnesty International USA Lawyers’ Conference at the University of Washington School of Law on February 17-18, 2006. In particular, he was inspired by John Shattuck’s presentation titled “The Legacy of Nuremberg: Confronting Genocide and Terrorism Through the Rule of Law.”*

I have enormous respect for Temple Beth Shalom, what it stands for, its congregation, and those individuals whom I have come to know and count as friends. I am deeply honored and privileged to be invited to speak to you on this Day of Remembrance—especially in light of the occasion to recognize the 60 years that have now passed since the establishment of a new rule of law and accountability regarding war crimes and crimes against humanity at the Nuremberg Military Tribunal in 1946.

I have a poster hanging in my office that frequently catches my eye and reminds me to connect my heart with my head. It is a picture of a small child of uncertain ethnicity, running happily, arms out, into the smiling face and open arms of his mother. The mother is standing at the threshold of a sturdy and secure-looking home. There are mountains and trees in the background, an evening sky twinkles with stars, and hovering protectively over the whole scene is a large white dove. Below the scene appears the following poem by Eleanor Roosevelt, from which I have taken the title of my remarks tonight:

*Where, after all,  
do universal human rights begin?  
In small places, close to home—  
so close and so small  
that they cannot be seen on  
any maps of the world. . .  
Unless these rights have meaning there,  
they have little meaning anywhere.*

My father was a veteran of the Second World War, having fought with

the Army from Normandy into the heart of Germany. He hardly ever talked about the war and never about his personal experiences in combat. However, he did talk about the death camps, even though he did not see them first-hand. He talked about the camps and what they represented in terms of the moral failures of ordinary human beings; he talked about how important it is for each of us to understand what happened during the Holocaust, to educate others about the Holocaust, and to fight against hatred and bigotry in the choices, small and large, that knit together and shape the moral character of an individual's life. For me, my father, a lawyer, was a real-life Atticus Finch. Whether or not he was able to actually emulate the morality, wisdom and courage of this fictional hero from *To Kill a Mockingbird*, he was a father who at least imprinted his son with the conviction that these things are paramount. So the son lives his life, in part, in the knowledge of the Holocaust and a commitment to fighting hate and the conditions that produced the Holocaust. And the son becomes a father and, in time, brings this knowledge and these values to his daughter. And the lesson becomes known to the daughter and is repeated in small places, too small to appear on any map, in lives that stretch forward through the generations.

I wish I could speak to you tonight, 60 years after Nuremberg, about how the military tribunals have successfully eliminated or diminished genocide, war crimes, or crimes against humanity. Certainly it is true that the Nuremberg trials established a standard of accountability and international legal norms that apply to private persons as well as governments across the globe. The United States led the way in the Nuremberg Trials—underscoring the need for strict, aggressive adherence to the rule of law in the face of mass lawlessness. Certainly Nuremberg provided a dramatic and highly visible stage from which to educate the world about Nazi atrocities. And Nuremberg was among the important events that gave rise to a collection of important international treaties, covenants, and pronouncements by international institutions and individual states. Not the least of these are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Against Torture, various Geneva Conventions and Protocols, and the Convention on the Prevention and Punishment of the Crime of Genocide.

Having acknowledged the influence of Nuremberg, we also have to acknowledge the continuing and horrific extent of genocide, war crimes, and crimes against humanity of the last several decades. What is there left to say about the Killing Fields of Cambodia in the late 1970s, the bloodlust of Rwanda in 1994, the attempts at ethnic cleansing in the 1990s in the former Yugoslavia, the slaughters that have more recently taken place in the

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Congo, Sierra Leone, and Liberia, widespread and systemic human rights abuses associated with South African apartheid, the killing, torture, and repression by authoritarian and military regimes in El Salvador, Argentina, Chile, Iraq, Iran, Afghanistan, and, now, the emergence of massive and organized genocide in Sudan's Darfur region? Sadly, this is only a partial list.

