THE INTERNATIONAL CRIMINAL COURT AND THE RESPONSIBILITY TO PROTECT

CHALLENGES AND OPPORTUNITIES FOR THE PEACE CHURCH TRADITION

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BOOK REVIEWS

Foreword

We are delighted to present this special issue on The International Criminal Court and the Responsibility to Protect: Challenges and Opportunities for the Peace Church Tradition.

We hope that this issue, produced under the auspices of the new Centre for the Study of Religion and Peace at Conrad Grebel University College, will make a useful contribution to the discussions already underway – within the historic peace churches and elsewhere – on such matters as the role and value of the International Criminal Court and the strengths and weaknesses of the Responsibility to Protect ("R2P") doctrine.

We thank Lowell Ewert, Director of Peace and Conflict Studies at Conrad Grebel University College, for conceiving the theme and for animating the process that resulted in the articles that now appear in this issue. That process and the background to it are briefly outlined in the Introduction that follows next. We thank all the authors and peer-reviewers who participated, and we regret that we could not publish every submission.

Also included in this issue are book reviews on a wide range of subjects. New reviews are posted regularly on www.grebel.uwaterloo.ca/academic/cgreview/reviews.shtml.

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Upcoming issues will include one devoted to a discussion of the newly-published *Nonviolence – A Brief History: The Warsaw Lectures* (lectures given by John Howard Yoder in 1983), and omnibus issues featuring the 2010 Benjamin Eby Lecture, "Peace Starts Now: Religious Contributions to Sustainable Peacemaking" by Professor Nathan Funk, as well as articles on a wide range of topics.

We encourage readers to submit Articles and Reflections for consideration. Readers might also invite their home institutions, churches, and other organizations to subscribe to the journal.

Jeremy M. Bergen
Academic Editor

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The International Criminal Court and the Responsibility to Protect
Challenges and Opportunities for the Peace Church Tradition

The origin of this special issue of *The Conrad Grebel Review* dates back to June 1999, when the Institute of Peace and Conflict Studies, located at Conrad Grebel University College, hosted a hastily called consultation of a small group of people associated with the Peace and Conflict Studies program to discuss the theological and political implications of NATO's military involvement in the former Yugoslavia. The almost 80-day bombing campaign of Serbia and Kosovo by NATO triggered countless discussions, debates, protests, e-mail messages, news articles, and letters to the editor about international law and how the international community should respond (if at all) to massive human rights abuses committed within the borders of another sovereign nation. The opposing perspectives aired through this process of public discussion by global human rights and peace activists were notable because of where the political fault lines fell.

Some traditional opponents of military intervention were vocal in supporting the bombing campaign, because it seemed designed to protect civilians from human rights abuses. Conversely, some traditional military hawks were often in the unique position of opposing military action to carry out humanitarian foreign policy objectives that were not directly linked to national security. Even those of us in the peace community struggled to articulate how to respond to this round of hostilities in the Balkans. Opposing an intervention aimed at stopping human rights abuses raised difficult optics. Yet, we typically resisted all forms of violence, especially that which is carried out by military means.

Our theological conversations at the College on that June day reflected this unsettledness and yielded no firm conclusions other than the need to continue the conversation. However, the planned ongoing conversation designed to clarify the relationship between the role of coercive enforcement of international order and peace, and the relationship between the use of force in this context and Anabaptist peace theology, never happened in any

formalized way.

The establishment of the International Criminal Court (ICC) in 2002 and the Responsibility to Protect Doctrine (R2P) articulated in 2001 added a new layer of issues to consider. With this new institution and this new doctrine, there now seemed to be formal structural mechanisms available to limit the arbitrariness of war that is the cause of so much harm. The ICC and R2P appear to operate more like policing and national criminal courts than unrestrained politics.

But these developments did not relieve the anxieties expressed at the 1999 gathering. While few people within the historic peace church traditions object to building international institutions that accord greater protection and redress to victims of human rights abuse, they see using coercion and violence to accomplish these objectives as inconsistent with their theological and philosophical principles.

Prosecution by the ICC of crimes of genocide, crimes against humanity, crimes of aggression, and war crimes can also seem to get in the way of reconciliation and peace. The ICC, by holding perpetrators of mass human rights violations accountable for their actions in a retributive justice forum, can be accused of making the restoration of peace more difficult even while it claims to administer justice. As we know from our experience in North America, the objective of a punishment-based approach to criminal justice is often an obstacle to meaningful restoration of relationships. The underlying dilemma is sometimes expressed as "justice *and* peace" or "justice *or* peace."

In contrast to the ICC's prosecutorial approach, the R2P doctrine outlines when violent military intervention to protect vulnerable populations is appropriate. While R2P intervention may be viewed theoretically as a quasi-police action to protect the innocent, pacifists counter that using violence to do so is never justified and is ineffective as well. They claim that such intervention is not appropriate, thereby appearing to let massive human rights violations continue, while non-pacifists claim that such intervention is not only appropriate but morally obligatory. Both views value life highly but take opposite positions on how to protect it.

The development of the ICC and R2P in the years after the 1999 consultation, along with many informal conversations, provided exactly the

spark needed to re-animate the discussion – and to produce this special CGR issue. A number of academics and practitioners known for their keen interest in the theme were invited to consider submitting material for the issue, and as the word got out, others also became involved. After a rigorous assessment process, several papers were ultimately selected for publication.

