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Pacifist Aggressives vs. the Second Amendment: An Analysis of Modern Philosophies of Compulsory Non-Violence

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PACIFIST-AGGRESSIVES vs. THE SECOND AMENDMENT: AN ANALYSIS OF MODERN PHILOSOPHIES OF COMPULSORY NON-VIOLENCE

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I. INTRODUCTION: RELIGIOUS PACIFISM vs. THE RIGHT TO ARMS

Does God believe in gun control? Many people seem to think so. In September 2008, thirty religious organizations sent a letter to Congress objecting to a congressional bill to reform the gun laws in the District of Columbia.[1] The joint letter was organized by the Brady Campaign, a lobby which opposes citizens owning guns for self-defense. The organization also supports the confiscation of many types of guns.[2]

1. 154 CONG. REC. H8175-76 (daily ed. Sept. 16, 2008) (statement of Rep. McGovern introducing letter dated September 8, 2008). The religious groups were objecting to H.R. 6691, a bill to repeal the District's ban on almost all semi-automatic handguns and rifles; the District's gun carrying restrictions which forbade use of a lawfully-owned gun for self-defense in one's own backyard or front porch; and the District's gun storage laws, which forbade unlocking an unloaded firearm in order to clean it or to teach someone gun safety, and which prohibited having a functional firearm except in response to an immediate attack. *See* H.R. 6691, 110th Cong. (2008).

2. Mrs. Brady states the only reason for guns in civilian hands is for sporting purposes. Randy E. Barnett & Don B. Kates, *Under Fire: The New Consensus on the Second Amendment*, 45 EMORY L.J. 1139, 1256 (1996) (citing Tom Jackson, *Keeping the Battle Alive*, TAMPA TRIB., Oct. 21, 1993). In addition, the Brady Campaign (formerly known as Handgun Control, Inc., and before that as the National Council to Control Handguns) argues for the prohibition of so-called "assault weapons" by maintaining that the guns are not sporting arms. The Brady Campaign filed a complaint with the Federal Trade Commission arguing that advertising handguns for defensive use was inherently "deceptive." Center to Prevent Gun Violence [former name of the Brady Campaign's legal arm], *FTC Filing on Deceptive Gun Advertising Petition*, *available at* http://www.gunlawsuits.org/reform/ftcfiling.php (last visited Sept. 27, 2008) (The complaint was eventually dismissed.). The Brady Campaign favors "needs-based" gun licensing, by which gun ownership would only be allowed when the police decide that someone needs a gun. Erik Eckhom, *A Little Gun Control, a Lot of Guns*, N.Y. TIMES, Aug. 15, 1993, at E1. Given Mrs. Brady's statement that defensive gun ownership is not legitimate, her needs-based licensing system would presumably find that no one "needs" a gun for self-defense. As far as banning guns, the Brady Campaign supports the confiscation of pump-action shotguns, supports the confiscation of "assault weapons" (defined to include many air guns), and supports creating federal administrative authority to ban guns. *See, e.g.*, N.Y. CITY ADMIN. CODE § 10-303.1 (Brady-supported law outlawing "assault weapons" and forbidding legal registered owners of such guns from continuing to own them); N.J. STAT. ANN. §§ 2C:39-1 to 15, 43-6 to 7, 58-5, 58-12 to 14 (1979) (Brady-supported law defining some air guns as illegal "assault weapons"); H.R. 1022, 110th Cong. (2007) (Brady-supported bill to give the Attorney General the administrative

Some of the religious groups which opposed congressional reform of the D.C. gun laws also joined an amicus brief in the United States Supreme Court case *District of Columbia v. Heller*.[3] That case was a Second Amendment challenge to the D.C. laws which forbade the ownership of handguns and also forbade the use of any firearm for self-defense in the home; among the amicus signers were representatives of Baptists, Methodists, Quakers, and Presbyterians, as well as a number of Jewish groups.[4] The brief was written by the Coalition to Stop Gun Violence, a group which seeks to outlaw handguns and many other firearms and includes many religious organizations in its membership.[5]

power to ban any semi-automatic rifle or shotgun derivative of a military design [as virtually all guns are] "that is not particularly suitable for sporting purposes, as determined by the Attorney General. . . . [A] firearm shall not be determined to be particularly suitable for sporting purposes solely because the firearm is suitable for use in a sporting event."); Donna Dees-Thomases & Carolynne Jarvis, *Why Wait to Tackle Gun Violence?: Germany's Timely Action Should Serve as Example for America*, DETROIT FREE PRESS, Aug. 8, 2002, at 9A (founder of the Million Mom March, which had become part of the Brady Campaign, and the executive director of Brady state affiliate describe the German ban on pump-action shotguns as one of the "common-sense measures" that should be adopted in the United States). Nelson Shields, at the time the head of the organization (under an earlier name) stated that the group's goal was "to make the possession of *all* handguns and *all* handgun ammunition—except for the military, policemen, licensed security guards, licensed sporting clubs, and licensed gun collectors—totally illegal." Richard Harris, *A Reporter at Large: Handguns,* NEW YORKER, July 26, 1976, at 58 (emphasis in original).

3. 554 U.S. ___, 128 S. Ct. 2783 (2008).

4. Brief for Jewish Committee et al. as Amici Curiae Supporting Petitioners, District of Columbia v. Heller, No. 07-290 (U.S. June 26, 2008) (Religious group signers were American Jewish Committee, Anti-Defamation League, Baptist Peace Fellowship of North America, Central Conference of American Rabbis, Methodist Federation For Social Action, Clifton Kirkpatrick In His Capacity as the Stated Clerk of the Presbyterian Church (USA), American Jewish Congress, Friends Committee on National Legislation, National Council of Jewish Women, and Union for Reform Judaism.).

5. According to the CSGV website, members include: American Ethical Union; American Jewish Committee; American Jewish Congress; B'nai B'rith Woman; Central Conference of American Rabbis; Church of the Brethren, Washington Office; Friends Committee on National Legislation; Jesuit Conference, Office of Social Ministries; National Council of Jewish Women; National Jewish Welfare Board; Presbyterian Church (USA)—The Program Agency; The Bible Holiness Movement, International; Union of American Hebrew Congregations; Unitarian Universalist Association; United Church of

The Brady Campaign also includes many religious organizations among its supporters,[6] as does the International Action Network on Small Arms (IANSA), which has been designated by the United Nations as the lead representative of civil society for UN policy-setting on gun control.[7] IANSA favors the prohibition of citizen ownership of any firearm for self-defense, the confiscation of all handguns, and a ban on almost all rifles.[8] IANSA membership includes religious organizations all over the world.[9]

Christ—Center for Social Action; United Methodist Church; United Synagogues of America; Women's League for Conservative Judaism; Young Women's Christian Association of the U.S.A., National Board. *See* http://www.csgv.org/site/c.pmL5JnO7KzE/b.3509251/k.601A/Member_Organizations.htm.

6. Among such groups are: the American Jewish Committee; American Jewish Congress; Anti-Defamation League; B'nai B'rith International; Church of the Brethren, Washington Office; Evangelical Lutheran Church in America; Mennonite Central Committee, Washington Office; Southern Christian Leadership Conference; Union of American Hebrew Congregations (Reform); Unitarian Universalist Association; United Church of Christ—Center for Social Action; United Methodist Church; U.S. Catholic Conference, Dept. of Social Development; World Spiritual Assembly, Inc.*; cf.* Robert Redding, Jr., *Religious Groups Organize to Lobby*, WASH. TIMES, Jan. 18, 2004, at A09 (Baltimore-Washington Conference of the United Methodist Church and the Lutheran Office on Public Policy in Maryland lobby for gun control); Kirsten Stewart, *LDS Stays Silent in Gun Spat*, SALT LAKE TRIB., Dec. 24, 2003, at B1 (Utah Episcopal, Catholic, Jewish, and Muslim religious leaders object to state law that prohibits licensed guns in church if a notice is posted; leaders object to having to post the notice).

7. *See IANSA's 2004 Review—The Year in Small Arms*, http://www.iansa.org/documents/2004/iansa_2004_wrap_up_revised.doc (last visited Sept. 11, 2008).

8. *See* Rebecca Peters, IANSA, debate with Wayne LaPierre, National Rifle Association, Oxford Union, Oxford University, United Kingdom, Oct. 12, 2004, transcript *available at* http://www.iansa.org/action/nra_debate.htm (people should not be allowed to have guns for self-defense; handgun ban); *Q&A Early Afternoon* (CNN International television broadcast Oct. 23, 2002) (Peters: civilians should not have rifles that can kill someone at 100 meters distance.).

9. *See IANSA Members*, http://www.iansa.org/about/members.htm (last visited Sept. 11, 2008) (Angola: Fundação Madre Teresa de Calcuta: Igreja Profética Vencedora no Mundo; Australia: Caritas Australia; Belgium: Pax Christi International; Pax Christi Vlaanderen (Flanders); Quaker Council for European Affairs (QCEA); Cameroon: Commission Diocésaine Justice et Paix de Yaoundé – Cameroun; Canada: Project Ploughshares; Centrale Diocésaine des Oeuvres; Ecumenical Service for Peace; Germany: World Vision Germany; Ireland: Pax Christi Ireland; Jordan: Quaker Service - American Friends

The leading handgun prohibition organization in the United States is not just supported by religious groups—it was founded by a religious group. The United Methodist Church, General Board of Church and Society, created the Coalition to Stop Gun Violence (originally named the National Coalition to Ban Handguns). The Coalition's office is in the Washington office building of the United Methodist Church, the largest Protestant denomination in the United States. From the pulpit of Washington, D.C.'s National Methodist Church—one of the most prestigious churches of America—the minister declared that belonging to the National Rifle Association was only slightly less evil than membership in the Mafia.[10]

Another major Protestant denomination, the Presbyterian Church (USA), has declared that it disapproves of "the killing of anyone, anywhere, for any reason." Because the church believes defensive gun ownership is immoral, it supports the confiscation of all handguns.[11]

Service Committee - Middle East Regional Office (AFSC); Kenya: Fellowship of Christian Councils in the Great Lakes & Horn of Africa; Norwegian Church Aid, Kenya; Kosovo: Mother Theresa [sic] – Kosovo (a group, not the person who is deceased); Macedonia: Pax Christi Netherlands in Macedonia; Netherlands: International Fellowship of Reconciliation (IFOR) (the world's oldest international ecumenical pacifist organization, founded in the early 20th century); Pax Christi Netherlands; Philippines: Pax Christi-Pilipinas; Sierra Leone: Calvary & Liberation Ministries of Sierra Leone (CALMIN - SL); Council of Churches in Sierra Leone (CCSL); Sweden: Swedish Fellowship of Reconciliation (SweFOR); Switzerland: Quaker United Nation Office - Geneva; World Council of Churches (WCC) (the world's major organization of Protestant churches; heavily involved in far-left causes for the last several decades); Togo: Association Catholique de la Veuve et de L'Orphelin (ACVO); Uganda: Uganda Joint Christian Council (UJCC); United Kingdom: Christian Aid; United States: Franciscans International; Quaker United Nations Office - New York (QUNO); World Conference on Religion and Peace (WCRP); World Vision International (WV); Zimbabwe: Catholic Commission for Justice & Peace, Zimbabwe (CCJPZ)).

10. In 1991, the late Rev. William Holmes gave a sermon, "Public Enemy No. 2," at the National Methodist Church. Holmes explained that Mafia was Public Enemy number 1, and the NRA was Public Enemy number 2. Larry Witham, *Clergyman vs. the Rifleman: Methodist Minister Blasts NRA as "Public Enemy No. 2,"* WASH. TIMES, Feb. 22, 1991, at F5.

11. *Legislation to Modify the 1968 Gun Control Act: Hearings Before the S. Comm. on Crime*, 99th Cong. (1985), at 127-28. *See also* Don B. Kates, Jr., *Bigotry, Symbolism and Ideology in the Battle over Gun Control*, 1992 PUB. INT. L. REV. 36, 43.

To support the right of gun ownership is to oppose the will of God, according to the "God Not Guns" coalition, which is directed by the Brady Center to Prevent Gun Violence (the educational-legal arm of the Brady Campaign).[12] "Gods Not Guns" is headed by Rev. Rachel Smith, a Brady Center trustee,[13] who denounces people who own guns and calls down especially strong imprecations on people who want to own or carry guns for self-defense.[14] The coalition accuses gun owners of being "gundamentalists" who worship guns as an idol in the place of the true God.[15] The exercise of Second Amendment rights is, according to the "God Not Guns" coalition, an inherently sinful action which demonstrates a refusal to trust in God.[16] Rev. Smith's work is promoted[17] by Jim Wallis, an evangelical Christian who is the founding editor of the pacifist, hard-left *Sojourners* magazine and the leading figure of the Christian Religious Left in modern America.[18]

12. God Not Guns: Faith in Action to Prevent Gun Violence, http://www.godnotguns.org/ (last visited Sept. 11, 2008). It is not clear how many religious organizations actually belong to the "God Not Guns" coalition. The coalition's website listing of "partners" is prefaced "Previous gun violence prevention activities and campaigns have been supported by the following organizations." God Not Guns Coalition: Partners, http://www.bradynetwork.org/site/PageServer?pagename=GNG_partners. At least some of these "partners" may be groups which endorsed some item on the Brady Campaign's agenda years ago, but which have never lent institutional support to "God Not Guns."

13. Paul Helmke, *Rev. Rachel Smith: God Not Guns*, HUFFINGTON POST, May 28, 2008, *available at* http://www.huffingtonpost.com/paul-helmke/rev-rachel-smith-god-not_b_103914.html.

14. http://www.godnotguns.org/.

15. *E.g.*, Posting of Rachel Smith to God Not Guns, http://www.godnotguns.org/blog/archives/25-Gundamentalisms-Day.html (June 29, 2008) ("[G]undamentalism is a religious movement without spiritual grounding. Rather, it is rooted in the sale and promotion of violence. . . . With the gun as its icon, the [Second] Amendment as its creed, gundamentalism proclaims that nothing is as sacred as the right to own a gun.").

16. *E.g.*, Posting of Rachel Smith to God Not Guns, http://www.godnotguns.org/blog/archives/23-Its-our-right,-but-is-it-right.html (June 27, 2008) ("Where do we place our trust - In God or in guns? Who do we serve - God or the [Second] Amendment?").

17. Posting of Rachel Smith to God's Politics, http://blog.beliefnet.com/godspolitics/2008/06/gundamentalism-by-rachel-smith.html (June 30, 2008).

18. Among Wallis's books arguing that true Christians must work to

Thus, it seems clear that religiously motivated pacifism plays a significant role in supporting anti-gun movements in the United States and elsewhere. These movements would nullify, formally or de facto, the arms rights and self-defense rights which are legally guaranteed by the U.S. Constitution, state constitutions, the constitutions of several other nations, the English Declaration of Rights, the Anglo-American common law, French civil law, Islamic law, and other sources.[19]

The religiously motivated advocates of bans on firearms and self-defense exemplify what UCLA law professor Eugene Volokh calls the "pacifist-aggressive" philosophy.[20] Some pacifists have made a personal moral decision that they will not engage in the use of force. For example, some members of the Mennonites, a Christian denomination, sought and received conscientious objector status during World War II.[21] The Mennonites, however, did not attempt to interfere with other persons who chose to serve in the military. Pacifist-aggressives, though, are pacifists who seek to impose their morality on other people. An extreme example of pacifist-aggression would be the sabotage and obstruction of military bases in one's own country—a tactic which a fringe of "peace activists" used during the Iraq Wars and the Cold War.

A much more common form of pacifist-aggression is to work within normal channels of government to seek laws prohibiting non-pacifists from using force. If a pacifist-aggressive decides that it would be immoral for him to own a gun for self-defense, he then works for laws to make it illegal for everyone else to own a handgun for self-defense.

In some countries, the pacifist-aggressive impulse has been

implement a socialist, pacifist, post-American policy agenda are THE GREAT AWAKENING: REVIVING FAITH & POLITICS IN A POST-RELIGIOUS RIGHT AMERICA (2008) and GOD'S POLITICS: WHY THE RIGHT GETS IT WRONG AND THE LEFT DOESN'T GET IT (2005).

19. For a survey of these sources, see David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Human Right of Self-Defense*, 22 BYU J. PUB. L. 43 (2008).

20. Posting of Eugene Volokh to The Volokh Conspiracy, http://volokh.com/2002_10_20_volokh_archive.html (Oct. 22, 2002, 06:27 PST).

21. Keith Graber Miller, *Mennonites*, *in* ENCYCLOPEDIA OF RELIGION AND WAR 297, 300-01 (Gabriel Palmer-Fernandez ed., 2004).

spectacularly successful. Defensive gun ownership has been made illegal, except under very rare circumstances, in the United Kingdom,[22] Ireland,[23] Australia,[24] New Zealand,[25] and Canada,[26] among other countries.

If a government can make it illegal to resist a violent criminal with a gun, the government can also discourage other forms of defensive violence. Thus, in England the police instruct subjects not to fight back against criminals. Instead, the subject should curl into a ball. Crime victims should not cry "Help! Help!" because the cry might inspire someone to fight with the criminal. Rather, British crime victims are told to shout, "Call the police!"[27]

A related issue is self-defense against a criminal government.

22. *See* David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Gold Standard of Gun Control*, 2 J.L. ECON. & POL'Y 417 (2006) (reviewing JOYCE LEE MALCOLM, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE (2002)); Joseph E. Olson & David B. Kopel, *All the Way Down the Slippery Slope: Gun Prohibition in England, and Some Lessons for Civil Liberties in America*, 22 HAMLINE L. REV. 399 (1999).