How is it that these scenarios continue to unfold 60 years after Nuremberg? The answers are manifold and uncertain. I certainly do not pretend to fully understand what causes genocide, any more than I understand why hatred appears to be so rooted in the human psyche. One of reasons is that the international community's response to genocide is reactive, not proactive or preventive. The international community has developed legal mechanisms for prosecuting the perpetrators of genocide, but has not developed the will or the mechanisms for intervening in genocide as it happens. Upwards of 400,000 men, women and children have been slaughtered in Darfur by organized militia; millions have been driven from their lands. It continues as we speak. While we might hope for effective intervention by the United Nations, it appears this is precluded by important economic and political relationships between Sudan and powerful countries, the United States included.

There is a prospect that international prosecutions will be brought, but under international law principles, this can generally be done only after it is shown that Sudan or other nation states are unable or unwilling to act. The international community has shown a willingness to establish special ad hoc Criminal Tribunals to prosecute the perpetrators of genocide in Rwanda and the former Yugoslavia. Additionally, since 2002, the International Criminal Court stands ready to investigate and prosecute such crimes. Such prosecutions have symbolic importance and serve the interest of retributive justice. But they do not yet appear to be sufficiently timely or predictable to constitute meaningful deterrence to genocidal behavior.

There are positive developments in the law of individual nations, however, that bode well for more accountability and better deterrence in the future. Many countries have adopted the policy of universal jurisdiction to prosecute crimes against humanity regardless of the perpetrator's nationality or where the crimes were committed. Spain has tried and convicted an Argentine Navy Captain for dropping political prisoners out of airplanes in 1977. Spain asserted universal jurisdiction over crimes against humanity based on customary law norms dating back to Nuremberg. A Dutch court recently convicted a Congolese military officer for the torture of other Congolese. A French court indicted Algerians for torture in Algeria. Augusto Pinochet, the former Chilean dictator, was extradited from London to Spain to face trial on charges of torture and murder in Chile. And in the United

States, the Alien Tort Claims Act was used to obtain a federal court judgment in favor of a Salvadoran citizen against a Salvadoran death squad operative for crimes against humanity, including the assassination of Salvadoran Archbishop Romero.

Against the effort to apply and affirm the rule of law in both international and domestic courts, there is the continuing problem of sovereign nations asserting and protecting historical rights of sovereignty in order to secure economic, geo-political, and security-related objectives. All states do this and it is exceedingly difficult for a country, especially a powerful one, to surrender sovereignty to a larger international framework or transcendent body of law. Whether we are talking about China, India, Russia, North Korea, Venezuela, Cuba, Iran, Syria, Sudan, or the United States; whether we are talking about nations that are predominately Christian, Muslim, or Jewish, all states operate from the assumption that national sovereignty is at the heart of international relations. Some authoritarian countries, like present-day North Korea, Iraq under Saddam Hussein, Serbia under Milosevic, and Afghanistan under the Taliban, have governments that have little or no respect for international law. Others, including established Western democracies, are more mercurial. In our own country, we have the example of the Bush administration's efforts to block international law, at least insofar as that law is seen to be an inconvenient impediment to furthering the administration's methods and goals in the fight against terrorism. The nation that after World War II was in the forefront of an effort to build an international rule of law, starting with Nuremberg and the establishment of the United Nations, now is represented by an administration that attacks and belittles the United Nations, rails against the International Criminal Court, resists human rights treaties like the Torture Convention, narrows the rights of enemy combatants, sponsors secret CIA camps outside the United States to interrogate prisoners, and forces aid-dependent countries into side agreements immunizing U.S. nationals from prosecution in those countries' courts.