These articles, written by seasoned practitioners and scholars, take up the theme from differing institutional and individual standpoints, to be sure, but they share a common desire to advance the conversation about how traditional peace church perspectives can meaningfully interact with the theory and practice of both the ICC and R2P. The articles outline essential history (Doug Hostetter), explore and assess underlying theological and ethical assumptions and concepts (Ted Grimsrud, Martin Rumscheidt, Gerald Schlabach, Mark Vander Vennen), and consider practical applications (Matthew Brubacher, John Siebert).

No attempt was made to mold a consensus. Rather, this CGR issue seeks to highlight approaches that may prove helpful as we continue the conversation on the implications of the International Criminal Court and the Responsibility to Protect doctrine.

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Striking a Balance:
Humanitarian, Peace, and Justice Initiatives

Matthew Brubacher

Unlike the Nuremberg and Tokyo tribunals, established in the wake of a clear military victory, international criminal courts today are increasingly operating within ongoing armed conflicts. From the establishment of the International Court for the Former Yugoslavia (ICTY) to the impact of the Special Court for Sierra Leone (SCSL) on the conflict in Liberia, to the multiple interventions of the International Criminal Court (ICC), international criminal investigations are becoming part of the landscape of armed conflict and altering the manner in which conflicts are managed.

The establishment of international criminal courts reflects the growing will of the international community to hold individuals accountable for serious crimes. However, while the primary justification for setting up these courts is the need for accountability, an almost equally significant justification is that by holding individuals accountable, the courts contribute to establishing real peace. The question arising from this double justification is, what happens when the pursuit of justice aggravates a situation by conflicting with efforts to achieve a negotiated settlement between belligerent parties? Depending on the organizations involved, the answer will be different.

For those mandated to uphold human rights and the rule of law, the answer will generally be to support international justice and to condemn those who use the pursuit of justice as a justification for continuing their campaign of violence or entrenching their positions. For those with a humanitarian mandate, the prioritization is generally to see that security and stability are restored, even if that means sacrificing efforts to achieve justice. The added factor for the humanitarian communities – and one reason some limit their cooperation with international justice mechanisms – is their need to maintain neutrality. Courts, at least in concept if not always in practice, are impartial in the application of law, but when prosecuting individuals for international crimes, neutrality is not a virtue of added value.

Although it does not change the essence of the "peace versus justice" debate or concerns over neutrality, there is often misunderstanding within the humanitarian and religious communities on the functioning of international courts and the differences between them in terms of their legal mandate and decision-making processes. This tension, and the ability of the humanitarian and religious communities to subvert justice for the sake of peace and security depending on the prevailing contacts, also creates inconsistent positions. For instance, many humanitarians supported judicial intervention in post-genocide Rwanda and, at least at the beginning, in Sudan and Congo, yet view the same intervention as unwanted in places like Northern Uganda and Sudan.

For their part, international courts are not blind to contextual complexities. However, depending on their founding statute, they cannot always take these complexities into consideration. In order to maintain integrity and uniform application of the law, they must sometimes apply it in a manner that appears blind to other prevailing circumstances. Unlike previous international courts that had few provisions to allow prosecutors to take peace and security into account, the ICC does include mechanisms that can be used to manage these tensions.

In this article I will first describe the dual narrative of justice and peace underpinning the justification for creating international criminal courts as a precursor to analyzing the fundamentals of the "peace versus justice" tension. I will then describe the mechanics and innovations of the ICC Statute that incorporated some of these concerns. Finally, I will look at the views of human rights groups, civil society, and religious institutions to judicial interventions in attempting to identify their own struggles to merge often conflicting values.

Peace and Accountability:
The Dual Purpose of International Criminal Courts
Because of the nature of international crimes, international criminal courts always intervene either within or in the wake of armed conflict. They operate among a multitude of other diplomatic, humanitarian, and military-related initiatives attempting to restore stability and national unity. While these courts are functionally established to enforce individual criminal

liability, states, practitioners, and commentators frequently profess that by holding individuals accountable the courts contribute to creating the basis for peace.

This dual purpose of building peace through accountability was given as justification for the creation of the *ad hoc* tribunals, both of which were created subsequent to UN Security Council determinations that the situations in the former Yugoslavia and Rwanda were threats to international peace and security.[1] In the text of UN Security Council Resolution 808 which authorized the creation of the ICTY, the Security Council stated

> … that it was convinced that in the particular circumstances of the former Yugoslavia, the establishment of an international tribunal would bring about the achievement of the aim of putting an end to such crimes and of taking effective measures to bring to justice the persons responsible for them, and would contribute to the restoration and maintenance of peace.[2]

In 1994, this reasoning was echoed by the ICTY itself when it stated that "Far from being a vehicle for revenge, [the ICTY] is a tool for promoting reconciliation and restoring true peace."[3]

> Similarly, the Security Council in authorising the creation of the SCLC stated that

> … a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,…[4]

Academic authorities such as Cherif Bassiouni,[5] Richard Goldstone,[6] and Telford Taylor[7] also assert that international tribunals are vital to peace, insofar as without fair and impartial justice there can be no reconciliation between the people even if there is a political settlement between leaders. Although not recognizing that justice positively contributes to building peace, the Preamble of the Rome Statute recognizes that grave crimes threaten the peace, security, and well-being of the world.[8]

Among the many reasons given for the ability of international criminal courts to assist in building peace is that they contribute to a process of national

reconciliation by substituting individual guilt for collective guilt,[9] provide justice for victim communities, re-establish the legal order in post-conflict environments, provide a forum for truth-telling that creates an authoritative and shared record of history,[10] deter future crimes by strengthening legal enforcement procedures,[11] and raise the normative level of acceptable behavior.[12] Also, the reasoning continues, punishment of criminal actions contributes to establishing 'real peace' by aiding the national transition process and restoring social equilibrium through the ability to impose the rule of law.[13]

However, while international courts may contribute in the above ways, most of these benefits presume there is a sufficient degree of stability and security within the country. In environments where conflict is ongoing and crimes are still being perpetrated, many of the goals identified above are difficult to achieve, and the ability of international courts to contribute to peace becomes much more complicated.