23. As in the United Kingdom, there is no statute in the Republic of Ireland which outlaws defensive gun ownership. Rather, the police simply operate the licensing system so as to allow gun ownership for sporting purposes only. *See* DEPARTMENT OF JUSTICE, EQUALITY, AND LAW REFORM, INFORMATION ON FIREARMS LICENSING, http://www.justice.ie/en/JELR/Information%20on%20firearms%20licensing.doc/Files/Information%20on%20firearms%20licensing.doc (last visited Sept. 11, 2008).

24. *Interview with Rebecca Peters, Senior Justice Fellow, Open Society Institute*, 6 GEO. PUB. POL'Y REV. 43, 44-45 (2000) ("Self-defense is not an acceptable legal reason" for gun ownership in Australia.).

25. *See* Jenny Ling, *Growing Interest in Firearms "Healthy,"* THE DOMINION POST (Wellington, N.Z.), Jan. 16, 2008, *available at* http://www.stuff.co.nz/4357659a11.html (Some gun license applicants "would say they wanted one for outdoors activities because self-defence was not an acceptable reason to want to own a gun in New Zealand."); Lech Beltowski, *Gunpoint Diplomacy*, INVESTIGATE MAG., July 2000, at 28-32, *available at* http://www.investigatemagazine.com/july00guns.htm (last visited Sept. 11, 2008) (explaining that self-defense gun ownership was prohibited after 1974).

26. *See* David B. Kopel, *Canadian Gun Control: Should America Look North for a Solution to Its Firearms Problem?*, 5 TEMPLE INT'L & COMP. L.J. 1, 17 (1991).

27. *See* Posting of Dave Kopel to Kopel's Corner, http://www.davekopel.com/Corner/Corner-Archive-2003.htm (May 15, 2003, 22:25 PST) (quoting American exchange student's report of instructions which a British officer delivered to a newly-arrived cadre of American students in London).

The Standard Model of the Second Amendment states that among the key purposes of the Second Amendment is to allow the American people to resist lone criminals and to resist a criminal tyrannical government, should such a government ever usurp power.[28] The Supreme Court's opinion in *District of Columbia v. Heller* follows the Standard Model: the opinion identifies personal self-defense in the home as the core of the Second Amendment and makes a passing observation that "when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny."[29]

The *Heller* opinion then, is squarely in conflict with the religious pacifist view that defensive gun ownership is an inherently immoral activity which should be outlawed.

Professor William Van Alstyne observed that "[t]his case is to the Second Amendment what *Roe v. Wade* was to abortion."[30] He elaborated: "That one didn't settle all the questions, and some people still don't like it, but it was a watershed, like this one."[31]

From the point of view of the religious pacifist-aggressives, the comparison to *Roe v. Wade* is apt, although not for the reasons that Van Alstyne gave. First, the religious opponents of legal self-defense, like the religious opponents of legal abortion, charge that the Supreme Court's decision was not grounded in true constitutional law, but was an arbitrary policy decision imposed by an activist Court. Second, they view the activity which is protected by the Court's decision as a form of legalized murder.

The opponents of *Roe v. Wade* tried to pass a constitutional amendment overturning the decision but were not successful.

28. The Standard Model is the model followed by most law professors who have written about the Second Amendment. The Model recognizes a right to own firearms for lawful purposes, and also recognizes permissibility of many forms of non-prohibitory gun control. For debate about the Standard Model, see ANDREW J. MCCLURG, DAVID B. KOPEL, & BRANNON P. DENNING, GUN CONTROL AND GUN RIGHTS: A READER & GUIDE (2002).

29. *Heller*, 554 U.S. at ___, 128 S. Ct. at 2801.

30. Joanne Kimberlin, *After Gun-Rights Ruling, Both Sides Look to Next Move*, THE VIRGINIAN-PILOT (Norfolk, Va.), June 27, 2008 *available at* http://hamptonroads.com/2008/06after-gunrights-ruling-both-sides-look-next-move (last visited Sept. 20, 2008).

31. *Id.*

There is no realistic possibility that the opponents of *Heller* could hope for success in passing their own constitutional amendment; even before *Heller*, 73% of the American public believed that the Second Amendment guarantees the right of all Americans, not just members of militias or the National Guard, to own guns.[32] Bi-partisan majorities in both houses of the U.S. Congress joined an amicus brief asking the Supreme Court to rule in favor of the individual's Second Amendment right to own guns for self-defense.[33]

Opponents of *Roe* also sought to influence Supreme Court appointments to produce a majority which would overturn the case. In thirty-five years, they have not been successful, in part because of the reluctance of some Justices to overturn precedent which has become part of the fabric of American rights-consciousness, even though that precedent was, in the Justices' view, wrongly established.[34] But *Roe v. Wade* was decided 7-2, and it took decades for the decision's enemies to win enough presidential elections to secure the appointment of Justices who thought the original opinion was wrongly decided. In contrast, *Heller* was a 5-4 decision, and it is entirely possible that Justice Scalia (age 72) might retire or that health reasons might force Justice Thomas off the bench. The replacement for either of

32. Jeffrey M. Jones, *Public Believes Americans Have Right to Own Guns*, GALLUP POLL, Mar. 27, 2008, *available at* http://www.gallup.com/poll/105721/Public-Believes-Americans-Right-Own-Guns.aspx.

33. Brief for 55 Members of United States Senate et al. as Amici Curiae Supporting Respondent, District of Columbia v. Heller, 554 U.S. ___, 128 S. Ct. 2783 (2008) (No. 07-290).

34. *See* Planned Parenthood v. Casey, 505 U.S. 833, 856 (1992) (O'Connor, J., plurality opinion) ("[F]or two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. . . . [W]hile the effect of reliance on *Roe* cannot be exactly measured, neither can the certain cost of overruling *Roe* for people who have ordered their thinking and living around that case be dismissed."); *cf.* Dickerson v. United States, 530 U.S. 428, 443 (2000) ("Whether or not we would agree with *Miranda*'s reasoning and its resulting rule, were we addressing the issue in the first instance, the principles of *stare decisi*s weigh heavily against overruling it now. . . . *Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture.") (internal citations and quotations omitted).

these two Justices in the *Heller* majority might be willing to overturn the precedent—perhaps especially willing if the replacement Justice agrees with the religious pacifists that armed self-defense is deeply immoral. A more cautious anti-*Heller* majority on a future Supreme Court might simply "construe" *Heller* so as to deprive the case of any practical force in stopping anything other than handgun bans or complete bans on armed self-defense.

A third tactic of *Roe* opponents was to work in state legislatures and Congress to impose every possible obstruction on the exercise of the abortion right. The Supreme Court has upheld some, but not all, of these obstructions.[35] The religious opponents of self-defense have used similar strategies with some success, especially at the state level. Like *Roe* opponents, the *Heller* opponents favor waiting periods, or "cooling-off periods," for exercise of the right, as well as compilation of government databases on people who exercise the right.[36] The *Heller* opponents have fought vigorously, and sometimes successfully, against liberalization of self-defense laws, such as by not requiring that crime victims retreat rather than use force in self-defense.[37] Forty states currently issue concealed handgun carry permits to adults who pass a fingerprint-based background check and a safety class.[38] The religious pacifists have been vigorous

35. *See, e.g.*, *Planned Parenthood*, 505 U.S. at 881-901 (upholding parental notification requirement for minors, and waiting period for adults, but striking spousal notification requirement for married women).

36. *See Gun Laws and Policies: A Dialogue*, FOCUS ON L. STUD. (Div. for Pub. Educ. of the A.B.A., Chicago, Ill.), Spring 2003, at 9 (discussion by Deborah Homsher) (noting Brady Campaign's unsuccessful efforts to impose a national five government working-day waiting period on firearms sales); Brady Campaign, "Licensing and Registration: Frequently Asked Questions," http://www.bradycampaign.org/facts/faqs/?page=licreg.

37. *See*, *e.g.*, Michael E. Young, *NRA, Brady Campaign in Passionate Fight over Gun Rights*, DALLAS MORNING NEWS, Jan. 20, 2008 (Brady Campaign opposition to NRA-backed laws to expand self-defense rights).

38. The typical model in the United States is a "shall issue" law for handgun permits, by which an adult who meets objective criteria (having a clean record and, in most states, passing a safety class), "shall" be issued a permit to carry a concealed handgun for lawful defense. These states are: Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina,

opponents of the proliferation of these laws in the last two decades, and so far, they have kept ten states—including California, New York, New Jersey, and Massachusetts—from adopting such laws.

Thus, the religiously motivated opponents of self-defense are likely to play an important role in whether the self-defense right in *Heller* will thrive or be constricted.

This Article examines the strengths and weaknesses of modern pacifist religious philosophy. The Article's focus is not on the application of that philosophy to gun control issues but on whether that philosophy is sound in the first place.

The Article does not investigate scriptural arguments for pacifism (e.g., some interpretations of The Sermon on the Mount). Rather, the Article studies modern arguments for compulsory pacifism which, although they have Christian foundations, are presented in terms broad enough to intend to persuade people from diverse religious faiths, or (sometimes) atheists.[39]

The Article suggests that some intellectual arguments for pacifism are logically solid, once certain premises are granted, while others have serious flaws. The Article discusses five influential Christian philosophical advocates of non-violence: Leo Tolstoy, Thomas Merton, Stanley Hauerwas, Tony Campolo, and most importantly, John Howard Yoder. In addition, the Article examines three real-world cases where the practice of non-violence was tested: the resistance to Nazism, particularly as

North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wyoming. Three states have laws which nominally have more discretion for the licensing authority, but the laws in practice tend to be applied similarly to "shall issue" laws. These three states might be called "do issue": Alabama, Connecticut, Iowa. In two states, no permit is required for an adult who is a lawful gun owner: Alaska and Vermont.

39. Other religious traditions, particularly Buddhism, also have many adherents who are pacifists, some of whom would use the force of law to impose pacifism on non-believers. This Article concentrates on Christian-derived arguments for compulsory pacifism, since those arguments are, for demographic reasons, far more influential in the United States and the West than are Buddhist arguments. Moreover, many of the ecumenical arguments of the Buddhist pacifist-aggressives (e.g., "violence never solves anything") are quite similar to the Christian-based ecumenical arguments.

exemplified by the Danish rescue of the Jews during World War II; the American civil rights movement in the South in the 1960s; and the invasion of the Chatham Islands—the home of the pacifist Moriori tribes.[40]

II. RESISTANCE TO HITLER

Before studying particular pacifist thinkers, let us examine the most difficult problem faced by pacifists in the last century—the Nazis.

After the disillusionment that resulted from World War I, Christian pacifism in the West was riding higher than at any time since Constantine won the battle of Milvian Bridge in 312

40. Notably, this Article does not address the philosophical basis of the pacifism of the Society of Friends (the Quakers) for their pacifism is logically irrefutable, because it is beyond reason. Quakers urge each person to listen attentively to the "inner light" of his or her own conscience, and they believe that as a person becomes increasingly open to that inner light, the person will eventually develop heartfelt convictions making interpersonal violence impossible. There are many Quaker converts who bear witness to the success of this approach. The Quaker historian Meredith Weddle explains:

> Of all the testimonies, the peace testimony was most resistant to dogma. . . . In Quaker belief, peaceful principles were not goals but were the logical consequences of righteousness. . . . Transforming love could be the only genuine motivation, and the only restraint, that mattered. . . . In this sense, truth could not be passed along, except for one element: the need to heed the voice within. . . . They were patient, recognizing the nature of revelation as a process, a deepening. They tolerated a person's faltering steps toward the good; believing that God bestowed increasing capacities as he required increasing responsibility . . . they tolerated those who carried guns to their cornfields. . . . Peace principles were extraordinarily difficult to develop, then, because the peace testimony was the fruit of attitude, not thought. But principles based on love—agape—once achieved, were unassailable in a way not available to a construct of the mind. A motion of the heart, profoundly established, is less susceptible to challenge than an intellectual frame.

MEREDITH BALDWIN WEDDLE, WALKING IN THE WAY OF PEACE: QUAKER PACIFISM IN THE SEVENTEENTH CENTURY 37-38 (2001). As the great French philosopher Blaise Pascal said, explaining why he had faith in Christianity, "The heart has its reasons which reason does not know." ("Le coeur a ses raisons que la raison ne connaît pas"). BLAISE PASCAL, PENSEES § 4, ¶ 277 (W.F. Trotter trans., 1944) (1670).

A.D.,[41] or perhaps even before. Hitler then started World War II in 1939, and Tojo launched a surprise attack on Pearl Harbor in 1941. Pacifist ranks were devastated. Pacifism lingered as a very minor element in Anglo-American Christianity during the first part of the Cold War, until disillusionment with the Vietnam War began to build.[42]

Whatever arguments can be made about the implications of "turn the other cheek"[43] or other scripture, mainstream Christians believed that pacifists had no satisfactory answer to the question, "What would you do about Hitler?" By extension, the pacifists could not answer, "What would you do about Communism?" even though Josef Stalin and Mao Tse-tung each murdered more people than Hitler did. Hitler, Stalin, and Mao

41. During a civil war, in the year 312 A.D., on the day before the Battle of Milvian Bridge, outside Rome, General Constantine reportedly saw a cross on the sun. That night, he had a dream and saw the cross again, formed from the combination of the Greek letters chi and rho—the first two letters of Christ's name. Constantine ordered his soldiers to paint the chi-rho symbol on their shields. *See* TIMOTHY D. BARNES, THE NEW EMPIRE OF DIOCLETIAN AND CONSTANTINE (1982); EUSEBIUS, THE LIFE OF THE BLESSED EMPEROR CONSTANTINE (Vita Constantini) chs. 28-32 (Philip Schaff ed., Arthur Cushman trans., New York, Christian Literature Pub. Co. 1890) (approx. 337 A.D.), *available at* http://www.ccel.org/fathers2/NPNF2-01/Npnf2-01-27.htm#P7068_2986018l; LACTANTIUS, DE MORTIBUS PERSECUTORUM (Of the Manner in Which the Persecutors Died) ch. 44 (approx. 314-315 A.D.), *available at* www.ccel.org/fathers2/ANF-07/anf07-15.htm#P4125_1656611 (reporting the dream but not the vision). Some astronomical historians suggest that at night Constantine did not have a dream, but on the night of October 27 may have seen an unusual alignment of planets (a syzygy) in or near the constellation Cygnus, which is in the shape of a cross. *See* David J. Ross, *The Bird, the Cross, and the Emperor: Investigations into the Antiquity of the Cross in Cygnus*, 4 CULTURE AND COSMOS (2000), *available at* http://www.twcac.org/onlinehorizon/cross.htm. The daytime cross on the sun is a phenomenon which can occur under certain atmospheric conditions. SIMON ANGLIM, PHYLLIS G. JESTICE & ROB S. RICE, FIGHTING TECHNIQUES OF THE ANCIENT WORLD (3000 B.C. TO 500 A.D.): EQUIPMENT, COMBAT SKILLS, AND TACTICS 176 (2003). In 313 A.D., the Edict of Milan granted religious freedom to all faiths in the Roman Empire, thus ending nearly three centuries of persecution of Christians. The Edict was co-signed by Constantine, who ruled the Western Empire, and by Licinius, who ruled the Eastern Empire. EDICT OF MILAN (Constantine & Licinius, 313).

42. *See generally* David B. Kopel, *Evolving Christian Attitudes Towards Personal and National Self-defense* (Independence Inst., Working Paper, Nov. 27, 2007), *available at* http://davekopel.org/Religion/Evolving-Christian-Attitudes.pdf.

43. *Matthew* 5:38-39; *see also Luke* 6:29-30.

each offered an idealistic (in their own eyes) vision in which everyone in the world would either be dead or would be the virtual slave of totalitarian tyrants a hundred times worse than the worst tyrants of the Roman Empire.

During the Battle of Britain, Winston Churchill spoke to the British people, as well as all free people. Churchill correctly warned:

> Upon this battle depends the survival of Christian civilization. . . . [I]f we fail, then the whole world, including the United States, including all that we have known and cared for, will sink into the abyss of a new Dark Age, made more sinister and perhaps more prolonged by the lights of perverted science.[44]

What Churchill asked of freedom-loving people was commensurate with the dangers they faced:

> What is our policy? I can say: It is to wage war, by sea, land and air, with all our might and with all the strength that God can give us; to wage war against a monstrous tyranny, never surpassed in the dark, lamentable catalogue of human crime. That is our policy. You ask, what is our aim? I can answer in one word: It is victory, victory at all costs, victory in spite of all terror, victory, however long and hard the road may be; for without victory, there is no survival.[45]

What was the pacifist alternative to total war to prevent totalitarian genocide and slavery? One unsatisfactory answer came from Richard Niebuhr, an eminent liberal American Protestant theologian of the Yale Theological Seminary. In 1931, Japan invaded China in violation of the 1928 Kellogg-Briand Pact, which Japan had signed and which outlawed offensive war. During the 1931–1945 Japanese invasion of China, the Japanese committed genocide against the Chinese.[46]

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44. Prime Minister Winston S. Churchill, Speech at the United Kingdom House of Commons (June 18, 1940).

45. Prime Minister Winston S. Churchill, Speech at the United Kingdom House of Commons (May 13, 1940).

46. ROBERT GELLATELY & BEN KIERNAN, THE SPECTER OF GENOCIDE: MASS MURDER IN HISTORICAL PERSPECTIVE 268 (2003); *see also* R. J. RUMMEL, DEATH BY GOVERNMENT 143-57 (1997).