Besides the inability of the world community to work together consistently, there is at least one more powerful and overarching reason that crimes against humanity abound. The end of the Cold War brought a truly fruitful opportunity for the world to embrace transformative change. We embraced freedom, the end of political and market barriers, the emergence of technology and communications revolutions—in short, we celebrated the prospect of democracy, human rights, and global cooperation. What we failed to understand, or anticipate, were the powerful forces at work to tear apart the new, transformed, more humane world order. Ethnic, religious, and economic conflict broke out in states rendered unstable by the disintegration of the old order. Dictators, racists, and religious fundamental-

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ists—from Bosnia to Rwanda to Afghanistan—manipulated conflict to gain power and pre-eminence. At the same time, an increasing gap between rich and poor combined with competition for scarce resources has created a broad pool of disaffected recruits for terrorism and extremism. In Darfur, genocide was bred in a foul mix of lawless and repressive government, poor people fighting over land, and ethnic conflict between Arab and African tribes.

The world looked away while millions were killed in Cambodia and Rwanda. But the international community finally came together in stopping the killing in Bosnia and Kosovo. We know that international cooperation, international law, and a framework of effective international organizations are the appropriate tools for dealing with the problem of genocide. We know that the Nuremberg principles and 60 years of treaties and conventions have produced a body of international law that can be used to prosecute and deter those who would commit crimes against humanity. It is imperative that governments strive to transcend parochial interests, obsolete notions of sovereignty, and unilateralism in an effort to work together to achieve fundamental human rights goals. It is imperative that we recognize that relentless poverty and powerlessness will fuel hate and aggression. It is critical that international lawyers and government officials hold nations and international organizations accountable to their moral and legal mandates under international law. A recent article in the *New York Times Magazine* asserted that the U.N. is not going to stop the genocide in Darfur. The African Union is not going to stop the genocide in Darfur. The U.S. is not going to stop the genocide in Darfur. NATO is not going to stop the genocide in Darfur. The European Union is not going to stop the genocide in Darfur. On this Day of Remembrance, let us reaffirm and communicate our hope and expectation that this is not so.

Turning from what's happening globally, we also need to take stock of the human rights successes and challenges closer to home, including those places not seen on any maps of the world. People sometimes ask whether the problem of hate has abated in the Inland Northwest. There are hopeful signs that it has—the most significant of which is the success in fighting the Aryan Nations won by the Kootenai County Task Force on Human Relations (with the support of a great many other organizations, individuals, and resources). But hate and prejudice persist. They are on the street—as in the reported incident last week in which the police arrested a man who boasted of assaulting a Black woman riding a bike simply because she was Black; they are in the military, where a local woman who had honorably devoted twenty years of service to her country was discharged from service because someone told her commanding officer she was a lesbian; they are manifest in countless acts of peer group bullying and abuse in the schools in which a

child is made to feel small and unworthy because of his or her color or religion. They are apparent in the compelling anecdotal and statistical evidence of disparate treatment of racial minorities in the criminal justice system. Episcopalians, Catholics, Methodists, Lutherans, Baptists, Buddhists, Rotarians, Elks, Eagles, and Fly Fisherman do not have to dedicate significant portions of their budgets to security—but the congregation of Temple Beth Shalom does and synagogues throughout the land do because anti-Semitism persists, despite the depredations and lessons of the twentieth century.

One of the most powerful and indescribable experiences of my life was a visit with my wife to the Children's Memorial at Yad Vashem in Jerusalem. The Memorial is a tribute to the 1.5 million Jewish children who perished in the Holocaust. It is designed so that an infinite number of candles are reflected in a dark and somber space. The candles, of course, represent the murdered children, whose names are read, methodically and without end, by a disembodied voice in the background. I had visited Holocaust exhibits before, but this particular experience made me feel more pain, regret, and humanity than just about anything I had ever experienced.

I returned to Spokane and my work at Gonzaga—only to encounter a rash of racial harassment incidents directed at African-American law students. The following example is just one illustration of what took place. Picture this: A young Black woman, a single mom from the East coast, far from her family and her community, the first in her family to graduate from college, who moved across country to Gonzaga to be a lawyer, is facing her first round of exhausting, year-end first year law exams; she stumbles home after a hard day of studying, picks up her child at the daycare, approaches her apartment, and finds a note tacked to her door. On the note is scrawled: "We don't want monkeys at Gonzaga or in Spokane. Go back to where you came from. Do not take your law exams or you will regret it. We know where you and your daughter live."