Inherent Tension between Accountability and Peace
The fundamental quandary confronting all international criminal courts that intervene in ongoing armed conflicts is that those whom they identify as suspects are often the same people involved in negotiating a political settlement. During a process of political negotiation, a public arrest warrant against a leader of a party to the negotiations may cause that party to retrench its positions and decrease its willingness to commit to a peaceful settlement. A public arrest warrant will also complicate negotiators' efforts to include indicted persons in talks. As observed by a British official involved in negotiations during the conflict in the former Yugoslavia, the problem was "indicting people [when] you may be negotiating with them."[14] In such conditions, parties may demand immunity from prosecution as a condition to concluding an agreement, and negotiators will be tempted to provide some degree of assurance as a means to increase trust and build incentives.

The suspect may also use the issuing of a warrant as a reason to escalate hostilities, both as a protest and as a means to raise his profile and complicate efforts for authorities to execute the warrant. States, on which international courts rely to execute their warrants, may also be reluctant to execute warrants if they perceive doing so as politically inexpedient and

potentially undermining regional stability, particularly if executing the warrant puts their nationals in danger.[15]

If the prosecutor accommodates these interests and does not issue the warrant, the individual may more likely participate in the peace process and peacemakers may even be able to decrease the level of violence. However, accommodating these interests and allowing suspected criminals to participate in negotiations creates an array of practical and legal difficulties.

Politically, allowing a suspect to participate in negotiations will result in conferring upon that person a greater degree of political, if not moral, legitimacy, as well as give credibility to the agenda they brought to the negotiating table. When the individual is suspected of committing serious crimes and furthering policies believed to foment systemic and widespread atrocities, such a decision sets an uncomfortable precedent and may make it more difficult for a prosecutor to issue a warrant at a later stage.

Legally, as judicial organs, prosecutors must remain independent and impartial in the execution of their responsibilities – factors that would be challenged were they to become, or be perceived to become, involved in negotiations. Also, a growing body of international law promotes the obligation to prosecute those suspected of committing serious crimes,[16] and the international community is showing a growing resolve to recognize unqualified amnesties in international peace agreements.[17]

While these factors obviously influence the environment in which prosecutors operate, how far they are considered depends on the primary source of applicable law, which for prosecutors is contained within the constituent instruments of the courts. A study of these documents and the elements of prosecutorial discretion identified within the statutes is necessary to evaluate the extent to which a prosecutor can accommodate and prioritize the various competing interests.

The ICC Rome Statute: Increased Sensitization to Contextual Factors
For the prosecutor of the ICC, the legal regime differs in several areas from those of previous international criminal courts. Unlike previous courts that could start investigations based on their own power, the prosecutor must receive notice of crimes from one of three sources.[18] Once notice is

received, the same analytical process must be followed in deciding whether to investigate.

The crime must have occurred after 1 July 2002, the date the Statute entered into force.[19] In addition, it must have been committed by a person either in the territory of "states parties" or a national of a state party.[20] This territorial jurisdiction, however, can be expanded when the UN Security Council acting under Chapter VII refers the matter to the ICC.[21] With 110 states parties, this jurisdictional regime gives the prosecutor much broader jurisdiction than the ICTY, which was limited to crimes occurring in the territory of the former Yugoslavia.

In addition to these jurisdictional criteria, the prosecutor has several admissibility criteria that must be considered. The first criterion, "gravity," is given particular emphasis in the Rome Statute.[22] It is applied both to the alleged crime and to the person believed to be most responsible for committing it. In regard to assessing the gravity of the crimes themselves, the prosecutor has identified four indicia to guide this analysis: the scale of the crimes, the nature of the crimes, the manner of their commission, and their impact.

The second criterion, "complementarity," refers to the ICC's relationship to national jurisdictions. This system is also markedly different from that of the ICTY, which had primacy over national courts. Unlike that "vertical" relationship with states, the ICC cannot simply order national systems to hand over a particular case but must instead defer to genuine national proceedings.[23] The principle of complementarity works on the premise that states have the primary obligation to enforce the law and that the ICC is only a court of last resort if the state having jurisdiction over the crime is either unable or unwilling to prosecute the crime itself.

This more "horizontal" relationship with state jurisdictions encourages states to comply with their obligation to enforce the law rather than to see the ICC as a substitute for national proceedings. Although it is currently unclear what type of proceeding is sufficient to satisfy the ICC's emerging definition of a "genuine proceeding," this system allows the Court to work in a manner that appreciates national justice initiatives.