In retrospect, we know that a firm response from the democracies might have prevented the Second World War. Britain, France, the United States, and other democracies could have imposed a complete economic boycott on Japan. If the boycott had failed, they could have blockaded Japan; if a blockade had failed, they could have invaded Japan. Such an invasion would not have been easy, but it would have been much less difficult than winning the Second World War—which Japan and Germany certainly could have won if they had not made some strategic errors.[47]

In 1932, Niebuhr wrote that he could think of no good methods, short of war, to end Japanese aggression in China.[48] But since he was a pacifist, force was out of the question. So he advocated "the grace of doing nothing."[49] That is, just sitting on the sidelines while Japan raped, literally and figuratively, the Chinese people and hoping that God would solve things in the long run.

Niebuhr's position might be called passive pacifism. It was "resist not evil"[50] carried to the extreme. Such a position might have made sense to a Christian in 82 A.D., when the Second Coming of Jesus was expected within a few months or a few years. Such a position was a tragic disaster in 1932, when it facilitated Japanese and German aggression that led to the deaths of thirty million people. In 1952, when Stalin and Mao were trying to finish the job that Hitler started—enslaving or murdering the entire world—"the grace of doing nothing" appeared to be fatuous and self-indulgent nonsense.

Richard Niebuhr's brother, Reinhold Niebuhr, agreed with Richard that Jesus had really been a pacifist.[51] But Reinhold Niebuhr was apparently motivated by the spirit of the Torah that

47. *See*, *e.g.*, HAROLD C. DEUTSCH & DENNIS E. SHOWALTER, WHAT IF? STRATEGIC ALTERNATIVES OF WWII (1997).

48. H. Richard Niebuhr, *The Grace of Doing Nothing*, *in* THE CHRISTIAN CENTURY, *reprinted in* HAROLD E. FEY & MARGARET FRAKES, THE CHRISTIAN CENTURY READER 216, 216-21 (1972).

49. *Id.*

50. *Matthew* 5:39.

51. Reinhold Niebuhr, *Must We Do Nothing?*, *in* THE CHRISTIAN CENTURY, *reprinted in* THE CHRISTIAN CENTURY READER, *supra* note 48, at 222, 222-24.

told the Hebrews, "[N]either shalt thou stand against the blood of thy neighbour."[52] As a Christian, Reinhold Niebuhr understood that his "neighbor" included people in distant lands.[53]

Reinhold Niebuhr's spirit was the opposite of Neville Chamberlin, who in the 1938 Munich Pact forced democratic Czechoslovakia to submit to Hitler's aggression and declared his own indifference to "a quarrel in a far away country between people of whom we know nothing."[54]

In a famous exchange of letters with his brother Richard, Reinhold Niebuhr argued that the deeper principle of the pacifist Gospels was "the law of love."[55] He argued that the law of love required Christians to protect the victims of fascist aggression.[56] His views were elaborated in his book *Moral Man and Immoral Society*.[57] After World War II, Reinhold Niebuhr became one of the founders of Americans for Democratic Action, an organization

52. *Leviticus* 19:16.

53. Reinhold Niebuhr had once been national chairman of the ecumenical Protestant pacifist Fellowship of Reconciliation. He initially broke with the pacifists over the issue of revolution. At the time of the break, Niebuhr was a Marxist and believed that violent revolution was justifiable in some cases. *See generally* RICHARD WIGHTMAN FOX, REINHOLD NIEBUHR: A BIOGRAPHY (1985).

54. *Prime Minister on the Issues*, THE TIMES (London), Sept. 28, 1938, at 10.

55. *See* Niebuhr, *supra* note 51.

56. *Id.*

57. *See* REINHOLD NIEBUHR, MORAL MAN AND IMMORAL SOCIETY: A STUDY IN ETHICS AND POLITICS (Westminster John Knox Press 2001) (1932). Niebuhr believed that the Gospels were pacifist and that pacifism was a guide for individual human behavior. However, he argued that the pacifist ethic could not be applied to nations, which necessarily could not operate according to a perfectly Christian ethic. Hence the title of his book. Moreover, argued Niebuhr, the pacifism of the Gospels was an "interim ethic" based on the (incorrect) expectation that the end of history was imminent; accordingly, there was no need to consider practical implications of radical pacifist behavior. *Id.* Niebuhr's position was broadly consistent with the early Luther, who distinguished the Christian as an individual from the Christian in society. Martin Luther, *The Sermon on the Mount*, *in* 21 LUTHER'S WORKS: THE SERMON ON THE MOUNT AND THE MAGNIFICAT 1, 106-13 (Jaroslav Pelikan trans., Concordia Pub. 1956) (an individual Christian should not defend himself with violence, or even by going to court; but the "Christian-in-relation" has a social duty to use force to defend others). Niebuhr's concession that perfected Christianity is pacifist left his theory open to rebuttal from people who rejected the validity of his argument that social ethics were different from individual ethics.

of liberal Democrats such as Arthur Schlesinger, Jr., Hubert Humphrey, and John Kenneth Galbraith—who supported President Truman's leftist economic policies and staunch resistance to Stalin.[58]

Passivism, or "the grace of doing nothing," provided a very unsatisfactory guideline for the loving Christian. Although some pacifists still quote Richard Niebuhr's words, thoughtful pacifists of the early twenty-first century tend to emphasize that pacifism does not mean "doing nothing." Rather, pacifism means being very active, but in a non-violent way.

What would have happened if instead of fighting the Nazis—that is, instead of meeting violence with violence—the people of Europe had greeted the Germans with love? History provides the answer.

When Hitler launched Operation Barbarossa in June 1941 and swiftly conquered immense swaths of Soviet territory, the Nazi forces were often greeted with cheers and flowers.[59] The conquered people had personal experience with Josef Stalin's genocidal tyranny, and they expected that any foreign conqueror had to be at least a little better. In fact, if Hitler emulated the worst parts of how Cortez treated the Mexican Indians, or how the Muslims treated their conquered peoples, or how the Western Europeans treated their colonies, or how the Teutonic Knights treated their conquests, or how the Germans treated Eastern Europeans during World War I, the conquered Soviet peoples would have been much better off under Hitler than under Stalin. Hitler would have enjoyed tranquility, and perhaps active cooperation, in all his conquered Soviet territory and probably would have won the war.

But the flowers and the cheers from the Eastern Europeans meant nothing to the Nazis. They intended to kill or enslave all

58. *See generally* CLIFTON BROCK, AMERICANS FOR DEMOCRATIC ACTION: ITS ROLE IN NATIONAL POLITICS (Greenwood Press reprint 1985) (1962).

59. *See*, *e.g.*, Ariel Cohen, *When Totalitarians Collapse*, NAT'L REV. ONLINE, Nov. 27, 2001, *available at* http://www.nationalreview.com/comment/comment-cohen112701.shtml; THE NAZIS: A WARNING FROM HISTORY (BBC 1998) (documentary series with photos of Polish and Lithuanian flower greetings for the Nazis).

the Slavs and repopulate Slavic land with Germans.[60] The Nazis dreamt of *Lebensraum* (living room) in the East. It is doubtful that Americans would have enjoyed better treatment had they followed the pacifist instructions to greet the Germans or the Japanese with Christian love; both of the main fascist powers despised the Americans as an inferior mongrel race.

During World War II, the pacifist arguments were self-evidently futile. If pacifists could not address the most urgent question of the day, the survival of civilization, their other theoretical arguments appeared worthless.

During the Cold War, pacifists continued to be dogged with the question, "What would you do (or what would Jesus have done) about the Nazis?" And by extension, "What are you going to do about the Communists?" Or now, "What are you going to do about the Islamofascists like bin Laden?" A typical pacifist response was to change the question: Communists were different from Nazis because the former were not so aggressive. Yet the Communists killed over a hundred million, far more than the Nazis.[61] Or nuclear weapons changed everything because they threatened total annihilation, so "Better Red than dead."[62]

Winston Churchill disagreed with the last sentiment. In his 1948 book *The Gathering Storm*, Churchill wrote:

> Still, if you will not fight for the right when you can easily win without bloodshed, if you will not fight when your victory will be sure and not too costly, you may come to the moment

60. *See generally* NORMAN RICH, HITLER'S WAR AIMS: IDEOLOGY, THE NAZI STATE, AND THE COURSE OF EXPANSION (1992).

61. *See generally* R.J. RUMMEL, STATISTICS OF DEMOCIDE: GENOCIDE AND MASS MURDER SINCE 1900 (1998); R.J. RUMMEL, LETHAL POLITICS: SOVIET GENOCIDE AND MASS MURDER SINCE 1917 (1990); R.J. RUMMEL, DEMOCIDE: NAZI GENOCIDE AND MASS MURDER (1992); R.J. RUMMEL, CHINA'S BLOODY CENTURY: GENOCIDE AND MASS MURDER SINCE 1900 (1991).

62. The slogan is how critics characterized Bertrand Russell's view: "If no alternative remains except Communist domination or the extinction of the human race, the former alternative is the lesser of two evils." Bertrand Russell (1958) quoted in NIGEL REES, MARK MY WORDS: GREAT QUOTATIONS AND THE STORIES BEHIND THEM (2002). Today, Russell's vision is carried forward by the Bertrand Russell Peace Foundation, which was established in 1963. The Bertrand Russell Peace Foundation, http://www.russfound.org (last visited Sept. 27, 2008).

> when you will have to fight with all the odds against you and only a precarious chance of survival. There may even be a worse case. You may have to fight when there is no hope of victory, because it is better to perish than live as slaves.[63]

"Live free or die" is the New Hampshire state motto.[64] The English philosopher John Stuart Mill expressed the same sentiment in the nineteenth century:

> War is an ugly thing, but not the ugliest of things: the decayed and degraded state of moral and patriotic feeling which thinks nothing *worth* a war, is worse. . . . A man who has nothing which he is willing to fight for, nothing which he cares more about than he does about his personal safety, is a miserable creature, who has no chance of being free, unless made and kept so by the exertions of better men than himself.[65]

"Better Red than dead" was the expression of a moral degradation by persons whose selfish interest in their own physical survival trumped all spiritual and other values. The slogan was contrary to the spirit of the Christian martyrs, including the pacifist martyrs, who knew that preserving their souls was infinitely more important than preserving their bodies.

I am not arguing that submission could never be preferable to death. A world run by the Ottoman Turks, Nebuchadnezzar's Babylon, or the Spanish Conquistadores, would be an awful world by the enlightened standards of the twenty-first century. But Istanbul, Babylon, or Madrid at least allowed the existence of some degree of civil society. Not so under Hitler, Stalin, or Mao. And not so under Islamofascism, as when the Taliban ruled Afghanistan.[66]

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63. 1 WINSTON S. CHURCHILL, THE SECOND WORLD WAR: THE GATHERING STORM 312 (1948).

64. The words are those of General John Stark, July 31, 1809, New Hampshire's most famous Revolutionary War officer. The New Hampshire legislature adopted them as the official state motto in 1945, near the end of World War II. New Hampshire State Motto, http://www.nh.gov/nhinfo/emblem.html (last visited Sept. 27, 2008).

65. JOHN STUART MILL, THE CONTEST IN AMERICA 31 (Boston, Little, Brown & Co. 1862) (emphasis in original).

66. It is true that over the course of several generations, the Soviet Union

One type of pacifism has always had a coherent response. In essence, the response is "So what?" To elaborate: "The Gospel forbids Christians to use force, and therefore we will not, and therefore we accept the consequences. And if the consequence is the whole world enslaved or murdered by Hitler or Bin Laden, we are willing to pay the price. It's not our responsibility to make history turn out right."

Although one can disagree with the scriptural soundness of "So what?" the position has perfect internal coherence. The problem for advocates of the position is that it is unappealing to most people who are inclined to reject a religious ideology that leads to a dark age of ultra-tyranny and genocide. "So what?" is fine for people who are already convinced by their reading of scripture (e.g., Mennonites) or by the moral intuition in their hearts (e.g., Quakers), but "So what?" is unlikely to convince anyone who is not already convinced.

"So what?" is not a persuasive solution to the decades-long failure of pacifists to answer the question, "What would you do about Hitler?"

A different answer by some pacifists is to claim that non-violence is *more* effective than violence; in fact, violence is futile and non-violence works. Indeed, even advocates of force are willing to concede the point in particular cases. For example, Mohandas Gandhi's campaign of non-violence brought independence to India, whereas the Indian people might not have succeeded at violent revolution.[67]

No serious person would deny that non-violence *sometimes* works better than violence. But if pacifism is to be the universal ethic, rather than a temporary tactic, then non-violence must *always* work better than violence. So now we are back to

and Communist China evolved into states which, while not free, are much freer than the hellholes tyrannized by Stalin and Mao. That evolution was possible precisely because the West did not surrender as the "Better Red than dead" cowards had urged. The continuing existence of free societies made it possible for some ideas of freedom to penetrate the Iron Curtain. Moreover, the economic dynamism of free economies forced the Communist states to allow some liberalization, lest the Communist countries be overwhelmed by the West.

67. *See generally* PADMA RAMAKRISHNAN, GANDHI AND INDIAN INDEPENDENCE (1994).

resisting Hitler. How did non-violence work against Hitler?

Tony Campolo is a leading American evangelical Protestant. He claims that "nonviolent resistance *did* work against the Nazis. As a matter of fact, it was the only strategy that had even limited success in stopping Hitler's demonic persecution of the Jews."[68] Campolo supplies one example to support his claim—the Danish resistance to Hitler. At last, it seems, pacifists have found an answer to "What would you do about Hitler?"

A. Danish Resistance to Hitler

Modern pacifist literature is rife with tales of the Danish non-violent resistance to Hitler. A highlight of the tales is how the Danish king, Christian X, wore a Jewish yellow star and told his countrymen to do the same so that the Germans could not identify the real Jews.[69]

The real story is rather different, as detailed by Denmark's Institute for International Studies, Department for Holocaust and Genocide Studies.[70]

In the years leading up to World War II, Denmark attempted to convince other Scandinavian countries to guarantee Denmark's southern border against German invasion. The Scandinavian countries refused to offer such a guarantee because the low level of Danish military spending indicated that Denmark was refusing to take its self-defense responsibilities seriously.[71]

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68. TONY CAMPOLO, 20 HOT POTATOES CHRISTIANS ARE AFRAID TO TOUCH 166 (1988) (emphasis in original).

69. Vilhjálmur Örn Vilhjálmsson, *The King and the Star*, *in* DENMARK AND THE HOLOCAUST 102, 102-05 (Mette Bastholm Jensen & Steven L.B. Jensen eds., Institute for Int'l Studies, Dep't of Holocaust and Genocide Studies 2003), *available at* http://web.archive.org/web/20050416084733/http://www.dchf.dk/publications_dk/information/dk_h_newbook.html#Anchor3; RICHARD PETROW, THE BITTER YEARS: THE INVASION AND OCCUPATION OF DENMARK AND NORWAY APRIL 1940–MAY 1945, at 228 (1974) ("[I]t simply was not true. The legend lingers on in the Western world, however, passed on by word of mouth . . . among those advocating a passive resistance to various forms of tyranny.").

70. *See* Vilhjálmsson, *supra* note 69.

71. DOUGLAS C. DILDY, DENMARK AND NORWAY 1940: HITLER'S BOLDEST OPERATION 21-22 (2007). Indeed, Denmark cut its ground forces by 50 percent from September 1939 to April 1940, under the vain hope that it could placate

In the spring of 1940, Hitler gave orders for the invasion of Norway, which had been planned since the fall of 1939. On April 9, 1940, the Germans attacked Norway and Denmark.

Instant submission was the response of much of the Danish army and all of the navy.[72] Two hours after the Germans had crossed the border, King Christian surrendered his nation to the Nazis.[73] The *Luftwaffe* had flown over Copenhagen without bombing it and had convinced the Danish government that resistance was futile. [74]

The Germans had offered Denmark generous surrender terms: Denmark would become a "protectorate" of the Third Reich but would be allowed to regulate its internal affairs and retain its sovereignty. Officially, Denmark was not under hostile foreign occupation but remained a self-governing polity. Germany's ultimatum demanding Danish surrender promised that Germany had no intention to "interfere with Denmark's territorial integrity or political independence."[75] Denmark became Germany's "model protectorate."[76]

World War II might have taken a very different turn had a well-prepared Denmark fought bravely. If the German Panzer tanks "did not cut through Jutland like a hot knife through butter, reaching the strategic airfields in northern Jutland within a few hours, and if the Danish government refused to capitulate, [German General] Falkenhorst feared that [his] chances for success in Norway would be seriously jeopardized."[77]

With a system of fortifications and an army that had grown to its full potential, rather than being overrun, Denmark could have resisted for at least a few days. Even if Denmark had fought for only a single day, the Danish forces might have prevented the Germans from bringing air support in the critical first day of the invasion of Norway.

Germany. PETROW, *supra* note 69, at 45.

72. PETROW, *supra* note 69, at 47-49.

73. *Id*. at 48.

74. *Id.*

75. EMILY E. WERNER, A CONSPIRACY OF DECENCY: THE RESCUE OF THE DANISH JEWS DURING WWII 9 (2002); PETROW, *supra* note 69, at 159.

76. PETROW, *supra* note 69, at 50.

77. *Id.* at 46.

As it was, the Norwegians fought as best they could until June, when the King, the rest of the government, and some remnants of the military fled to England to set up a government in exile.[78]

What if Danish resistance had thrown the German invasion of Norway off balance? Perhaps the Norwegians would have been able to organize more durable resistance throughout much more of their country.

If the Nazis had been forced to commit substantial reinforcement to Norway, would they still have been able to knock France out of the war in six weeks? It is impossible to know for sure, but it seems clear that the lightning-swift surrender of Denmark was a great benefit to the Nazis in 1940.