Some folks, including some scholars and professionals, question the value of highlighting and working against hate. The argument is that laws that protect against hate crime and some anti-discrimination laws cause people to think of themselves in terms of favored or preferred groups—based on race, nationality, religion or sexual orientation—and that this creates unhealthy competition and division in our society. Others sometimes complain about giving undue attention to discrimination, organized hate, or hate crimes because it is bad for Spokane's image. The reality, of course, is that there is hate in our community and region, and it will fester and grow unless it is visibly and effectively confronted. Minority members of a community are divided and marginalized because of hate, not because of laws against hate. And for those who are concerned about image, it seems self-evident

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that a modern, forward-looking community would prefer an image associated with aggressively fighting hate over an image of denial, self-delusion and silence—the social ingredients that made possible the rise of fascism in Nazi Germany.

The racial harassment incidents at Gonzaga in the mid-'90s were the impetus for a university dialogue about how students, staff, and faculty might respond to the problem of hate. We hoped to do something that was both creative and enduring. For several months we talked among ourselves, and with outside consultants, including Ken Stern, who is the Hate and Extremism Specialist with the American Jewish Committee, Bill Wassmuth, Executive Director of the Northwest Coalition Against Malicious Harassment, and Morris Dees of the Southern Poverty Law Center. Both Ken Stern and Bill Wassmuth had spoken persuasively about the need for there to be—at some university or college—an interdisciplinary academic center or program for the study of why people hate and strategies for combating hate. The center would focus on education, research, and advocacy. Thus emerged the Gonzaga Institute for Action Against Hate. With a paucity of funding, but with a great deal of volunteer energy and heart, we started operations in 1998, established an Advisory Board, named a director, and co-sponsored, with the Simon Wiesenthal Center, our first major project: The Changing Faces of Hate, a conference about hate and hate crimes for law enforcement employees, probation officers, and social workers. We sponsored a few other projects and then undertook our first really big event: sponsorship of the Anne Frank Exhibit at Gonzaga, a project that cost \$100,000, involved dozens of volunteers, docents, and docent trainings, and was co-sponsored by Temple Beth Shalom. The event resulted in exhibit tours by almost 25,000 children and adults, including many organized public and private school classes. In 2001, the Institute edited and published our first peer-reviewed scholarly journal, the *Journal of Hate Studies*, and started planning for the development of the new Field of Hate Studies. This led to the first International Conference on Hate Studies held at Gonzaga two years ago. We are continuing publication of our annual journal and look forward to convening a second international conference on hate studies in the next few years.

We are also excited about a new exhibit we are bringing to campus from March 10 to May 5, 2007. It is entitled “Fighting the Fires of Hate: America and the Nazi Book Burnings.” The exhibit focuses on the book burnings of the 1930s, in which the Nazis encouraged German students to burn allegedly un-German books written by authors ranging from Helen Keller to Ernest Hemingway to Sigmund Freud. The Institute would be delighted to enlist the Temple in promoting this event and we look forward to the opportunity to partner with you on other future events.

While there is a global dimension to understanding and working against genocide and hate, it is also true that every atrocity and every act of abuse is perpetrated at a local level. It is inescapably true that responsibility for creating conditions that serve and promote human right lies with us, as individuals working in our respective and relevant contexts. We are all responsible for creating cultures and communities of respect for and appreciation of difference. As parents, private citizens, members of faith communities, educators, professionals, coaches, business people, skilled and unskilled workers—we have a responsibility to counter hate whenever and wherever it emerges. Nuremberg helped us by focusing us, in a profound and historic way, on the moral proposition that individuals, not abstract political entities, are responsible for choosing how to treat one another. We honor the victims of the Shoah, and the victims of all crimes against humanity, on this Day of Remembrance and every day, by choosing to fight hate in places so small and close to home that they cannot be seen on any maps of the world.

I end with a few lines from Maya Angelou's Inaugural Poem:

*History, despite its wrenching pain,  
Cannot be unlived, and if faced with courage,  
Need not be lived again.*