The third criterion is the "interests of justice." It is a countervailing element that requires the prosecutor to consider certain factors which may

produce a reason *not* to proceed with an investigation or prosecution. This consideration is made only once a positive decision to proceed has already been taken. "In deciding whether to initiate an investigation, the Prosecutor shall consider whether: . . . Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice."[24]

The definition and scope of the "interests of justice" has been a matter of much debate. Initially, some authors argued that this provision could apply if the pursuit of justice impaired peace and security.[25] However, others, particularly from the human rights community, argue for a more restrictive interpretation.[26] This second, more restrictive interpretation is the direction in which the Office of the Prosecutor (OTP) is going. In its policy paper on the "interests of justice," the OTP cites the need to provide redress to victims and the object and purpose of the Statute in pursuing accountability as the basis for interpreting this provision, and it states that exercising this provision would be exceptional in nature.[27]

In the policy paper the OTP says that "it would be misleading to equate the interests of justice with the interests of peace."[28] Were a situation to arise whereby ICC involvement directly threatens peace and stability, the authors of the Statute included Article 16, which obliges the Court to defer an investigation or prosecution for one year in the event the UN Security Council finds that these proceedings are a threat to international peace and security by issuing a Chapter VII resolution. The insertion of this provision is significant, as the mandate and capacities of the UN Security Council are more capable of dealing with resolving conflicts between peace, justice, and security than a judicial body such as the ICC. It should also be noted that any decision by the prosecutor not to proceed based solely on the "interests of justice" is reviewable by the judges.[29]

However, while broader issues of peace and security may not directly factor into decisions, the paper goes on to state that in assessing the "interests of victims," an element of the interests of justice, the OTP will consider the victims' personal security as well as the obligation of the Court to protect victims and witnesses.[30] While the prosecutor cannot change its decisions in light of the effect of its investigations on peace processes or on the general security situation, the prosecutor may take certain precautionary measures

regarding security, including witness protection measures and modifying its public messages and profile.

Cooperation between the ICC and
Humanitarian or Religious Organizations
While the criteria by which the international prosecutor makes his decisions are fairly clearly defined and must be uniformly applied, the manner in which international and local civil society, humanitarian, and religious organizations relate to international courts and react to their interventions differs, and it often evolves based on prevailing circumstances. These differences are exemplified by the decision of the ICC prosecutor to open an investigation in Northern Uganda.

When the ICC came into being in 2004, it began receiving a wide array of information and correspondence urging it to open investigations in various countries. One of the situations on which the prosecutor received civil society and human rights requests was northern Uganda. At war since 1988, the Lord's Resistance Army (LRA) had committed some of the worst crimes in modern history, abducting tens of thousands of children and making them into ruthless fighters. If anyone needed to be prosecuted and made an example of, it was the leaders of the LRA.

With a willing government and crimes that clearly passed the "gravity" threshold, northern Uganda appeared to be the perfect case for this young court to test its mettle. In July 2004 it officially opened an investigation into the Situation of Northern Uganda. However, even before the investigation was opened, the Court began receiving a litany of concerns from the local civil society and humanitarian NGOs. Although there was no peace process with the LRA at the time, the broadly accepted consensus in northern Uganda was that only a negotiated solution could end the war, and that opening an investigation would entrench the position of the LRA and possibly even make it more violent.

Some of the ICC's most outspoken critics were members of the Catholic Church, including Archbishop Jean Baptiste Odama of Gulu Archdiocese in northern Uganda. His influential voice criticized the ICC and its involvement in his domain, and continues to do so.

> I was stunned by ICC indictment. While we support the concept
> of the ICC as an institution, we're not happy with the approach
> to the LRA. The population is desperate for peace talks to be
> successful. When the ICC came with its ruling, it was like
> throwing something into the wheel of a moving vehicle.[31]

This view was echoed by other community members and was taken up as an advocacy position by humanitarian NGOs working among them. Although it did not slow down the prosecutor's investigation, it did force the court to take a low-profile approach and complicated efforts to acquire cooperation and support from the local community.

Despite public concern, the facts now demonstrate that the ICC intervention did not stop peace talks. On the contrary, two peace processes were initiated after July 2004 that, at least on the surface, were more advanced and promising than any of those conducted previously. However, these peace talks also failed, not because of the ICC as such or even the existence of the warrants but because of the incessant refusal of LRA leaders to stop their campaign of violence.

Interestingly, after the second peace talks in Juba and the relocation of the LRA from northern Uganda to northern Congo (DRC), not only did criticism of the ICC die down but the office began receiving requests to expand the charges or add additional warrants. Many of these requests came from local communities in northern DRC where the LRA began a vicious campaign of violence in September 2008.

As in northern Uganda, the Catholic Church in northern DRC plays a significant guiding role in shaping public opinion, and many of these requests referencing the need for justice were written at the Church's initiative. Unlike northern Uganda, however, these communications did not reference concern for peace talks or possible security implications that justice initiatives could bring. According to a statement in January 2010 from civil society in Dungu signed by all its principal notables,

> It is an outrageous injustice that the LRA who surrender are not
> given to the ICC for prosecution but are transported from the
> cradle of the rebellion to receive amnesty. Enough is enough.[32]

This view is echoed by a Cambonian missionary serving in Congo for more than 20 years who was abducted by the LRA in August 2008: "Perhaps I am

not as good of a Christian as Archbishop Odama, but these LRA have to be dealt with and they must be brought to justice."[33]

How could two different communities with the same faith, experiencing the same types of criminality, have such polar opposite positions? One reason is that members of the LRA, for the currently affected community, are not their children but a foreign force. In addition, the affected Congolese community either had not been aware of, or had doubted the sincerity of, the peace talks in Juba heralded by northern Uganda communities as the best chance for peace. Humanitarian organizations often reflect the views of affected communities, and many of these organizations have modified their positions from arguing for suspension or withdrawal of the ICC warrants to pushing for a quicker, more effective force to arrest LRA leaders.