In the Allied nations, the Danish capitulation was viewed with disgust during the next several years. All other nations conquered by Hitler managed to fight at least for a few days, not just a few hours.[79]

Danish acceptance of the "protectorate" provided other advantages to the Germans. The *Wehrmacht* did not need to deploy soldiers to finish the war in Denmark or maintain control. Denmark's bountiful farm economy provided much-needed food to the Germans, who could not import food from overseas due to the British naval blockade.[80]

Nazi ideology stressed that Hitler was the savior of all the Aryan peoples, not just the Germans. Alone among the non-German Aryan nations, Denmark could plausibly be portrayed as cooperating with its Aryan big brother.

Many powerful Germans developed a vested interest in making sure that "The Arrangement of 9 April" continued. In countries which had been officially conquered, the German army ran the post-conquest governments. In Denmark, though, the German Ministry of Foreign Affairs was the most powerful

78. *Id.* at 95-98.

79. The Grand Duchy of Luxembourg was conquered in less than day, on May 10, 1940, the government having fled the night before the invasion. Since Luxembourg is a micro-state rather than an ordinary-sized nation, there was not as much of a backlash to the country's speedy conquest.

80. PETROW, *supra* note 69, at 161.

German influence, for there was no German military government. The German Ministry was loathe to disturb the April 9 arrangement, lest foreign service officers be elbowed aside by *Wehrmacht* officers.[81]

Many German businesses and civil organizations had long-standing ties with counterparts in Denmark. These ties were undisturbed or even improved after April 9, 1940, thus giving more Germans a financial and personal interest in preserving those ties, and therefore in making sure that Denmark remained "sovereign."[82]

Before the war, Denmark had been extremely stringent about not accepting Jewish refugees from Germany—even refugees who had close family ties with Danish citizens. However, the Danes had no interest in persecuting their own Jewish community of about eight thousand. The grateful Jews reciprocated by staying inconspicuous. Despite some grumbling, the Germans involved with Denmark did not force the Jewish issue with their Danish counterparts.[83]

By the summer of 1942, the United States was in the war, the Soviet Union had not been knocked out of the war, and on all three major fronts, the Axis lost the turning point battles: at El Alamein in Africa, at Stalingrad in the U.S.S.R., and at Midway in the Pacific.[84] American forces invaded and conquered Algeria and Morocco.[85]

About this time, stories began appearing that King Christian had defied a German order that Danish Jews be made to wear the yellow star. In some versions, the King threatened to wear the star himself and said that other Danes would do the same.

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81. *Id.* at 159-61.

82. *Id.* at 160-61.

83. Michael Mogensen, *October 1943 – The Rescue of the Danish Jews, in* DENMARK AND THE HOLOCAUST 33, 35-36; PETROW, *supra* note 69, at 196-99. Even Danish Prime Minister Erik Scavenius, whom the Germans ordered installed in that post because he was the most enthusiastically pro-German major politician in the country, warned the Germans that he would resign if the Jews were persecuted. *Id.* at 199.

84. JOHN BIERMAN & COLIN SMITH, THE BATTLE OF ALAMEIN: TURNING POINT, WORLD WAR II 334-35 (2002).

85. ORR KELLY, MEETING THE FOX: THE ALLIED INVASION OF AFRICA, FROM OPERATION TORCH TO KASSERINE PASS TO VICTORY IN TUNISIA 6 (2002).

In other versions, the King actually did wear the yellow star on his morning horseback rides through Copenhagen.[86]

Today, Danes know that the story is fabrication, but the story is still almost as widely-believed in other countries as it was when it began to appear in the democratic press in 1942–1943. What changed in Denmark was that many Danes began passive resistance to the Germans—not violently resisting, but giving the Germans "the cold shoulder" (*den kolde skulder*).[87]

The summer of 1943 was a disaster for the Axis, and most Danes concluded that the Germans were probably going to lose the war, perhaps very soon.[88] Germany's most important European ally, Italy, was knocked out of the war by an Allied invasion, and Mussolini took refuge among the Germans. On the Eastern Front, the German summer offensive at Kursk was smashed, and the Soviets reclaimed more and more territory from the Germans. In the Pacific, the Japanese were on the defensive, losing one island after another.[89]

On August 29, 1943, after the Danes refused German requests to impose martial law, the special arrangement broke down; the *Wehrmacht* declared temporary martial law, which would last until October.[90]

Even though the April 9 arrangement had been abrogated, the Germans attempted to maintain a degree of friendly relations with the Danes. The Danish government was no longer in power, but the permanent Danish civil service was allowed to administer most of the government. Hitler sent King Christian a warm greeting on the King's birthday, to which the King curtly replied, "My utmost thanks. Christian Rex," enraging *der Führer*.[91]

86. Vilhjálmsson, *supra* note 69, at 102-05; PETROW, *supra* note 69, at 227-28 (discussing appearance of the myth in the Oct. 13, 1943, British *Evening Standard*).

87. PETROW, *supra* note 69, at 170.

88. Mogensen, *supra* note 83, at 36; PETROW, *supra* note 69, at 187-88.

89. JOHN DEVANEY, AMERICA ON THE ATTACK 1943, at 5-6 (1992).

90. Mogensen, *supra* note 83, at 36-37; PETROW, *supra* note 69, at 190-95. One order of the martial law was "all guns and explosives to be turned in." *Id.* at 191.

91. PETROW, *supra* note 69, at 180.

The Germans began moving their police into Denmark to get ready for a roundup of the Jews. The Germans had been "warned by the SS officers in Denmark that Danish police would probably forcibly resist attempts to take the Jews away by force, and there was to be no fighting between Germans and Danes."[92] The Danish police were still functioning and still armed.[93]

Martial law was supposed to be lifted by November; the German officials in Denmark—and the Ministry of Foreign Affairs in Berlin—continued to hope for a resumption of friendly relations.[94]

The roundup of the Jews was scheduled for October 1 and 2. Still deferential to the Danish civil service, the Germans promised not to break into any homes, but instead procured special door-opening keys.[95]

Incredibly, on September 28, a high-ranking German official in Denmark deliberately leaked plans for the roundup.[96] For the Danes, the next two weeks would be their finest hour. The Jews went into hiding, often sheltered by people whom they had never met. Danish boats smuggled the Jews to safety in neutral Sweden. Thirty Jews died while attempting to escape. Fewer than one hundred Jews remained in Denmark, where they were hidden by friendly families until the war ended.[97]

Two of the four ships that the Germans brought to transport the Danish Jews were destroyed by Danes with explosives.[98]

It is very doubtful that the Danes would have abetted the Jewish escape so thoroughly if the April 9, 1940, arrangement had not been abrogated by the Germans on August 29, 1943.[99]

Incredibly, much of the German force remained passive. The smuggling boats were almost never interdicted by the German navy. The German police and army in Denmark were mostly

92. THOMAS MERTON, THOMAS MERTON ON PEACE 166 (1971).

93. Mogensen, *supra* note 83, at 37.

94. *Id.*

95. *Id.* at 38-39.

96. PETROW, *supra* note 69, at 202-03.

97. Mogensen, *supra* note 83, at 33-41; PETROW, *supra* note 69, at 204-29.

98. ABRAM L. SACHAR, THE REDEMPTION OF THE UNWANTED: FROM THE LIBERATION OF THE DEATH CAMPS TO THE FOUNDING OF ISRAEL 99 (1983).

99. Mogensen, *supra* note 83, at 46.

torpid. Apparently much of the German leadership in Denmark was more interested in keeping up good relations with the Danish majority than in apprehending all the Danish Jews; the officials' conciliatory policy was supported by the German Foreign Minister Joachim von Ribbentrop (who had risen to power as part of the old German aristocracy, rather than as a Nazi party hack). [100]

Why did the Swedes give refuge to the Danish Jews? Sweden had initially balked, not wanting to disturb its status as a pure neutral. But living in Stockholm was Niels Bohr, the father of quantum mechanics and one of the greatest physicists of all time. Bohr, who was a Danish Jew, had been smuggled into Sweden a while before, so that the Germans could not use his knowledge in their atomic bomb research. Bohr was scheduled to come to the United States to work on the Manhattan Project.[101]

Bohr had never been religious, but when he heard that Sweden was refusing entry to Danish Jewish refugees, he put his foot down. He told his Allied military contacts that he would "sit on his duff" in Stockholm for the rest of the war, unless Sweden immediately agreed to admit every Danish Jew. Soon after Bohr gave the Allies his ultimatum, Sweden reversed its policy and offered asylum to all Danish Jews.[102]

Precisely why Sweden suddenly decided to change its policy 180 degrees is still unknown. However, the reasonable inference is that American and British governments informed the Swedish governments that getting Bohr into the United States was of the utmost importance. The Allies would have been extremely displeased with any Swedish policy that interfered with Bohr's work for the Allies. Since the Allies appeared to be already on their way towards winning the war, the Swedes decided to accommodate the Allies on a matter of supreme significance to the Allies**.**

So one might say that the Danish Jews were saved by the atomic bomb—or at least they were saved by the Manhattan

100. *Id.* at 51-52.

101. *See* WALTER ISAACSON, EINSTEIN: HIS LIFE AND UNIVERSE 482 (2007).

102. SACHAR, *supra* note 98, at 100; *see also* PETROW, *supra* note 69, at 225-26.

Project.

A few hundred Danish Jews were captured and sent to the "model" concentration camp of Theresienstadt, near Prague. The camp was established for certain privileged Jews, such as elderly German Jews who had served in the German army during World War One. All of the Theresienstadt inmates were eventually shipped to extermination camps, except for the Danes, who were turned over to Swedish custody by the Germans in April 1945. Conditions at Theresienstadt were awful, but better than in the extermination camps. Fifty-one of the Danish inmates at Theresienstadt died. Overall, ninety-eight percent of Denmark's Jewish population survived the war.[103]

Thus, the Danish Jews were saved by a combination of non-violent resistance by the general population and by a specific threat to use force by the portion of the population which was armed and trained. Denmark is a good example of how non-violent and violent tactics (or threats) can work together. But if the Danish police had not been ready to fight, many more Danish Jews would have been sent to extermination camps. Accordingly, Denmark is not an example proving that non-violence, by itself, could have stopped the Holocaust.

In any case, the Danish example could not possibly have been followed in countries such as Poland or the rest of Eastern Europe, where the Germans were uninterested in friendly relations with the population or in allowing the pre-war government to retain a pretense of internal sovereignty. The Holocaust in these countries came to an end only because millions of Allied soldiers went to war.[104]

The way the Danish Christians treated Danish Jews during the Second World War was admirable. In other countries, such as France, Germans who were rounding up the Jews were assisted by many Christians. The glory of Denmark's behavior should not be tarnished by myth-making. The Danes had an opportunity to do their particular good deeds only because Denmark enjoyed a unique status in the Nazi empire. Contrary to the assertions of some modern pacifists, the Danish example

103. PETROW, *supra* note 69, at 213, 306-13.

104. *See generally* YEHUDA BAUER, A HISTORY OF THE HOLOCAUST (2002).

was not one which could have been followed in the rest of Nazi territory.

B. Other Resistance to Hitler

There was another country on Germany's border where the Jews had a survival rate of 100 percent—even better than Denmark's 98 percent. Not one Jew in this country was sent to a concentration camp. Unlike Denmark, which accepted hardly any Jewish refugees from other countries, this country took in a large number of Jews, especially children, from other countries and accepted Jews who had no prior ties to the nation.

In this country, no soldiers died in battle, in contrast to the Danish soldiers who died in German *blitzkrieg* of Denmark. This fortunate country made its own good luck by following a policy which was the opposite of Denmark's policy of cutting military spending even as the Nazi threat grew apparent. This happy country armed itself to the teeth and made sure that every able-bodied male was a highly trained fighter.

As historian Stephen Halbrook shows in his book *Target Switzerland: Swiss Armed Neutrality in World War II*, the behavior of the Swiss people during the war was morally exemplary—superior, indeed, to the conduct of most of the rest of Europe.[105] As Winston Churchill recalled, "Of all the neutrals, Switzerland has the greatest right to distinction. . . . She has been a democratic State, standing for freedom in self-defence among her mountains, and in thought, in spite of race, largely on our side."[106]

Nazi maps showed that the Third Reich would eventually include Switzerland, just as it would include all portions of Europe with German-speaking people. Although the majority of Switzerland's population is German-speaking (the rest speaking French, Italian, or Romansh), the nation was virtually unanimous in praying for the defeat of Germany. Infuriated by

105. *See* STEPHEN P. HALBROOK, TARGET SWITZERLAND: SWISS ARMED NEUTRALITY IN WORLD WAR II (1998).

106. Letter from Prime Minister Winston S. Churchill to Foreign Secretary Anthony Eden (Dec. 3, 1944), *in* WINSTON S. CHURCHILL, TRIUMPH AND TRAGEDY 712, 712 (1953).

the lack of ethnic solidarity and by the strongly anti-Nazi stance of Switzerland's free press, Hitler predicted that Switzerland would be "liquidated" and that he would be known as "the butcher of the Swiss."[107]

As Halbrook details, in every stage of the war, the Axis had good military reasons to invade Switzerland. Before the fall of France, the non-Alpine part of Switzerland offered an inviting path to sweep into France to avoid the Maginot Line. After France fell and Italy entered the war, Switzerland offered the only convenient transport of military men and supplies between Italy and Germany. After the Allied landing in Italy, Germany's need to deploy troops swiftly into Italy became even more urgent. As the war came to a conclusion in 1944–1945, the Nazi leadership laid plans to make a stand in the Alps, but Switzerland stood right in the middle.[108]

By the summer of 1940, there was only one country on Germany's borders whose free press and rights of assembly allowed the Third Reich to be publicly and lawfully denounced as the evil empire that it was. Switzerland protected her own Jews and sheltered many more refugees of all religious backgrounds. Had America sheltered refugees at the same per capita rate as Switzerland, the United States would have taken in over three million refugees. Instead, America accepted hardly any.[109]

In all the countries that Hitler conquered the economy was plundered for use in the Nazi war machine. As a neutral, Switzerland traded with Germany, Italy, and with the Allies. (For the Allied trade, the Swiss smuggled out precision ball bearings and other military equipment disguised in consumer products like watches.) But unlike in the countries which Hitler conquered, the only products that Hitler could get from Switzerland were those he could buy at full price.[110]

Target Switzerland includes the maps and details of the evolving Germans invasion plans.[111] Yet although the Germans

107. *See* HALBROOK, *supra* note 105, at 182.
108. *See generally* HALBROOK, *supra* note 105.
109. *See id.* at 186-88.
110. *See id.* at 107, 217-18.
111. *See id.* at 47, 134, 179-80, 198, 207.

massed troops several times on the Swiss border for an invasion, the invasion never went forward. With so many reasons to invade Switzerland, why did the Nazis desist?

The Nazis could have eventually conquered Switzerland, but at a fearful price. The *Wehrmacht* expected 200,000 German casualties; it would have taken a very long time to remove the Swiss military from the Alpine *Reduit* where they planned to make a stand. By the time the Swiss were defeated, every bridge and train track and everything else of value to the conquerors would have been destroyed.[112]

The reason that Switzerland was too difficult to invade—in contrast to all the other nations which Hitler conquered in a matter of weeks—was the Swiss militia system. Unlike all the other nations of Europe, which relied on a standing army, Switzerland was (and still is) defended by a universal militia. Every man was trained in war, had his rifle at home, was encouraged to practice frequently, and could be mobilized almost instantly. The Swiss militiaman was under orders to fight to the last bullet, after that with his bayonet, and after that with his bare hands. Rather than having to defeat an army, Hitler would have had to defeat a whole people.[113]

From the *Anschluss* of Austria to the Fall of France, Hitler swallowed nation after nation where cowardly ruling elites surrendered the country to the Nazis. But such surrender would have been impossible in Switzerland. The Swiss governmental system was decentralized, with the separate twenty-six cantons, not the federal government, having the authority. The federal government did notify the Swiss people that in case of a German invasion, any claim that there had been a Swiss surrender should be disregarded as Nazi propaganda. Because the military power was in the hands of every Swiss man, the federal government would have been unable to surrender had it ever wanted to. Nothing could stop the Swiss militiamen from fighting to the very end.[114]

America's founders admired Switzerland as a "Sister

112. *See generally* HALBROOK, *supra* note 105.
113. *See generally id.*
114. *See generally id.*

Republic" amidst the despotisms of Europe.[115] The American Founders, like the Swiss, understood the moral implications of a universal militia system: a people who are trained in self-reliance and responsibility will defend their freedom to the utmost. But a people who rely on a professional standing army may not have the nerve to resist tyranny.

Switzerland never had the ability to invade Germany and overthrow Hitler. But other countries did, and if they had not been so squeamish about preemptive war, the Holocaust never would have happened. In 1936, after Hitler violated the Versailles Treaty by illegally remilitarizing the Rhineland, the French considered but vetoed a British proposal to invade Germany and depose Hitler. In 1938, Britain and France could have gone to war with Hitler, rather than betray Czechoslovakia in the Munich Accords.[116]

In retrospect, we know that preemptive war by the Allies in 1936–1938 would have succeeded almost instantly. The upper ranks of the German officer corps were drawn mainly from aristocratic families who looked down on Hitler as a vulgar blowhard. The officers were terrified about a war with the West and repeatedly made plans to remove Hitler in a coup if the West attacked.[117] It was only the repeated cowardice of Britain and France, in the face of Hitler's repeated provocations in 1936–1938, that convinced the officer corps to participate wholeheartedly in the war when Hitler invaded Poland in September 1939.[118]

In sum, the modern pacifist effort to re-write the history of World War II is wrong. Denmark's record is more complicated than the pacifist myth-making claims. The traditional understanding of the lessons of World War II is correct: the way to prevent genocide is for democracies to build powerful militaries and act preemptively against dictators.