In terms of policy and cooperation with international criminal courts, Kate Mackintosh of Médecins Sans Frontières **(**MSF**)** has explained the quandary that the humanitarian community found itself in when confronted by a real functioning International Criminal Court.

> Before the International Criminal Court (ICC) became a reality in 2002, most humanitarian workers thought it was a good thing…. The emerging regime to promote justice and accountability and to end impunity for crimes against civilians serves the same long-term goal of protecting civilians. Nevertheless, cooperation by humanitarian workers with criminal prosecutions can be difficult to square with the need to appear neutral and to safeguard humanitarian access and cooperation.[34]

In fact, before the ICCs creation, many humanitarian and church-based organizations called on states to support the new court.[35] In advocating its support for the Court, the United Church of Christ stated that "the International Criminal Court reflects the strongly affirmed hope . . . that there is an emerging global consensus about human rights and justice long ago revealed in God's profoundly hopeful promise in Biblical history."[36] However, although many organizations called for the creation of the ICC, its actual existence and intervention into delicate environments have since produced varying positions based on these organizations' perceptions of

whether it is improving or aggravating the situation of the people they serve.

An additional example of this dichotomy is evident in comparing reactions to the ICC activity in Kenya and Sudan. In Kenya, the ICC's announcement that it would investigate the post-election violence was welcomed by the Kenyan churches,[37] but its announcement that it was issuing a warrant against the President of Sudan created a great degree of criticism and concern, particularly when Sudan expelled 13 NGOs for cooperating with the ICC.[38]

Médecins Sans Frontières, which has one of the most developed policies on the ICC and, with the exception of the International Committee of the Red Cross, the most restricted policy for cooperation, explains the dilemma this way: Cooperation with the ICC may jeopardize the access of humanitarians to persons in need and challenge the neutral character of humanitarian organizations that allows them to function between belligerent forces. Accordingly, MSF will never meet ICC officials in the field and will respond to requests for information only if it is the sole source available to provide crucial evidence. However, MSF does not prevent individual staff members from voluntarily testifying in judicial proceedings.[39]

This consistently conservative policy is not followed by other humanitarian organizations, many of which often make decisions based on what is happening on the ground. Making decisions by weighing the need for justice with the need to maintain the neutrality and impartiality required for navigating in conflict situations is the main reason for the varied positions taken by humanitarian and civil society organizations in supporting and cooperating with the ICC. The conditions that may satisfy an organization for cooperating in Kenya and northern Congo may not be satisfied in Sudan and northern Uganda. This variance can be understood from a practical perspective, but the lack of uniformity inhibits organizations from developing standardized policies of cooperation with international criminal courts.

Conclusion

Regardless of their respective positions, humanitarian organizations and civil society are compelled to work in the same situations. This fact creates

real dilemmas. While humanitarians want to contribute to the fight against impunity for grave violations of international law – both to uphold basic standards of justice and, in the longer term, to prevent these violations from re-occurring – the involvement of international courts in ongoing armed conflicts can complicate efforts to find a resolution. In addition, as these courts are impartial insofar as they are created to apply the law uniformly, they are not neutral; cooperation with these courts may thus impact on one of the sacred principles of humanitarianism.

Unlike the legal judgments that are intended to be purely objective, humanitarians, with their need to operate in an essentially political environment, find it difficult to develop a coherent and universal policy on international criminal courts. As such, some organizations may support the same international judicial intervention in one context but reject it in another.

For those working in international criminal courts the challenge is to act judiciously but not to be so blinded by the law that the complexities in which the courts operate are overlooked.[40] While the absoluteness of rules must be maintained, flexible strategies must be developed in order to prevent the efforts to achieve justice from undermining the security of the intended beneficiaries of such efforts.

More important, and something that is often overlooked because of the novelty and profile of international judicial interventions, is that international courts are not the only mechanisms to obtain justice. They are just one instrument among national, local, and traditional justice mechanisms seeking to provide justice and restore the dignity of victims. As stated by UN Secretary General Kofi Annan, "the goals of justice and reconciliation compete with each other . . . each society needs to form a view about how to strike the right balance between them."[41] It is this balance that both the international criminal courts and the humanitarian community must seek to obtain.

Notes
[1] United Nations Security Council [hereafter SC] Res. 808, UN SCOR, 48th Sess., 3175th mtg., at 1 UN Doc. S/RES/808 (22 Feb. 1993).
[2] See Report of the Secretary General (S/25704), at para. 10 and 26.

[3] See UN Doc. S/1994/1007 (29 August 1994).

[4] SC Res. 1315, UN SCOR, 4186th mtg., UN Doc. S/RES/1315 (2000).

[5] Cherif Bassiouni, *The Statute of the International Criminal Court: A Documentary History* (Ardsley, NY: Transnational Publishers, 1998), 1211.

[6] Richard Goldstone, "Justice as a Tool for Peace-Making: Truth Commissions and International Tribunals," *NYU Journal of International Law and Politics* 28 (1995-1996): 485-503.

[7] Telford Taylor, *The Anatomy of the Nuremberg Trials* (New York: Knopf, 1992), at 634-41.

[8] Preamble, para. 3, ICC Statute [hereafter ICCSt.].

[9] Sterling Johnson, *Peace without Justice: Hegemonic Instability or International Criminal Law?* (Aldershot: Ashgate, 2003), 183. Richard Goldstone, "Justice as a Tool for Peace-Making," 488.