115. *See generally id.*
116. *See generally* DEUTSCH & SHOWALTER, *supra* note 47, at 9-15.
117. *See*, *e.g.*, *id.*
118. *See generally id.*

III. FOUR INFLUENTIAL PACIFISTS

A. Leo Tolstoy

Count Leo Tolstoy (1828–1910) was one of Russia's greatest novelists. In the last third of his life, he became a Christian pacifist and anarchist.[119] When Tolstoy met with William Jennings Bryan, the American politician, Bryan asked Tolstoy what Tolstoy would do if he saw a criminal about to rape and murder a child. Tolstoy replied that in all his seventy-five years, he had never seen such a criminal. But he had seen wars in which millions of people were killed. Bryan (who would later serve as U.S. Secretary of State and strenuously oppose U.S. entry into World War One) declared himself persuaded by Tolstoy's argument.[120]

In a letter, Tolstoy elaborated, declaring: "None of us has ever yet met the imaginary criminal with the imaginary child . . . ."[121] Tolstoy, then, was like the person who says he does not care about starving children, because they must not exist since he has never met one, nor have any of his friends ever met one. As a Russian aristocrat living a life of privilege, Tolstoy never did meet a criminal who was about to rape and kill a child. But certainly such criminals do exist. For example:

In Merced, California, on August 23, 2000, a naked man wielding a pitchfork cut the phone lines to a home, then broke in and began attacking the four children, while their parents were not home. The oldest child, fourteen-year-old Jessica Carpenter, was unable to retrieve her father's guns from a locked cabinet. She ran to a neighbor's home and begged him to use his own gun to confront the attacker. The neighbor did not do so, but 911 was

119. A. N. WILSON, TOLSTOY: A BIOGRAPHY 7 (2001).

120. WALTER WINK, ENGAGING THE POWERS 233 (1994).

121. Letter from Leo Tolstoy to Ernest Howard Crosby *in* TOLSTOY'S WRITINGS ON CIVIL DISOBEDIENCE AND NON-VIOLENCE 241, 251 (1967). Tolstoy's callous letter about the child was one of his few writings on personal defense. The bulk of his work exhorted people not to participate in the military or in government. Unlike many intellectuals of his time, he did not support the establishment of a democratic government in Russia. He viewed all government as violently coercive, and he therefore favored anarchy.

called. By the time the police arrived, Jessica Carpenter's seven-year-old brother and nine-year-old sister had been stabbed to death. Jessica's father's guns were locked up in accordance with California's gun storage law. The killer was finally stopped when police officers arrived and shot him.[122]

On January 29, 1998, in Tulsa, Oklahoma, a paranoid-schizophrenic snatched a two-year-old girl from her mother's arms and fled. A nearby landscaper named Gene Case saw what had happened, and ran to his car to retrieve his .45 handgun. He chased the kidnapper, caught up with him, pointed the gun at the kidnapper, and yelled, "Stop! Put the child down, or I'm going to kill you!" The kidnapper released the child, and was held at gunpoint until the police arrived.[123]

On January 26, 1994, in Frayser, Tennessee, two home invaders slashed the throat of a six-year-old girl, before the girl's mother shot the attackers with a .22 pistol. The girl survived, after receiving eighteen stitches.[124]

The last victim of serial killer Ted Bundy was a twelve-year-old girl Bundy kidnapped from a school in Florida.[125] Would a Good Samaritan have shot Bundy to thwart the kidnap-murder, or would he have agreed with Tolstoy that such a victim does not exist?

A list of all the children who have been raped or murdered would be much longer than one of Tolstoy's long books. That Tolstoy had to pretend to himself that children are never raped

122. Kimi Yoshino, *No Easy Answers: Gun Advocates Say Fear of Liability Keeps Parents From Teaching Survival Skills*, FRESNO BEE (Fresno, Cal.), Aug. 26, 2000 at A1; Vin Suprynowicz, *If It'll Save a Single Child . . . Repeal the Gun Laws*, LAS VEGAS REVIEW-JOURNAL, Sept. 24, 2000; Erich Pratt, *When Gun Safety Locks Kill*, Aug. 16, 2001, *available at* http://www.gunowners.org/op0132.htm. *See also Rural Terror: California Town Baffled by Stranger's Pitchfork Attack*, Aug. 25, 2000, *available at* http://edition.cnn.com/2000/US/08/25/pitchfork.killings.02.ap/.

123. Robert A. Waters, *"An Extraordinarily Gruesome Case," or Why Everyone Needs a Gun,* SIERRA TIMES, Sept. 4, 2000, *available at* http://www.kc3.com/self_defense/gruesome.htm.

124. Robert A. Waters, *Do Women Really Use Guns for Self-Defense?* http://www.trt-md.org/articles/Do-Women-Really-Use -Guns-for-Self.htm.

125. STEPHEN G. MICHAUD & HUGH AYNESWORTH, THE ONLY LIVING WITNESS: THE TRUE STORY OF SERIAL SEX KILLER TED BUNDY 11 (1999).

and killed shows the weakness of his reasoning. He fell into an extreme version of the error some pacifists make in refusing to acknowledge reality.

According to Tolstoy, the neighbor in Merced who refused to get involved by shooting the pitchfork murderer did the right thing. According to Tolstoy, the police officers who shot the pitchfork killer, the mother who shot the home invaders, and the landscaper who threatened to shoot the kidnapper were not behaving like true Christians.

Tolstoy was correct in pointing out that wars have resulted in millions of pointless deaths. The record of most of the wars of Tolstoy's native Russia is appalling. It is a perverse moral theory, however, that says, "Because many people died in the Crimean War, it is immoral to shoot someone who is about to rape and murder an eight-year-old girl."

In the letter, Tolstoy asked why even a non-Christian should "decide to kill the criminal in order to defend the child? By killing the former, he kills for certain; whereas he cannot know positively whether the criminal would have killed the child or not."[126]

Tolstoy's argument is weak. Of course one cannot know the future for certain. It is *possible* that the criminal who is thrusting a knife at the child's throat might, a millisecond before the knife strikes, repent and turn the knife away. Maybe the blade will fly off its handle and strike the criminal in the head, rendering him unconscious. Or the girl being kidnapped might, after being raped and tortured for several days, escape before she is killed. Or the killer might miraculously be struck by lightning.

But if we are going to indulge in far-fetched hypotheticals, then it is also hypothetically possible that the Good Samaritan might not kill the criminal, despite his intention to do so. Maybe the criminal will see the Good Samaritan drawing his gun and run away. Maybe the bullet will stop the criminal, but the criminal will receive timely medical care, and survive.[127]

126. Tolstoy, *supra* note 121, at 248.

127. If a person receives medical care in the "Golden Hour" after the shooting, his prospects for survival are strong. *See* Tom Saul, *"Golden Hour" Can Mean Difference Between Life and Death*, QUAD-CITY TIMES (Davenport,

Moreover, if the Good Samaritan does not stop the criminal, how do we know that the criminal will not kill more people later?

Tolstoy's argument has a much more profound flaw, however, than its selective attention to uncertainty about the future. The lives of the murderer and the girl are not equivalent.

The girl is an innocent. She has done nothing to deserve having her right to life stolen by the criminal.[128]

Not so for the criminal. Consider a person who purchased a knife which he uses to chop vegetables, and who purchased matches which he uses to light dinner-time candles for family meals. The person has a right to the matches and knife. To take away the matches and knife from the person would be unjust; the taking would be stealing. But if the person used the knife to stab his neighbor, and used the matches to burn down the neighbor's house, the person would forfeit his property right to the matches and the knife. Taking away the matches and knife would no longer be unjust; taking them away would be a moral duty.

The killer, by using himself to murder an innocent, likewise loses his right to life. By using his life to commit the most heinous offense possible—to destroy an innocent's right to life—the would-be killer forfeits his own life.[129]

The New Testament supports such reasoning because it sanctions the death penalty.[130] A murderer forfeits his life. And if the state may take away the murderer's forfeited life—even

Iowa), May 13, 2007 ("In the vernacular of medical professionals who treat the victims of gun violence, the 'golden hour' is the 60-minute period following a shooting when they have the greatest chance of staving off death or serious permanent injury. . . . 'If you can treat them within that hour, the risks of death and morbidity are greatly reduced,' said Dr. Walter Bradley, director of emergency medical services for Trinity Regional Health System."), *available at* http://www.qctimes.com/articles/2007/05/14/news/local/doc4647e7e3cf7a3141270140.txt (last visited Sept. 11, 2008).

128. Professor Herbert Weschler, one of the giants of twentieth century American criminal and constitutional law, wrote that all legal systems recognize the right of self-defense, because of "the universal judgment that there is no social interest in preserving the lives of aggressors at the cost of those of their victims." Herbert Weschler & Jerome Michael, *A Rationale of the Law of Homicide*, 37 COLUM. L. REV. 701, 736 (1937).

129. The forfeiture argument is developed in considerable depth, from a common law perspective, in FIONA LEVERICK, KILLING IN SELF-DEFENCE (2006).

130. *See Romans* 13:4; *cf. Acts* 25:11.

though execution cannot restore the life of the victim—then there is no reasonable objection to a Good Samaritan taking away the criminal's life in order to save the life of the innocent.

Thus, in Tolstoy's one-sided hypothetical, the Good Samaritan might think, "If I shoot, there is a 100% chance the killer will die. If I do not shoot, there is only a 97% chance—or perhaps only a 25% chance—that the girl will die." In this hypothetical, the moral action is to shoot. By beginning a murder attempt—by acting so that the Good Samaritan *reasonably believes* (this is the standard of American law) that the girl is in imminent danger of death—the killer has destroyed the Good Samaritan's obligation to consider the hypothetical possibility that the girl might survive.

The criminal is the one who initiated the crime; all the risks of hypotheticals must be borne by the killer because he assumed those risks by starting the crime. It is unjust for the innocent girl to be forced to assume *any* risks. A person who gambles voluntarily risks his money; a person who makes other people reasonably believe that he is about to murder someone voluntarily risks his own life. The potential victim of a robbery does not voluntarily put his money at risk, and the girl did not voluntarily put her life at risk.

B. Thomas Merton

Thomas Merton (1915–1968) was a Trappist Monk and writer in Kentucky. Merton strongly opposed the Vietnam War and the nuclear arms race, and was much admired by pacifists.[131]

Merton was not, however, a pacifist. He emphatically stated that a good Catholic could not assert that war is immoral under all circumstances. Merton supported the 1956 Hungarian uprising against Soviet colonialism as a just war.[132]

He greatly preferred non-violent resistance to war, but he did not make non-violence an absolute rule:

131. *See generally* MONICA FURLONG, MERTON: A BIOGRAPHY OF THOMAS MERTON (1980).

132. PATRICIA MCNEAL, HARDER THAN WAR: CATHOLIC PEACEMAKING IN TWENTIETH CENTURY AMERICA 116 (1992).

> In practice, when nonviolent resistance is impossible, *then violent resistance must be used, rather than passive acquiescence*. . . . Merely passive acquiescence in evil is in no sense to be dignified by the name of nonviolence. It is a travesty of Christian meekness. It is purely and simply the sin of cowardice . . . confusing heroism with degenerate and apathetic passivity. Hence even the proponent of nonviolence will allow that in practice a man might use force to protect the safety of his family in a fallout shelter, assuming that he was not able to solve the problem in a legitimately nonviolent manner.[133]

Merton warned against the smug self-righteousness of some Catholic pacifists, which he described as "moral aggression" and "a weak and veiled form of psychological aggression."[134]

When Merton began writing, American Catholicism staunchly supported the American military in the Cold War.[135] By the end of Merton's life, he had done much to move vanguard Catholic intellectuals in a different direction. Over the coming decades, the American Bishops would adopt positions which were much closer to Merton's views than to the view of the Bishops of 1960.[136] Merton was a very important catalyst in American Christian thinking on war and peace and a careful writer who approached his subjects with the seriousness and depth of thought they deserved.

C. Tony Campolo

The same cannot be said about Tony Campolo, Baptist preacher and writer. He speaks very frequently to evangelical and conservative audiences, and presents himself as a conservative Christian who believes in the inerrancy of the Bible.

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133. THOMAS MERTON, THE NONVIOLENT ALTERNATIVE 104 (rev. ed. 1980) (emphasis in original).

134. *Id.* at 251.

135. *See generally* JOHN COURTNEY MURRAY, WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION (1960).

136. *See generally* GEORGE WEIGEL, TRANQUILLITAS ORDINIS: THE PRESENT FAILURE AND FUTURE PROMISE OF AMERICAN CATHOLIC THOUGHT ON WAR AND PEACE (1987).

However, some conservative Christians argue that Campolo's theology is mainly New Age and his politics are far to the left of Campolo's close, personal friend Bill Clinton.[137] Campolo was one of seventy church leaders who signed a statement in late 2002 declaring that war in Iraq would be "illegal, unwise, and immoral."[138]

Campolo's presentations are based on story-telling. Consider his book, *20 Hot Potatoes Christians Are Afraid to Touch*, which includes a chapter asserting that Christians must be complete pacifists. The Biblical analysis does not even rise to the level of "sketchy." He briefly acknowledges that the Old Testament contains many war stories and instructions, but he offers no doctrinal reason why the war parts of the Old Testament have lost their binding moral force. (Some Christians do have such theories,[139] but Campolo does not offer one.)

Instead, Campolo relies almost entirely on the Sermon on the Mount.[140] He never mentions the soldiers who were baptized in the New Testament.

Campolo also offers an unusual interpretation of one other speech of Jesus, in *Matthew* 25:40, "I say unto you, Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me."[141] By Campolo's theory, shooting a criminal is shooting "the least of these my brethren" and therefore equivalent to shooting God. But it would be just as logical to say "an eight-year-old boy" is "the least of these my brethren" and whoever willfully fails to protect the boy from a rapist-murderer has willfully failed to protect God from a rapist-murderer.

137. Campolo was known as one of President Clinton's favorite preachers. Parker Holmes, *Clinton Lists Good Preachers*, MOBILE REG. (Mobile, Ala.), Mar. 2, 1996, at D1.

138. *A Statement from Religious Leaders in the United States and United Kingdom*, Nov. 26, 2002, http://www.unitedforpeace.org/article.php?id=220 (last visited Sept. 11, 2008).

139. *See, e.g.,* PETER C. CRAIGIE, THE PROBLEM OF WAR IN THE OLD TESTAMENT (1978). A much less persuasive book on the same subject is LOIS BARRETT, THE WAY GOD FIGHTS (1987).

140. CAMPOLO, *supra* note 68, at 164-65.

141. *Id.* at 167.

Campolo's first extended story in the chapter is Danish resistance to Hitler. As we have seen, Campolo's story is factually wrong, and he falls for the propaganda about King Christian X wearing a yellow star. Regarding Denmark, Campolo might be excused for believing a myth which is still widely credited outside Denmark.[142]

On the other hand, Campolo is Professor Emeritus of Sociology at Eastern University and was formerly on the faculty of the University of Pennsylvania.[143] It is not asking too much to ask an Ivy League professor to take the time to study what he is writing about—especially when the writing involves, literally, life or death decisions—and the professor is telling people to let themselves be killed by criminals.

The longest story in Campolo's pacifism chapter is how the human gladiatorial battles at the Roman Coliseum were ended.[144] Here is the story according to the Christian historian and Bishop Theodoret of Cyrrhus (393- approx. 457 A.D.), in his book *Historia Ecclesiastica* (The Ecclesiastical History):

> HONORIUS, who inherited the empire of Europe, put a stop to the gladiatorial combats which had long been held at Rome. The occasion of his doing so arose from the following circumstance. A certain man of the name of Telemachus had embraced the ascetic life. He had set out from the East and for this reason had repaired to Rome. There, when the abominable spectacle was being exhibited, he went himself into the stadium, and, stepping down into the arena, endeavoured to stop the men who were wielding their weapons against one another. The spectators of the slaughter were indignant, and inspired by the mad fury of the demon who delights in those bloody deeds, stoned the peacemaker to death.
>
> When the admirable emperor was informed of this he numbered Telemachus in the array of victorious martyrs, and put an end to that impious spectacle.[145]

142. PETROW, *supra* note 69, at 227-28.

143. Eastern University has created a "Campolo School of Social Change" in his honor.

144. CAMPOLO, *supra* note 68, at 168-69.

145. Theodoret, *The Ecclesiastical History*, bk. 5, ch. 26, *in* 3 PHILIP SCHAFF,

The Western Roman Emperor Honorius reigned from 395 to 423 A.D. There are no surviving Roman legal documents indicating that he abolished the gladiatorial fights. There are also no surviving documents showing any gladiatorial fights taking place after 404 A.D., so it is possible that the Telemachus incident really did take place.[146]

The Telemachus story should be an inspiring one to Christians. By sacrificing his life, a young man put an end to a cruel and degrading spectacle of slaughter.

Campolo uses the Telemachus story to conclude his chapter insisting that Christians must never kill, although the story hardly supports Campolo's conclusion. Saint Augustine, whose views on Just War are entirely opposite of Campolo's, condemned the gladiatorial death matches.[147] In fact, Theodoret himself apparently did not read the Telemachus story as proving the immorality of all violence. Elsewhere, Theodoret wrote, "It is a fact of nature that each sex has special functions: the women spin wool, and the men cultivate the soil and wage war."[148]

Campolo's book provides a nine paragraph version of the story. He does not cite any source but does provide much imagined detail and dialogue. In Campolo's version, there is no date for when the incident occurred and no name for the brave young Christian Telemachus. Telemachus came from the East, but Campolo starts him in the south of France. In the historical story, Telemachus was stoned to death by the angry crowd. In Campolo's version, the entire crowd was so moved by the young monk that they silently left the Coliseum and so did the gladiators. According to Campolo, "Caesar himself slipped away" from the Coliseum.[149] In the historical story, the Emperor

NICENE AND POST-NICENE FATHERS OF THE CHRISTIAN CHURCH 264, 264 (1892).

146. 3 PHILIP SCHAFF, HISTORY OF THE CHRISTIAN CHURCH ch. 3, § 21 (5th rev. ed. 1997) (1867). Telemachus is recognized as a Catholic saint. *See* ALBAN BUTLER & PAUL BURNS, BUTLER'S LIVES OF THE SAINTS: NEW FULL EDITION (The Liturgical Press 2000).

147. *See* SAINT AUGUSTINE, CONFESSIONS, bk. 6, ch. 8 (Henry Chadwick trans., Oxford Univ. Press 1991) (400 A.D.).

148. Theodoret, "The Cure of Pagan Diseases," ch. 9, excerpted in MORALITY AND ETHICS IN EARLY CHRISTIANITY 126 (Jan L. Womer trans. & ed., 1987).

149. CAMPOLO, *supra* note 68, at 169.

Honorius was not at the Coliseum, but heard about the stoning of Telemachus later.[150]

There are serious Christian ethicists who have written thoughtful books that have policy positions similar to Campolo's. It would be reckless, though, for any person to base an important decision in her life merely on Campolo's superficial and sloppy work.

D. Stanley Hauerwas

A theology professor at Duke University, Stanley Hauerwas was raised a Methodist, but now calls himself a "High-Church Mennonite" because he believes the Mennonites have the best Christian answer to the problem of violence.[151]

In *The Peaceable Kingdom: A Primer in Christian Ethics*, Hauerwas argues that Christians should imitate the life of Christ. The exclusive focus on imitation allows Hauerwas to ignore the statements in the New Testament about the legitimacy of violence.[152]

Hauerwas looks selectively at the life of Christ, ignoring the story about Jesus using violence to drive the moneychangers from the Temple.[153] Likewise, Hauerwas places great emphasis

150. *See* Theodoret, *supra* note 144, at 326-27.

151. STANLEY M. HAUERWAS, WILDERNESS WANDERINGS: PROBING TWENTIETH-CENTURY THEOLOGY AND PHILOSOPHY 184-85 (1997).

152. *See generally* STANLEY HAUERWAS, THE PEACEABLE KINGDOM: A PRIMER IN CHRISTIAN ETHICS (1983); *see also* THE HAUERWAS READER 125 (John Berkman & Michael Cartwright eds., 2001).

153. *Matthew* 21:12-13; *Mark* 11:15-17; *John* 2:14-16. The pacifist response is: (1) Only John, and not the Synoptic Gospels, mention Jesus using a scourge or whip. (2) The original Greek text suggests that the whip was a kind which was normally used on animals. JAMES W. DOUGLASS, THE NON-VIOLENT CROSS 214 n.11 (1966). It is a stretch to assert that just because *John* includes a detail about an incident which the Synoptics do not, *John* must be false. Second, it is possible for a whip which is generally used against animals to be used on people. Third, even if we accept the two pacifist arguments, Jesus still entered the Temple, damaged other people's property, and frightened people into fleeing from the Temple. This is hardly the behavior of a meek person who never does anything violent. The great pacifist historian of the early church, John Cadoux, pointed out that all Gospel versions of the cleansing of the Temple use a Greek word meaning "to cast out," and the word is repeatedly used elsewhere in the New Testament in non-violent contexts, including a man removing money from

on Jesus refusing to use physical means to defend himself from arrest and execution. Yet, Hauerwas draws no lesson at all from Jesus's refusal to use legal means or prayer to defend himself from arrest and execution.[154]

Hauerwas is deeply authoritarian. He says that he has "a general distaste of liberal regimes"—meaning democratic regimes founded on the liberal principles of the Enlightenment.[155] Pointing out that "modern, liberal democracy" bombed Hiroshima and Dresden during World War II and fought the Vietnam War, Hauerwas asks rhetorically, "This is the political system that must be preserved in order for Christians to be politically responsible?"[156]

Well, yes. If one grants Hauerwas's assumption that Hiroshima, Dresden, and Vietnam were all crimes against humanity, one must still recognize that modern liberal democracies commit fewer crimes against humanity—against their own people and against foreigners—than do other forms of government. Democracies almost never start wars against each other—a fact suggesting that people who want peace would do

his purse. C. JOHN CADOUX, THE EARLY CHRISTIAN ATTITUDE TO WAR: A CONTRIBUTION TO THE HISTORY OF CHRISTIAN ETHICS 34-35 (Seabury Press 1982) (1919); *Luke* 10:35. Cadoux continued that the word used in the cleansing of the Temple "need mean no more than an authoritative dismissal. It is obviously impossible for one man to drive out a crowd by physical force or even by the threat of it." CADOUX, *supra* at 35 (emphasis omitted). Well, not really. One man using a weapon, even a non-lethal weapon such as a scourge, can often clear a room pretty quickly. Especially if the other people in the room are unarmed, surprised, and (as disarmed subjects of a foreign dictatorship) used to being submissive to force. The room-clearing is all the easier if the man with the weapon has a strong and fearless personality. It is even easier if the man is backed by a wildly cheering crowd in a religious frenzy (such as the crowd that had, in *Matthew*'s version, just welcomed Jesus into Jerusalem and proclaimed him the messiah).

154. *Matthew* 26:52-53 (refusal to use prayer to escape arrest). When brought before the Sanhedrin, King Herod, and Pontius Pilate, Jesus repeatedly refused to make legal or other arguments in his own behalf.

155. *Christian Peace: A Conversation Between Stanley Hauerwas and John Milbank*, *in* MUST CHRISTIANITY BE VIOLENT?: REFLECTIONS ON HISTORY, PRACTICE, AND THEOLOGY 207, 208 (Kenneth R. Chase & Alan Jacobs eds., 2003).

156. STANLEY HAUERWAS & WILLIAM H. WILLIMON, RESIDENT ALIENS: A PROVOCATIVE CHRISTIAN ASSESSMENT OF CULTURE AND MINISTRY FOR PEOPLE WHO KNOW THAT SOMETHING IS WRONG 43 (1989).

well to work for the spread of democracy worldwide.

As for Hauerwas's litany of alleged war crimes, the Vietnam War was a failed effort to prevent the imposition of genocidal Stalinist tyranny on Southeast Asia.[157] Hiroshima led to a net saving of lives, including Japanese civilian lives. The alternative to ending the war by the atomic bomb or by an invasion with many more casualties was a treaty leaving the Japanese military dictatorship in charge of the country.[158] Dresden and its suburbs contained legitimate targets, including factories which made military gunsights, radar components, fuses for anti-aircraft rounds, gas masks, and engines and cockpit components for military aircraft. Estimates of the casualties at Dresden were falsely inflated by Nazi propaganda, and later by Communist propaganda.[159]

Some modern liberal democracies practice separation of church and state, whereas hardly any non-democratic nations do. For supporters of religious freedom, separation is one of the elements of modern liberal democracy which makes democracy worth fighting for. Hauerwas disagrees and complains that "the American experiment with constitutional separation of church

157. There is a plausible case to be made that the Vietnam War was not a Just War, according to traditional criteria. First of all, President Lyndon Johnson grossly deceived the American public and Congress during his escalation of American involvement in the war. *See generally* H. R. MCMASTER, DERELICTION OF DUTY: LYNDON JOHNSON, ROBERT MCNAMARA, THE JOINT CHIEFS OF STAFF, AND THE LIES THAT LED TO VIETNAM (1997). Accordingly, the war was never truly authorized by proper authority, because those authorities (the public and Congress) were deliberately prevented from making an informed decision. Second, a Just War must have some reasonable possibility of success. However, as the war continued, it became increasingly clear that the Stalinist regime in the North would under no circumstances abandon its goal of conquering the South. The only way to end the war would have been to change the regime in North Vietnam. Regime change would have required an American invasion of the North. American policy-makers were understandably reluctant to invade the North, for fear of provoking direct intervention by North Vietnam's patron Communist China. In addition, the American-backed regime in the South was corrupt and incompetent, and had little support among the people of South Vietnam.

158. *See generally* PAUL FUSSELL, THANK GOD FOR THE ATOM BOMB AND OTHER ESSAYS (1988).

159. *See generally* FREDERICK TAYLOR, DRESDEN: TUESDAY, FEBRUARY 13, 1945 (2004).

and state has been deeply destructive to the serious practice of Christianity, as of every other religion . . . ."[160]

His claim is quite wrong. Attendance rates at Christian churches in the United States are vastly higher than in European nations which had (and in many cases, still have) officially established religions with state support.[161] Does true Islam flourish in Islamic nations which shield the state-sanctioned version of Islam from intellectual challenge?[162] How can people develop a genuine religious conscience if state power imposes only a single "faith" and prevents them from thinking for themselves and from learning about diverse understandings of the state religion or other religions?

According to Hauerwas, the war on terrorism is wrong because terrorists are murderers and "you do not go to 'war' against murderers. Instead, you try to arrest them."[163] Yet when terrorists have a state which provides the terrorists with a safe haven and training facilities, and the state is governed according

160. Stanley Hauerwas & Paul J. Griffiths, *War, Peace & Jean Bethke Elshtain: An Exchange*, FIRST THINGS, Oct. 2003, at 42, *available at* http://www.firstthings.com/article.php3?id_article=534.

161. For example, England's population is approximately 67 million, but only about half a million people attend a Church of England service on a particular Sunday. Edward T. Oakes, *Luther, the Movie*, FIRST THINGS, Jan. 2004, at 20, *available at* http://www.firstthings.com/article.php3?id_article=281. Overall, only eight percent of Britons attend church. Tom Hundley, *Church of England Flock Strays from Its Pews*, CHI. TRIB., May 11, 2006, *available at* http://www.chicagotribune.com/news/nationworld/chi-060619faith3-story, 0,601 0031.story. Said Richard Cardinal Cushing, then-Archbishop of Boston, "I don't know of anywhere in the history of Christianity where the Catholic Church, the Protestant church or any other church has made greater progress than in the United States of America and in my opinion the chief reason is that there is no union of church and state." George M. Collins, *The Cardinal's Talk*, BOSTON GLOBE, Jan. 26, 1964, at A7.

162. *E.g.*, PAK. PENAL CODE § 295-C (2006) ("Use of derogatory remarks, etc., in respect of the Holy Prophet: Whoever by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine."); Paul Marshall, *Apostates from Islam: The Case of the Afghan Convert Is Not Unique*, THE WKLY. STANDARD, Apr. 10, 2006, *available at* http://www.weeklystandard.com/Content/Public/Articles/000/000/012/059fpgrn.asp.

163. Hauerwas & Griffiths, *supra* note 160, at 43.

to the terrorists' wishes, then going to war with that state makes sense. The United States did so in Afghanistan.

Stanley Hauerwas and Tony Campolo agree that Americans have too much freedom, too much prosperity, and not nearly enough government. Because Hauerwas is so timid about confronting the hard arguments against his position, he is a much less persuasive author than the man Hauerwas acknowledges as his mentor, John Howard Yoder, who is perhaps the greatest pacifist writer of all time.[164]

IV. JOHN HOWARD YODER

John Howard Yoder (1927–1997) was a Mennonite ethicist who took full advantage of the ecumenical spirit of American Christianity during the latter half of the twentieth century. He taught at Goshen Biblical Seminary (a Mennonite school) and at the University of Notre Dame, the most famous Catholic school in the U.S. At Notre Dame, he was a leading scholar at the "Joan B. Kroc Institute for International Peace Studies," which was funded by Joan Kroc, the late widow of the founder of the

164. Martin Luther King, Jr., was a very effective pacifist leader (although he still sometimes supported the right of self-defense, see text at note 224), but someone whose most famous works, as well as his Ph.D. thesis, are heavily dependent on plagiarism can hardly be considered a great writer. *See generally* THEODORE PAPPAS, PLAGIARISM AND THE CULTURE WAR: THE WRITINGS OF MARTIN LUTHER KING, JR., AND OTHER PROMINENT AMERICANS (1998) (King plagiarized with increasing frequency at Morehouse College and Crozer Theological Seminary and lifted a large fraction of his Boston University Ph.D. dissertation from a former doctoral candidate at B.U.; King's famous "Letter from a Birmingham Jail" and his Nobel Prize lecture "contained significant portions taken from other sources." Some key passages from the "I Have a Dream" speech were lifted from Rev. Archibald Carey's address to the 1952 Republican National Convention.). Mohandas Gandhi was a great pacifist writer, but Yoder did a much better job than Gandhi of addressing critical arguments against his position. From a purely stylistic viewpoint, Tertullian was incomparable. Even in translation, the wit of his Latin rhetoric shines through. *See generally* TERTULLIAN, APOLOGY, DE SPECTACULIS (T.R. Glover trans., Harvard Univ. Press 2003) (1931); MINUCIUS FELIX: OCTAVIUS (Gerald H. Rendal trans., Harvard Univ. Press 2003) (1931). However, when content is considered, Yoder wrote more persuasively, since he wrote for a diverse Christian audience, whereas Tertullian talked himself into a very small corner of eccentric and extremist doctrine and ultimately became a heretic.

McDonald's global empire.[165] For most of American history, the Mennonites, like other Anabaptists, such as the Shakers, had very little influence in the ethical debates conducted among Catholics and the large Protestant sects. However, Yoder became quite influential among late-twentieth century Catholic ethicists.[166]

According to the *New York Times* obituary of Yoder, "'After World War II and the criticism of pacifism by Reinhold Niebuhr, Christian nonviolence had lost credibility,' said Stanley Hauerwas, a prominent Christian ethicist much influenced by Mr. Yoder. 'Yoder turned that around,' said Mr. Hauerwas."[167]

Without disparaging the rhetorical genius of Tertullian or Menno Simons, it is fair to say that Yoder's enormous body of scholarship might be considered the best defense of Christian pacifism ever written. Yoder took care to understand, rather than merely caricature, opposing arguments. One of his books, *Nevertheless: The Varieties and Shortcomings of Religious Pacifism,* examined different theories of pacifism and acknowledged the strongest arguments against them. Yoder argued that although all pacifist theories had serious flaws, the anti-pacifist arguments had even greater flaws.

Another Yoder book, *When War Is Unjust: Being Honest in Just War Thinking*, did not attempt to argue against the principle of Just War, although Yoder abhorred the principle.[168] Instead, Yoder surveyed the various Just War rules which had been articulated by Christian thinkers and wove them together to argue that, as a practical matter, it was doubtful that any modern wars could be considered just; perhaps none were.

Yoder's writing style was thoughtful and temperate. He was just the opposite of people who call themselves "pacifists" because they are against physical violence but who overflow with rage

165. *See* LISA SOWLE CAHILL, LOVE YOUR ENEMIES: DISCIPLESHIP, PACIFISM, AND JUST WAR THEORY 226 (1994).

166. *See generally* MARK NATION, JOHN HOWARD YODER: MENNONITE PATIENCE, EVANGELICAL WITNESS, CATHOLIC CONVICTIONS (2006).

167. Peter Steinfels, *John H. Yoder, Theologian at Notre Dame, Is Dead at 70*, N.Y. TIMES, Jan. 7, 1998, at A17.

168. *See* JOHN HOWARD YODER, WHEN WAR IS UNJUST: BEING HONEST IN JUST WAR THINKING (2001).

against people who disagree.[169]

Yoder's career is a model for writers and scholars who have a passionate belief about an ethical idea and who wish to produce scholarship which reaches out to skeptics and critics in a positive intellectual way, rather than merely reinforcing the inclinations of the already-convinced.

A. Is It Wrong to Resist a Racist Murderer?

Nobody is perfect, Yoder would be the first to so acknowledge; and even a scholar as great as Yoder may sometimes become so carried away he writes things which are indefensible. Perhaps the most awful words Yoder ever wrote came when Yoder adopted the theories of Frantz Fanon. Fanon was a Marxist psychiatrist who wrote *The Wretched of the Earth*, which was published in 1961, but remains enormously influential on campuses today. The book described the Algerian anti-colonial war against France and extolled the purifying force of violence, especially racial terrorism of natives against the distinct "species" of whites and their native allies.[170] Fanon inspired murderous racists and hatemongers around the world, including the Black Panthers in the United States.[171] Yoder used Fanon to make the point that it might be immoral for a crime victim to defend her life because "the offender might be an oppressed person (as in the theories of Frantz Fanon), whose human dignity is dependent upon his rising up and destroying a symbol of oppressive order (an innocent symbol, true, but that makes no difference for the psychic need of the former slave)."[172]

169. Reinhold Niebuhr received hate mail from people who were furious that he was urging resistance to Hitler. He once remarked, "I wish some of these pacifists would hate Hitler more and me less." ELISABETH SIFTON, THE SERENITY PRAYER: FAITH AND POLITICS IN TIMES OF PEACE AND WAR 226 (2003). Among modern "peace protesters," there is no shortage of people overflowing with hatred of George Bush and filled with excuses for tyrants.

170. *See* FRANTZ FANON, THE WRETCHED OF THE EARTH (Constance Farrington trans., Grove Press, Inc. 1968) (1961).

171. *See*, *e.g.*, LIBERATION, IMAGINATION AND THE BLACK PANTHER PARTY: A NEW LOOK AT THE BLACK PANTHERS AND THEIR LEGACY 28 (Kathleen Cleaver & George Katsiaficas eds., 2001).

172. JOHN H. YODER, WHAT WOULD YOU DO? 19 (1983) (parentheses in

Yoder, citing Fanon, was suggesting an innocent woman may have a moral obligation to let herself be murdered by a racist because the murder fulfills the alleged "psychic need" of the racist. After the American Civil War, many Southerners felt humiliated, and viewed the victorious Union forces as oppressive and exploitive colonizers. Some of those Southerners developed a "psychic need" to empower themselves by killing or terrorizing people who were associated with the Northern power structure—such as Northern reformers, their white Southern allies, or freed blacks.[173] All sorts of wicked people have felt a "psychic need" to murder the innocent; Charles Manson, Ted Bundy, Eric Harris, and Dylan Klebold had "psychic needs." Any decent system of religion or psychotherapy will try to prevent people from acting on the "psychic need" to murder innocents, rather than inciting murder (as Fanon did) or criticizing victims who resist (as Yoder did).