[10] *Finding the Balance: the Scales of Justice in Kosovo*, International Crisis Group, ICG Balkans Report no. 134, 12 September 2002.

[11] The issue of whether international criminal justice actually deters crime is contested. Little empirical evidence supports this belief, and some criminal behavioral psychologists say that for criminal justice systems to deter, the system must have the ability to impose liability and punishments.

For an overview see Danilo Zolo, "Peace through Criminal Law?," *Journal of International Criminal Justice* 2 (2004): 731; Paul Robinson and John Darley, "Does Criminal Law Deter? A Behavioural Science Investigation," *Oxford Journal of Legal Studies* 2 (2004): 173-205; Andrew von Hirsch, Anthony Bottoms, Elizabeth Burney and Per-olof Wikstrom, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (Cambridge, UK: University of Cambridge Institute of Criminology, 1999).

For authors expounding the belief that international criminal law deters crime, see Payam Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?," *American Journal of International Law* 95 (2001): 9; Paul Williams and Michael Scharf, *Peace with Justice? War Crimes and Accountability in the Former Yugoslavia* (Oxford: Rowman & Littlefield Publishers, Inc., 2002), 21, 22.

[12] Report by UN High-Level Panel on Threats, Challenges and Change. Follow-up to the Outcome of the Millennium Summit, UN General Assembly, A/59/65, 2 December 2004, 35; Antoine Garapon, "Three Challenges for International Justice," *Journal of International Criminal Justice* 2 (2004): 716.

[13] Michael Scharf and Nigel Rodley, "International Principles on Accountability" in Cherif Bassioni, ed., *Post Conflict Justice* (Ardsley, NY: Transnational Publishers, 2002), 89-96.

[14] G.J. Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton Univ. Press, 2000), 222.

[15] Christine Bell, *Peace Agreements and Human Rights* (New York: Oxford Univ. Press, 2000), 270-73.

[16] International Covenant of Civil and Political Rights (Article 2), Convention Against Torture (Articles 4,5 and 7), American Convention on Human Rights (Article 1), Inter-American Convention on Forced Disappearance of Persons (article 1), Inter-American Convention to

Prevent and Punish Torture (Article 1).

See also non-treaty human rights standards, such as the Declaration on Protection of All Persons from Enforced Disappearance, General Assembly Res. 47/133, 18 December 1992, and the Principles of the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, ECOSOC Res. 1989/65, 24 May 1989; Principles of international cooperation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, GA Res. 3074 (XXVIII), 3 December 1973.

Cf. Jelena Pejic, "Accountability for International Crimes: From Conjecture to Reality," *International Review of the Red Cross* [hereafter *IRRC*] 845 (2002): 28.

[17] While in the early 1990s, the UN was involved in negotiating broad amnesties in El Salvador, Haiti and Guatemala, the international community has become increasingly reluctant to grant amnesties for serious crimes, as demonstrated in the peace agreements in the DRC, East Timor, and Sierra Leone. See I. Martin, "Haiti: International Force or National Compromise?" in *Journal of Latin American Studies* (1999): 711-34. For an overview see Carsten Stahn, "United Nations Peace-building Amnesties and Alternative Forms of Justice: A Change in Practice?" *IRRC* 845 (2002): 191-205. See also N.J. Kritz, "Where We Are and How We Got Here: An Overview of Developments in the Search for Justice and Reconciliation," in A.H. Henkin, ed., *The Legacy of Abuse – Confronting the Past, Facing the Future* (New York: The Aspen Institute and New York University School of Law, 2002), 82.

[18] Notice of crimes under the statute can be referred by the UN Security Council, a state party or any other source.

[19] Article 12, ICCSt.

[20] Ibid.

[21] Article 13 (b), ICCSt.

[22] Article 17(1)(d) states that the crimes must be of "sufficient gravity to justify further action."

[23] Article 17, ICCSt.

[24] Article 53(1)(c) ICCSt.

[25] The interests of peace and security have additional relevance, in that Article 16 allows the Security Council to defer ICC investigations if the Council deems the investigations to be a threat to international peace and security under Chapter 7 of the UN Charter.

[26] *The Meaning of "the Interests of Justice" in Article 53 of the Rome Statute*, Human Rights Watch Policy Paper, June 2005.

[27] Paragraph 4 of the Preamble of the ICC Statute affirms that the most serious crimes of concern to the international community must not go unpunished; while the last paragraph states that the authors are resolved to guarantee lasting respect for the enforcement of international criminal justice. This more limited definition may be further evidenced by the use of the term "interests of justice" in Articles 55(2)(c), 65(4), 67(1)(d), all of which employ it to refer to matters regarding the rights of the accused or victims as affected in the course of an investigation or trial.

[28] *Policy Paper on the Interests of Justice*, Office of the Prosecutor, ICC, September 2007. www.icc-cpi.int/library/organs/otp/ICC-OTP-InterestsOfJustice.pdf).

29 ICCSt., Art. 53(3), (4).

[30] The Court's obligation to protect victim and witness security and well-being is expressed in Article 68(1) and Article 54(1)(b).

[31] Question time: Archbishop John Baptist Odama of Gulu, Uganda, www.caritas.org.

[32] "Again more deaths … the latest attacks by the LRA against the civilian population in the territory of Dungu," Memorandum of Civil Society in Dungu, 22 January 2010. (Translated from French.)

[33] Interview by the author in 2009.

[34] Kate Mackintosh, "The Development of the International Criminal Court: Some Implications for Humanitarian Activity," in *Humanitarian Exchange Magazine*, December 2005.