In any case, the innocent victim has psychic needs of her own, including staying alive. There is no reason to prefer the psychic needs of a racist murderer to the psychic needs of an innocent victim.

B. Is There a Duty to Be a Martyr?

A more powerful argument by Yoder was that the deaths of martyrs have spread Christianity. "These deaths of Christian disciples make a greater contribution to the cause of God and to the welfare of the world than their staying alive at the cost of killing would have done."[174]

Yoder was indisputably right that martyrs have helped spread Christianity. But the fact that martyrdom can produce great spiritual results does not mean that martyrs cannot resist. The number of martyrs who worked very hard not to be martyrs is huge. Some hid or fled and were caught. Thomas More used every legal trick in the book to try to keep England's King Henry

original).

173. *See generally* Edward John Harcourt, *Who Were the Pale Faces? New Perspectives on the Tennessee Ku Klux*, 51 CIV. WAR HIST. 23 (2005).

174. YODER, *supra* note 172, at 26.

VIII from turning More into a martyr.[175] Joan of Arc did her best to use military force to keep the English from capturing her and making her a martyr.[176] What almost all the martyrs have in common is that once they were captured, they refused to renounce their faith.

Yoder's rationale about the good which flows from martyrdom proves too much. The rationale proves the wrongfulness of doing *anything* to resist martyrdom. After all, if being tortured to death by the secret police will forever redound to the glory of Christianity, then hiding from the secret police would be just as wrong as shooting the secret policeman; either course of action deprives the body of Christianity of a martyr.

Suffering under persecution is not the only kind of suffering that can produce holy results. The list of saints contains many names of people who bravely endured painful illnesses or terrible disabilities. The spiritual glory of their suffering does not mean that a person should *try* to get sick, or refuse medical care designed to kill the disease, or that a doctor who kills the germs or parasites is frustrating the glory of martyrdom.

Yoder amplified the "choose death" duty to martyrdom by pointing to the example of Jesus:

> Christians have held that the death of a Christian believer, as the result of his behaving in a Christian way at the hands of the agents of evil, can become through no merit of his or her own a special witness, and a monument to the power of God. . . . Why not accept suffering? Jesus did.[177]

Why not abjure marriage? Jesus did. Why not use a whip to drive hypocrites out of the biggest church in town and vandalize property in the church? Jesus did. Why not act so that your family believes you are insane and tries to have you put away? Jesus did.[178] Why not speak about your mother disrespectfully in

175. *See generally* PETER ACKROYD, THE LIFE OF THOMAS MORE (1999).

176. *See generally* JOAN OF ARC, JOAN OF ARC: IN HER OWN WORDS (Willard Trask trans., 1996).

177. Yoder, *quoted in* DAVID FERGUSON, COMMUNITY, LIBERALISM, & CHRISTIAN ETHICS 58 (1998).

178. *Mark* 3:21; *John* 10:20.

public? Jesus did.[179] Just because the Second Person in the Trinity did something does not mean that everyone else must. Just because Jesus accepted a violent death by torture from which he could have escaped does not mean that everyone must accept being victimized by unjust violence.

C. Yoder's Alternatives to Using Force

Pacifists are commonly asked, "What would you do if someone were attacked by a murderous criminal?" Tolstoy's answer was to dismiss the question since he had never personally seen such a criminal. Many other pacifists also offer glib and unconvincing responses. Yoder, though, engaged the question head-on in a short book titled *What Would You Do?*

If a friend were attacked, said Yoder, "I might use nonlethal force or a ruse."[180] Elsewhere he wrote, "I would defend the innocent victim of an attack; what I deny is that the intention justifies killing the assailant."[181]

There are some situations in American law when a person may use lethal force when non-lethal force would suffice. One of these is the home protection laws in states such as Colorado. Under Colorado law, when a criminal enters a home to commit a violent crime against someone in the home, lethal force may always be used.[182] In recent years, many states have enacted "Castle Doctrine" laws applying similar rules to home invasions or, in fewer states, to violent felony attacks in public places.[183]

179. *Luke* 8:19-21. Yoder argues that the *only* action of Jesus which Christians should imitate is the crucifixion and that the imitation of the crucifixion should be all-encompassing. JOHN HOWARD YODER, THE POLITICS OF JESUS: VICIT AGNUS NOSTER 97 (William B. Eerdmans Pub. 2003) (1972).

180. YODER, *supra* note 172, at 28.

181. JOHN HOWARD YODER, NEVERTHELESS: VARIETIES OF RELIGIOUS PACIFISM 31 (1971).

182. COLO. REV. STAT. § 18-1-704.5.

183. *See* Jared Miller, *Gov Signs "Castle Doctrine" Bill,* STAR-TRIB. (Casper, Wyo.), Mar. 14, 2008 ("Wyoming joins more than 20 other states in enacting the 'castle doctrine,' which has been favored by the National Rifle Association."); Christopher Reinhart, Office of Legislative Research (Conn.) *Castle Doctrine and Self-Defense*, Rep. No. 2007-R-0052 (Jan. 17, 2007) ("We found 15 states that adopted a 'castle doctrine' bill in the last two years. These states are: Alabama, Alaska, Arizona, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky,

Even those laws, however, may be seen as a legislative decision to protect crime victims from being second-guessed by district attorneys. In any case, standard non-pacifist Christian ethics would counsel against deadly force if the victim were sure that lesser force would suffice.

Yoder argued that there are certain things Christians may never do, and he included killing on his list of forbidden acts. Yet Yoder's discussion of what he *would* do to defend the innocent includes two arguably forbidden acts.

First, Yoder would use non-lethal violence. Christian pacifists do not simply rely on "Thou shalt not kill" from the Sixth Commandment.[184] They rely on the Sermon on the Mount and other New Testament passages which enjoin violence, according to the pacifist reading. *None* of these passages make a distinction between lethal and non-lethal violence. The Sermon on the Mount does not say "If someone strikes you on the cheek with his right hand, hit him back, but do not kill him." The Jerusalem council described in *Acts* did not instruct Christians to "abstain . . . from blood,[185] but it is still all right to make someone bleed if you do not kill them." Paul's *Epistle to the Romans* did not tell Christians "Whosoever resisteth the power [of rulers] resisteth the ordinance of God,[186] but ye may resist with sublethal force." If one reads the passages as mandating pacifism, then the pacifist mandate makes no allowance for non-lethal force.

Yoder might also use "a ruse." Yet, if the example of Jesus's martyrdom is the controlling example for Christian behavior then we see that Jesus did not use "a ruse" to escape crucifixion. Jesus simply could have lied to the Sanhedrin and to Pontius Pilate: "I don't know what these accusations are all about. I definitely never claimed to be the Son of God or the King of the Jews. Those claims are just malicious rumors. I deny them all."

Louisiana, Michigan, Mississippi, Oklahoma, South Carolina, and South Dakota.")

184. *Exodus* 20:13; *Deuteronomy* 5:17.

185. *Acts* 15:29.

186. *Romans* 12:2.

With lies, Jesus might have escaped crucifixion.[187]

Yoder has other alternatives. Kind words or words of moral authority might dissuade the attacker.[188] There are certainly times when words do work. American law generally forbids the use of force if words would suffice to stop a crime in progress, but we need to know what to do after the words have failed and the violent attack continues.

Yoder might also hope or pray for miraculous deliverance.[189] Hope and prayer are reasonable strategies for Christians, especially when the only other alternative is an act which is forbidden to Christians. Miracles do happen,[190] but sometimes they do not. Still, if one accepts Yoder's premise that lethal force is always and everywhere wrong, then prayer may be the only course of action—even though Jesus refused to rescue himself through prayer.[191]

Yoder pointed to Jesus's statement that anyone who wishes to follow him must be willing to forsake his family. Yoder used the point to rebut the notion that moral responsibility requires a Christian to use violence to protect his family.[192] After all, many Christian thinkers would not allow a Christian to worship idols in order to protect his family. So, if violence is as intrinsically immoral as idol worship, the Christian should let his family be killed rather than use violence to save them.

187. The Old Testament includes many ruses in the service of a righteous cause, but if Old Testament examples are a legitimate guide for Christian behavior, then the much more numerous examples of Old Testament violence and killing would legitimize Christian violence and killing.

188. YODER, *supra* note 172, at 27-28.

189. *Id.* at 28-29.

190. At least according to Christians.

191. *Matthew* 26:53-54 (when being arrested, Jesus did not resist, but pointed out that he could easily escape by prayer: "Thinkest thou that I cannot now pray to my Father, and he shall presently give me more than twelve legions of angels? But how then shall the scriptures be fulfilled, that thus it must be?").

192. YODER, *supra* note 172, at 38-39.

D. Heaven and Hell

Yoder also examined the implications of Christian belief in the afterlife:

> [I]t would be most likely that my killing the attacker would seal for him that negative destiny [hell]. I would take away from him any possibility of repentance and faith. I would be doing this in order to save from death someone who—pardon the piety, but it is a meaningful Christian stance—is "ready to meet her Maker." To keep out of heaven temporarily someone who wants to go there ultimately anyway, I would consign to hell immediately someone whom I am in the world to save.[193]

This argument, too, has force, but in a more limited context than Yoder acknowledged. An Italian Catholic priest who defends the right of gun ownership for self-defense explains that if he personally were attacked by a murderer, he would let the murderer kill him, rather than kill the murderer. The priest would make the choice because he knows he is in a state of grace, and therefore certain of going to heaven. He would let the murderer live, so that the murderer might later repent his evil ways and might gain salvation.[194]

Accordingly, by Yoder's reasoning, a victim who is certain that he is going to heaven might choose to let the murderer kill him.

But the reasoning breaks down when third parties are involved. The Good Samaritan who is wondering whether to save

193. *Id.* at 39-40.

194. As one article about the priest detailed:

> "Shoot, shoot, shoot," Father Giorgio Giorgi said from the pulpit of his church in Retorbido, near Pavia, Italy, during a sermon about a year ago . . . . [Confronted by a criminal] "I might let him kill me," he added. "Indeed, if I killed a bandit, I should presume to send him to Hell, because he's not in the Grace of God. So it would be better for me to die, because, theoretically, I should always be in the Grace of God, given my job. But the father of a family is not a priest. He has the right, and before it the duty, to defend his wife, his children, and his property."

Carlo Stagnaro, "Christians and Guns" (Mar. 30, 2002), http://www.lewrockwell.com/orig2/stagnaro4.html.

the girl cannot know for certain the status of her salvation. If he knows her well, he might be able to make an educated guess, but he cannot know her inner thoughts; perhaps she is outwardly pious and good, but, unbeknownst to the Good Samaritan, has secretly begun molesting another child, or has become an atheist—even though she has not told anyone, and attends church with her parents. If the Good Samaritan encounters a crime in progress while going for a walk in the park late at night and does not know the victim, he cannot even guess at the victim's salvific status.

Moreover, even if we are certain that the victim will go to heaven, if the murderer is not stopped the murderer might later kill someone else, and that next victim might be a person in a state of sin who would be denied a longer life in which she might repent.

Regardless of whether the victim is in a state of grace, she might have family, co-workers, and friends for whom her life is a blessing. If she is currently saved (spiritually), she might bring many other people to salvation. If she is not saved, she still might live a life that helps other people find salvation. In contrast, it is much less likely that the criminal is leading a life which helps other people find spiritual salvation. The weight of the probabilities suggests that the future life of the victim might bring much more good to other people than the future life of the killer.

Finally, some, but not all, Christians believe in predestination. If the Christian does believe in predestination, then Yoder's argument is irrelevant. A person is predestined to be saved or damned. The Good Samaritan cannot change the killer's salvific destiny, but the Good Samaritan can save the life of the innocent.

V. VIOLENCE SOLVES MANY THINGS

Broadly speaking, there are two major strains of pacifist argument.[195] One strain argues that violence is ineffective. Some adherents of this view believe that they win the argument with platitudes such as "violence never solves anything" or "violence begets violence."[196]

The "ineffectiveness" version of pacifism is in some ways not a truly pacifist moral theory, but instead a variant of Just War reasoning. Just War requires a consideration of, among other things, the reasonable likelihood of success. If there is no prospect for success, then Just War theory would forbid fighting. So if violence never solves anything, then violence could never be just.

Whether or not violence solves anything is an empirical issue. Or in Just War terms, the question is a "prudential" one.

"Violence never solves anything" is the ethical equivalent of flat-Earth geography. It is a purportedly empirical claim which is contradicted by ample and obvious evidence.

Unless one wants to abolish the police, one cannot really believe that "violence never solves anything" or that "violence begets violence." The police carry weapons and use them; even British Bobbies of the nineteenth century carried nightsticks.[197] The police use weapons and violence when necessary to apprehend criminals or thwart a crime in progress. Societies create police because they believe that police violence, as well as the deterrent threat of police violence, leads to *less* violence.

When you watch the evening news, you sometimes see stories such as "Policeman thwarts kidnapping by wounding kidnapper"

195. Yoder argued that there is no single pacifist position. Even so, some broad generalizations can be made, with the understanding that there will always be exceptions.

196. Or "[v]iolence never solves problems. It only creates new and more complicated ones." Martin Luther King, Jr., *Facing the Challenge of a New Age*, *in* PEACE IS THE WAY: WRITINGS ON NONVIOLENCE FROM THE FELLOWSHIP OF RECONCILIATION 182 (Walter Wink ed., 2000). Or "[v]iolence never attains the objectives it sets up." JACQUES ELLUL, VIOLENCE: REFLECTIONS FROM A CHRISTIAN PERSPECTIVE 103 (Cecelia Gaul Kings trans., 1969).

197. *See* THE ENCYCLOPEDIA OF POLICE SCIENCE 465 (William G. Bailey ed., 2d ed. 1995).

or "Rapist stopped when policeman subdues him with billy club." No reasonable person sees such stories and thinks, "Oh how terrible. The policeman used violence, and since violence begets violence, we are sure to have even more violence in the future." Instead, rational people think, "Oh good. Because the criminal was stopped and arrested, we will probably have a little less violence in the future. At least that criminal will not be attacking anyone else for a while."

Most people think the same thing when citizens who do not work for the government stop a crime. If the newspaper headlines read, "Brave Students Wrestle School Shooter to the Ground, Breaking His Arm," or "Elderly Woman Shoots Burglar; DNA Tests Identify Him as Serial Murderer," most people who are governed by natural reason and ordinary human decency are happy that the crime was thwarted. They believe that the people who stopped the crimes reduced, and did not beget, violence.

Every year, at least a hundred thousand Americans (according to the lowest estimates) or several million Americans (according to the highest estimates) successfully use gun violence, or the threat of gun violence, to thwart violent criminal attacks.[198] Less violent crime, less violence.

At the national level, history tells many success stories for violence. Violence begat American independence,[199] Greek independence,[200] and Swiss independence.[201] Violence kept the

198. Gary Kleck & Marc Gertz, *The Illegitimacy of One-Sided Speculation: Getting the Defensive Gun Use Estimate Down*, 87 J. CRIM. L. & CRIMINOLOGY 1446, 1460 (1997) (approximately 2.5 million defensive uses); Tom W. Smith, *A Call for a Truce in the DGU War*, 87 J. CRIM. L. & CRIMINOLOGY 1462, 1468 (1997) (hundreds of thousands of defensive uses). The National Crime Victimization Survey (NCVS), conducted by the Census Bureau, estimates about 110,000 annual defensive gun uses. However, the NCVS does not specifically ask about defensive gun use. Rather, it asks people if they did anything to resist the criminal; if a person did several things (e.g., shout for help, draw a gun, and try to reason with the attacker, the survey form only allows for one form of resistance to be recorded). Most defensive gun uses involve brandishing the gun, rather than firing it. For a thorough discussion, see GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL (1997).

199. *See generally* JOHN FERLING, ALMOST A MIRACLE: THE AMERICAN VICTORY IN THE WAR OF INDEPENDENCE (2007).

200. *See generally* THOMAS GORDON, HISTORY OF THE GREEK REVOLUTION (2d ed. 1836).

United States united and then freed the slaves.[202] Violence prevented Napoleon from becoming dictator of Europe[203] and prevented Hitler and Hirohito from becoming dictators of Eurasia.[204] The threat of violence, including nuclear violence, deterred Stalin and the Soviets from conquering Western Europe.[205] Violence ended the Holocaust,[206] established the modern state of Israel, and stopped the Arabs from driving the Jews into the sea in 1948 and 1967.[207] Violence removed the Ceausescu communist dictatorship in Romania.[208] Violence removed Afghanistan as a secure training base for worldwide terrorists in 2001.[209] Violence kept United Airlines Flight 93 from crashing into Washington, D.C.[210]

Pacifists point out, quite correctly, that non-violence can be successful and is sometimes *more* effective than violence. Gandhi's non-violence ended British rule in India, and the People Power movement in the Philippines removed the Marcos dictatorship in 1986.[211]

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201. *See generally* JOHN WILSON, THE HISTORY OF SWITZERLAND (A. & R. Spottlswoode 2007) (1832).

202. *See generally* JAMES M. MCPHERSON, BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA (2003).

203. *See generally* PAUL JOHNSON, NAPOLEON (2002).

204. *See generally* JOHN KEEGAN, THE SECOND WORLD WAR (2005).

205. *See generally* JOHN GADDIS, THE COLD WAR: A NEW HISTORY (2005).

206. *See generally* KEEGAN, *supra* note 204.

207. *See generally* BENNY MORRIS, 1948: A HISTORY OF THE FIRST ARAB-ISRAELI WAR (2008); MICHAEL B. OREN, SIX DAYS OF WAR: JUNE 1967 AND THE MAKING OF THE MODERN MIDDLE EAST (2003).

208. *See generally* EDWARD BEHR, KISS THE HAND YOU CANNOT BITE: THE RISE AND FALL OF THE CEAUSESCUS (1991).

209. *See generally* STEPHEN TANNER, AFGHANISTAN: A MILITARY HISTORY FROM ALEXANDER THE GREAT TO THE FALL OF THE TALIBAN (2003).

210. *See generally* JERE LONGMAN, AMONG THE HEROES: UNITED FLIGHT 93 AND THE PASSENGERS AND CREW WHO FOUGHT BACK (2002).

211. The Philippines was a client state of the United States, so Ferdinand Marcos was constrained by American public opinion. Indeed, when he responded to American pressure about his repression of the democratic opposition, his announcement that he would allow an election was made on Nov. 3, 1985, on the American television show, "This Week with David Brinkley," rather than in a speech to the Filipino people. BRYAN JOHNSON, FOUR DAYS OF COURAGE: THE UNTOLD STORY OF THE PEOPLE WHO BROUGHT MARCOS DOWN 23 (1987). A dictator who was not worried about keeping on the right side of democratic public opinion in his patron nation would be less vulnerable

Only a person willfully blind to history can deny that violence and non-violence can both be effective.

It is true that the application of violence to a problem often does not result in a perfect solution. For example, World War II left Stalin in control of half of Europe, and the War Between the States did not solve the problem of racism.

But there is not much humans can do which is *perfectly* effective. If perfect results were the standard, then non-violence is a failure, too. The peaceful People Power revolution in the Philippines has left the Philippines with many social problems, including a terrorist Islamic insurgency which was more effectively suppressed by the police state of Ferdinand Marcos.[212] Gandhi's non-violent movement for Indian independence failed to produce a united India and led to the creation of the Islamic state of Pakistan, which suppressed civil liberty and abused non-Muslims much more severely than the British colonialists did.[213] Non-violence by the Eastern European Slavs towards the Nazis only facilitated the Nazi crimes against humanity.[214]

Non-violence by conscientious people begets violence by lone criminals and criminal governments. Non-violence begat the worst violence in history, by paralyzing democracies from acting against Fascism when victory would have been easy.

A. The Civil Rights Movement

Pacifists often cite the American civil rights movement of the 1950s and 1960s as proof of the efficacy of non-violent resistance.[215] The reality is more complex.

Under the leadership of Dr. Martin Luther King, Jr., the civil

to non-violent tactics than Marcos was.

212. Miriam Coronel Ferrer, *The Communist Insurgency in the Philippines*, *in* A HANDBOOK OF TERRORISM AND INSURGENCY IN SOUTHEAST ASIA 405, 405 (Andrew T.H. Tan ed., 2007).

213. *See generally* YASMIN KHAN, THE GREAT PARTITION: THE MAKING OF INDIA AND PAKISTAN (2007); IAN TALBOT, PAKISTAN: A MODERN HISTORY (1998).

214. *See supra* text accompanying note 62.

215. *See*, *e.g.*, PEACE IS THE WAY: WRITINGS ON NONVIOLENCE FROM THE FELLOWSHIP OF RECONCILIATION 163-207 (Walter Wink ed., 2000) (collecting various essays on non-violence written by participants in the civil rights movement).

rights movement engaged in a wide variety of non-violent actions, including bus boycotts, lunch counter sit-ins, and demonstrations. Some of these, such as the Montgomery bus boycott, succeeded quickly and directly. At other times, the benefits came more indirectly, but were still substantial. For example, when Birmingham, Alabama, police used German Shepherd attack dogs and fire hoses against peaceful protesters, the images shown on national television news played a major role in turning Northern public opinion in favor of the civil rights protestors. The images showed that it was the racist police, and not the civil rights protesters, who were guilty of destroying public order. The changes in Northern public opinion helped pave the way for congressional passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965.[216]

But part of the civil rights story has been ignored by pacifist myth-makers. That part is the great extent to which civil rights activists armed themselves for protection against the Ku Klux Klan and other terrorists.

White supremacist tactics in the 1960s were just as violent as they had been in the first Ku Klux Klan era, after Reconstruction. Then, the Klan would methodically disarm the freedmen in a community; after the freedmen were defenseless, the Klan would impose its reign of terror.[217]

In the 1960s, over 100 civil rights workers were murdered. The U.S. Department of Justice mostly refused to intervene to prosecute the Klan or to protect civil rights workers. Help from the local police was often out of the question; Klan dues were sometimes collected at the local station.[218]

Many blacks and civil rights workers armed themselves for self-defense. John Salter, a professor at Tougaloo College and NAACP leader during the early 1960s wrote, "No one knows what kind of massive racist retaliation would have been directed

216. *See generally* WILLIAM A. NUNNELLY, BULL CONNOR (1991).

217. *See generally* STEPHEN P. HALBROOK, FREEDMEN, THE FOURTEENTH AMENDMENT, AND THE RIGHT TO BEAR ARMS, 1866-1876 (1998).

218. John R. Salter, Jr., *Social Justice Community Organizing and the Necessity for Protective Firearms*, *in* THE GUN CULTURE AND ITS ENEMIES 19, 19-23 (William R. Tonso ed., 1990).

against grassroots black people had the black community not had a healthy measure of firearms within it."[219] Salter and his fellow civil rights workers used firearms successfully to thwart or deter attacks by night riders.[220] The unburned Ku Klux Klan cross in the Smithsonian Institution was donated by a civil rights worker whose shotgun blast drove Klansmen away from her driveway.[221]

Many civil rights advocates and blacks viewed non-violence as a useful tactic for certain situations, not as a moral injunction to let oneself be murdered on a deserted road in the middle of the night. Based in local churches, the Deacons for Defense and Justice set up armed patrol car systems in cities such as Bogalusa and Jonesboro, Louisiana. They succeeded in deterring Klan and other attacks on civil rights workers and black residents. Sixty chapters of the Deacons were formed throughout the South.[222]

Martin Luther King, Jr., personally chose not to own a gun, but he also explicitly defended the right of self-defense. In 1959, the annual convention of the NAACP resolved, "we do not deny but reaffirm the right of an individual and collective self-defense against unlawful assaults."[223] King supported the resolution, explaining that violence "exercised in self-defense" was "moral and legal" everywhere.[224] King pointed out that not even Gandhi condemned self-defense.[225]

In short, the civil rights movement succeeded because of the

219. John R. Salter, Jr., *Guns Kept the Klan Enemies at Bay in Deep South*, GRAND FORKS HERALD (Grand Forks, N.D.), Oct. 9, 1994, *available at* http://www.ccrkba.org/pub/rkba/general/GunsVersusKKK.htm.

220. Salter, *supra* note 218, at 19-21.

221. *Id.* at 20.

222. Richard Maxwell Brown, *The American Vigilante Tradition*, *in* THE HISTORY OF VIOLENCE IN AMERICA 154, 203, 217 n.150 (Hugh Davis Graham & Ted Robert Gurr eds., 1969). After an especially violent white supremacist group began a terror campaign in Meridian, Mississippi, local blacks and their allies formed an armed self-protection group which successfully defended homes and churches. JACK NELSON, TERROR IN THE NIGHT: THE KLAN'S CAMPAIGN AGAINST THE JEWS 108-09 (1993); *see also* DEACONS FOR DEFENSE (Showtime Entertainment 2003) (cable television movie and DVD).

223. HERBERT SHAPIRO, WHITE VIOLENCE AND BLACK RESPONSE: FROM RECONSTRUCTION TO MONTGOMERY 460 (1988).

224. *Id.* at 461.

225. *Id.*

combination of highly-public acts of non-violence *plus* private readiness to use violence against racial terrorists.

The claim of some pacifists that non-violence is always more powerful than violence cannot stand up to historical scrutiny. Sometimes non-violence may work better, and sometimes non-violence on one front works wonderfully when supported by violence on another front. From a prudential viewpoint, non-violence always deserves careful consideration. However, a rational person will sometimes conclude that pacifism is not an effective option in certain situations.

The assertion that non-violence is *always* more effective than violence is implausible. As an ethical standard, absolute non-violence is untenable if the practical consequences are taken seriously.

B. Genocide in the Chatham Islands: The Costs of Non-violence

An alternative version of pacifism argues that we do not need to look to the real-world results of pacifism. God forbids violence, and man's duty is simply to obey, without regard for social utility. By this theory, violence is forbidden to Christians in much the same way that pork and shellfish are forbidden to Orthodox Jews: God prohibits it, and that is the end of the question.

This view, unlike the results-oriented view, is immune to criticism on grounds of efficacy. A skeptic might assert that pacifism by victims would lead to Hitler, Stalin, or bin Laden murdering millions, conquering many nations or even the whole world, exterminating all religions, and imposing worship of a false and wicked totalitarian god. The ritual purity pacifist could reply, "So what? If that's what God wants, then that's what God will get." To argue against this view based on real-world consequences is as pointless as trying to convince an Orthodox Jew to eat a ham sandwich because the pig farmers will go bankrupt otherwise.

Let us examine a real-world application of purity pacifism. Long ago, on the Chatham Islands (about 500 miles east of New

Zealand), there lived a people called the Moriori.[226] The Moriori probably migrated from New Zealand to the Chatham Islands around the thirteenth or fourteenth century.[227]

The Moriori brought with them a culture of violence and cannibalism. But their revered chieftain, Nunuku-whenua, became sickened by the endless combat. One day, Nunuku jumped between two fighting forces and ordered the fighting and savagery to stop. The stunned warriors pulled apart. According to Michael King's book *Moriori: A People Rediscovered*, Nunuku declared: "Listen all! From now and forever, never again let there be war as this day has been! From today on forget the taste of human flesh!"[228] Those who refused to honor Nunuku's decree would be cursed: "May your bowels rot the day you disobey."[229]

Almost overnight, a warring, violent culture embraced non-violence. As King notes, "The membrane of distance, which had protected the Chatham Islanders from contact with peoples who thought and behaved differently from themselves . . . allowed the uninterrupted evolution of their culture and the successful observance of Nunuku's law."[230]

The Taranaki were one of the several Maori (not Moriori) tribes of New Zealand. In 1835, the Taranaki Maori decided to migrate to the Chathams.

The Maori majority who stayed in New Zealand fought a long and often victorious series of campaigns against the British white invaders. Outnumbered by the whites, the New Zealand Maori invented a form of trench warfare, using timber and earthwork structures called *pa*. The Maori became experts in firearms and fought longer and more successfully than any other outnumbered indigenous group in the nineteenth century. It was only because of overwhelming white numerical superiority that the New

226. This discussion is based on David B. Kopel, Paul Gallant & Joanne D. Eisen, *A Moriori Lesson: A Brief History of Pacifism*, NAT'L REV. ONLINE, Apr. 11, 2003, *available at* http://www.nationalreview.com/kopel/kopel041103.asp.

227. MICHAEL KING, MORIORI: A PEOPLE REDISCOVERED 22 (1989).

228. *Id.* at 26.

229. *Id.*

230. *Id.* at 40.

Zealand Maori were finally defeated in the 1860s; even then they won citizenship rights and designated seats in the parliament. In New Zealand, the readiness of the whites and the Maori to fight had resulted, after much bloodshed, in a political settlement whereby the majority triumphed, but some minority rights were established. While the gentle Stone Age Aborigines of Australia had been very quickly crushed and viciously subjugated, the fighting natives of New Zealand preserved a not-insubstantial degree of their rights.[231]

The outcome was different in the Chatham Islands. By late 1835, nine hundred Maori had arrived in the Chathams. The Maoris began to take possession of the islands by their ceremony of "takahi," or "walking the land."[232] Historian Michael King described the takeover:

> Parties of warriors armed with muskets, clubs and tomahawks, led by their chiefs, walked through Moriori tribal territories and settlements without warning, permission or greeting. If the districts were wanted by the invaders, they curtly informed the inhabitants that their land had been taken and the Moriori living there were now vassals.[233]

A council of Moriori elders was convened at the settlement called Te Awapatiki. Despite knowing of the Maori's predilection for killing and eating the conquered, and despite the admonition by some of the elder chiefs that the principle of Nunuku was not appropriate now, two chiefs declared that "the law of Nunuku was not a strategy for survival, to be varied as conditions changed; it was a moral imperative."[234]

So there would be no resistance, no compromise with the principle of Nunuku. As one Moriori recounted: "Morioris were taken prisoners, the women and children were bound, and many of these, together with the men, were killed and eaten, so that the corpses lay scattered in the woods and over the plains. Those who were spared from death were herded like swine, and even

231. DAVID B. KOPEL, THE SAMURAI, THE MOUNTIE, AND THE COWBOY: SHOULD AMERICA ADOPT THE GUN CONTROLS OF OTHER DEMOCRACIES? 233-36 (1992).

232. KING, *supra* note 227, at 59.

233. *Id.* at 59-60.

234. *Id.* at 60-62.

killed from year to year."[235]

King suggests that the Moriori decision not to fight back was a spur to Maori brutality; the Maoris confused Nunuku with cowardice, "and—by implication—worthlessness."[236]

By 1862, only 101 Morioris out of an initial two thousand were left alive. The strategy, "not designed for survival," led directly to the destruction of the Morioris. The Europeans watched the slaughter of Morioris by the Maoris and did nothing to prevent it.[237]

As King observes, "The Moriori had learned a tactical and philosophical truth that was to be articulated by other people from other cultures in the twentieth century: non-violence is an effective weapon only against an adversary who shares your conscience."[238]

The last full-blooded Moriori, Tommy Solomon, died on March 19, 1933.[239]

Bravely accepting death, the Moriori refuted beyond all doubt the claim that all pacifists are cowards.[240]

The Argentine human rights activist Adolfo Peréz Esquivel won the Nobel Peace Prize in 1980. He observed, "What has always caught my attention is the attitude of the peace movement in Europe and the United States, where nonviolence is envisioned as the final objective. Nonviolence is not the final objective. Nonviolence is a lifestyle. The final objective is humanity. It is life."[241] Esquivel's position is compatible with

235. *Id.* at 62.

236. *Id.* at 36.

237. *Id.* at 63.

238. *Id.* at 75.

239. *Id.* at 15.

240. In the United States, Britain, and Australia, some pacifists proclaim their moral superiority to the soldiers who protect the pacifists' right to free speech. What happened to the Moriori would happen to these same pacifists if not for the protection provided for many generations by the Anglosphere's soldiers and sailors. What the Maori did to the Moriori would have been done a thousand times over to the pacifists by Hitler, Tojo, Stalin, and bin Laden—and every other tyrant whom the pacifists condemned the military for resisting.

A popular bumper sticker says, "If you can read this, thank a teacher." If you are a pacifist who has not been murdered or enslaved, thank a soldier.

241. WALTER WINK, JESUS AND NONVIOLENCE: A THIRD WAY 36 (2003).

that of Mohandas Gandhi or Thomas Merton, who preferred non-violence, but who considered violence much better than passivity.[242]

However, the Esquivel critique cannot shake a pacifist whose devotion to non-violence is based on a sincere belief about purity. If one sincerely believes that the Bible mandates non-violence in all circumstances, and that the Bible is the certain word of God, then prudential arguments are irrelevant.

In a free society, purity pacifists should have every right to live, or sacrifice, their lives. The government should not force them to engage in violence, such as by drafting them into the army. If the purity pacifists are consistent, they will not seek advantage from violence, such as by calling an armed policeman to help them when they are attacked by criminals.

What the purity pacifists should not do is attempt to force their morality on everyone else. Even if sixty percent of the voters in a community are Orthodox Jews, it would be wrong for them to outlaw pork sales for the other forty percent. Even if ninety-seven percent of the voters in a community are heterosexual Christians who believe that homosexuality is an abomination, it is wrong for them to impose criminal penalties on homosexuals.

Indeed, criminal penalties contradict the whole premise of purity pacifism. Criminal laws are enforced by police officers who carry guns, clubs, and chemical agents, and who use those weapons against people who resist. Criminal law violators are placed in prisons and jails ruled by armed guards who use violence against inmates who step out of line. The criminal law is violent by nature.

242. In 1922, Gandhi declared that he had "repeatedly said that I would have India become free even by violence rather than that she should remain in bondage." 1 MOHANDAS K. GANDHI, NON-VIOLENCE IN PEACE & WAR 3 (1942). Similarly, "I would rather have India resort to arms in order to defend her honour than that she would, in a cowardly manner, become or remain a helpless witness to her own dishonour." *Id.*

VI. CONCLUSION

As John Howard Yoder insightfully noted, there is no single pacifist rationale. Rather, many different people adopt pacifism for a wide variety of reasons, or from impulses that are not based on strict reason. When we carefully examine the various claims made by some of the most important modern advocates of non-violence, we find that some arguments are very strong; if one truly believes that lethal violence is always and everywhere wrong—as did the Moriori—then there is nothing to say against such a belief once one accepts the religious or spiritual premises on which that belief is based.

In contrast, another strain of pacifism argues that non-violence will always and everywhere produce superior results (in terms of lives saved, or other important human values) than violence. The assertion is tenable neither in individual cases, nor based on the historical record of the last century. Non-violence is often—but not always and not necessarily—a superior tactic for protecting human lives and freedom. In the courts and legislatures of the United States, of other nations, and of international bodies such as the United Nations, the argument that legally mandated non-violence for the victims of crime or the victims of tyranny will *necessarily* lead to better outcomes for the victims is plainly wrong as a matter of fact.