[35] Resolution on The International Criminal Court, Approved by the NCC General Assembly November 11, 1999.

[36] United Church of Christ's Support for the ICC. Adopted by the 25th General Synod in July 2005: www.amicc.org/docs/UCC%20Resolution.pdf

[37] "Kenya: Church Calls for International Criminal Court Trials for Post-election Violence," *Catholic World News*, 21 July 2009.

[38] "Sudan says decision to expel aid groups is irrevocable," *Sudan Tribune*, 8 March 2009.

[39] UNITAR Peace and Security Series: A humanitarian dilemma: protecting civilians and promoting justice. Organized jointly with the Friends of the International Criminal Court (ICC), 30 October 2007.

[40] David Kennedy, "The International Human Rights Movement: Part of the Problem?," *Harvard Human Rights Journal* 15 (Spring 2002): 117.

[41] UN Press Release SG/SM/8892, SC/7881 (24 September 2003). Remarks made to the ministerial meeting of the Security Council on "Justice and the Rule of Law: The United Nations Role."

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Core Convictions for Engaged Pacifism

Ted Grimsrud

"One of the most pressing questions facing the world today is, How can we oppose evil without creating new evils and being made evil ourselves?"[1] These words opened Walter Wink's *Engaging the Powers* nearly twenty years ago – and voice the concern that remains at the center of many peacemakers' sensibilities. Wink's question about resisting evil without adding to it points in two directions at once, thereby capturing one of the central tensions we face. On the one hand, we human beings of good will, especially those of us inclined toward pacifism, assume that at the heart of our lives we have a responsibility to resist evil in our world, to seek peace, to be agents of healing – that is, to enter into the brokenness of our present situation and be a force for transformation. On the other hand, we recognize that efforts to overcome evil all too often end up exacerbating the brokenness. We recognize that resisting evil can lead to the use of tactics that add to the evil and transform the actors more than the evil situation.

So, how might we act responsibly while not only remaining true to our core convictions that lead us to seek peace, but also serving as agents of actual healing instead of well-meaning contributors to added brokenness?

In recent years, various strategies with potential for addressing these issues have arisen. These include efforts to add teeth to the enforcement of international law (the International Criminal Court) and the emergence of what has come to be known as the "Responsibility to Protect" (R2P) doctrine affirmed by the United Nations Security Council in 2006. In this general arena of seeking to respond creatively to evil, we could also include creative thinking that has been emerging out of peace church circles related to themes such as restorative justice,[2] "just policing,"[3] and projects such at the 3D Security Initiative[4] and Mennonite Central Committee's "Peace Theology Project."[5]

The tension seemingly inherent for peacemakers in these efforts at responding to evil appears in the tendency to incline either towards "responsibility" in ways that compromise our commitment to nonviolence

and the inherent worth of all human beings, even wrongdoers, or towards "faithfulness" in ways that do not truly contribute to resisting wrongdoing and bringing about needed changes. We face a basic choice. Will we understand this tension as signaling a need to choose one side of it over the other – either retreating into our ecclesial cocoon and accepting our "irresponsibility," or embracing the call to enter the messy world in creative ways that almost certainly will mean leaving our commitment to nonviolence behind? Or will we understand the tension as a call to devote our best energies to finding ways to hold *together* our nonviolence with creative responsibility?

I affirm the need (and the realistic possibility) of taking the "tension-as-opportunity-for-creative-engagement" path. A number of the people and writings cited in notes 2 through 5 below have been embodying just this kind of path; I do not mean to imply that peace church practitioners haven't make significant progress in understanding and applying our peacemaking convictions to the "real world."[6] However, I am not content that we have yet done the necessary work at sharpening our understanding and articulation of the "faithfulness" side of the responsibility/faithfulness dialectic. Our creativity in engaging these issues may be drawing on increasingly depleted traditions of principled pacifism that found their roots more in traditional communities than in carefully articulated theological ethics. We may not have the resources to live creatively with this dialectic unless we do more work on clarifying and solidifying our understanding of our peace ideals.

With this essay I will articulate a perspective on pacifism that might be usable for thoughtfully engaging human security issues. My contribution is mostly as a pastor and theologian, not a practitioner. My hope is to help with the philosophical underpinnings, not to direct a program of engagement – though I will conclude with a few thoughts on how I see the pacifist perspective outlined here possibly applying to our present situation.

What is Pacifism?

The word "pacifism" has the virtue of being a positive term, connoting the affirmation of peace more than simply the opposition to violence. It is quite recent in English, dating back perhaps only about 100 years. It was not listed in the 1904 *Complete Oxford Dictionary*. According to the Supplement to the *Oxford English Dictionary* in 1982, the first occurrence came in 1902 at

an international peace conference as an English version of the French word *pacifisme*, used to express opposition to war.[7] However, the French term originally had the meaning of "making peace," not simply "opposing war."

The root word is "*paci*" (from *pax*), "peace." If we take the word "pacifism" literally, we could define it as love of peace, or devotion to peace. We might best think of pacifism as the conviction that no other value or necessity takes priority over the commitment to peace. Hence, pacifism is more than simply approving of peace (which everyone in some sense would do). It also includes the conviction that peace stands higher than any commitment that could justify the use of violence. We will need to flesh out much more what we mean by "peace," of course. The kind of peace that pacifism values as the highest of values is widespread well-being in human communities, peace with justice, peace with equality, peace with health for all.

In what follows, I will sketch a fuller understanding of pacifism and present it as a foundational orienting point. What are the key elements that make up this orienting point? What are the key convictions that provide a pacifist context for discerning how to respond to evil?

Core Pacifist Convictions

(1) *Love of neighbor is the heart of being human.* At its very core, pacifism follows from the conviction that as human beings our central calling is to love our neighbors. The Bible emphasizes this call in numerous places in both Testaments. One of the strongest statements comes in Luke's Gospel. A teacher of the Law asks Jesus what a person must do to attain eternal life – that is, what is the highest calling for human beings. Jesus asks him to answer this question himself, drawing on the core teachings of his tradition. The teacher responds, "Love the Lord your God with all your heart, and with all your soul, and with all your strength, with all your mind; and your neighbor as yourself" (Luke 10:27).

Jesus strongly affirms the teacher's response: "You have given the right answer; do this, and you will live" (10:28). In the version of this encounter reported in Matthew's Gospel, Jesus adds an important assertion concerning Torah: "On these two commandments hang all the law and the prophets" (Matt. 22:40). If you were to boil the Old Testament Law down to

just a few words, this would be it: Love God and love neighbor. As Luke tells the story, the teacher then zeroes in on implications of the Love Command. "And who is my neighbor?" (Luke 10:29). He recognizes that love of God and love of neighbor belong inextricably together. If you don't love the neighbor, you simply are not loving God (see affirmations of this point in 1 John 4:20-21 and Romans 13:8-10). However, the teacher's challenge to Jesus has to do with the definition of "neighbor."

Jesus takes the challenge, and makes it unalterably clear that "neighbor-love" is indeed directly a call to pacifism. Imagine a friend of yours, he says to the teacher, a fellow Jew traveling from Jerusalem down to Jericho (a steep, winding, dangerous trip), and imagine your friend is attacked, beaten, robbed, and left for dead. Now comes the provocative part. As the traveler lies there bleeding, a couple of people pass by and notice the victim. Rather than help, they sidle to the far side of the road and continue on. These are not just random passers-by; they are the very people a Jew would consider "neighbors": a priest and a Levite, two embodiments of the faith community. Finally, someone comes by who is willing to help – extravagantly, as it turns out. This "Good Samaritan" was in fact a Samaritan. Shocking, because Samaritans were the last people the teacher of the law would ever imagine being "neighbors." They were enemies, members of a rival clan.

Jesus' story clearly defines "neighbor" as the one who cares for others in need, including those labeled as enemies. To find eternal life (to fulfill our highest calling as human beings), we must practice this kind of neighbor love. This is the only way we can embody (and validate) our claim to love God. This articulation of what it means to be fully human centers on a vision of each human being linked with each other human being. Pacifism, in light of this vision, has to do with loving each particular person – certainly the extreme cases such as the Samaritan loving his Jewish enemy but everything less extreme as well. Jesus gives us our marching orders for every relationship, every aspect of life.

(2) *No value or cause takes precedence over love of neighbor.* If we understand love of neighbor to extend to each person without exception, including enemies, we are recognizing that such a call to love is our "ultimate principle." To understand love of neighbor as the core of human morality

will lead one to see that no other value or conviction or principle can take precedence over this love. As a consequence, any calculation of moral responsibility must take this commitment to love as central to discernment concerning morally appropriate action. Love of neighbor stands as the conviction that may never be compromised in relation to other convictions. When other important values come into play (such as defense against aggression, the need to hold wrong-doers accountable for their actions, one's duties as a citizen of a particular nation-state, efforts to free people from oppression and injustice, and many others), these must be acted on in ways that do not violate the call to love *each* neighbor.

Such an understanding of the love command calls us to action, not to withdrawal and passivity. As John Howard Yoder points out, Jesus faced one central temptation throughout his public ministry: to use violence in order to uphold the core concerns of Torah.[8] Jesus did not take seriously the temptation to withdraw in order to "love" the world through avoiding impurity or through his own suffering. This "Essene option" was not a serious temptation for him. But the "Zealot" option clearly was, the option to bring God's rule into being by force, to "do good" at the expense of treating some people as means instead of ends. Jesus understood the call to love the neighbor as a call actively to resist the injustices of the day and actively to seek to empower and liberate those oppressed by such injustices.

However, this call is not a call to draw lines between the "neighbor" whom one fights to support against enemies who are not considered neighbors. From early in his ministry, Jesus makes it clear that his kind of active love refuses to draw such lines. The kind of transformation Jesus embodied meant injustice would be resisted in ways that did not visit suffering upon the enemy but instead accepted self-suffering as the cost of genuine love.[9]

Jesus' approach challenges pacifists today to hold two truths together at all times. The first truth is that love of neighbor leads to involvement in resistance and transformation work. The second is that this love requires a refusal to exclude anyone. Hence, the need for creativity. How do we involve ourselves in ways that show love toward everyone? How do we resist evil in ways that are consistent with love for each neighbor?

The term "pacifism" connotes that "peace," holistically understood as pertaining to widespread well-being linked with all-encompassing love

of neighbors, stands as our core value. This is the one "ism" that does not elevate the penultimate to an ultimate, because holistic peace (love of God and neighbor, in Jesus' terms) is the ultimate.

(3) *Pacifism has to do with life in* every *aspect of human existence.* Since pacifism stands at the center of our understanding of human morality, we believe it informs all areas of life. For example, we recognize that Jesus' message speaks to life here and now. So we reject a present/future separation as if Jesus' love-centered ethic is normative only in some future heavenly setting. Jesus used apocalyptic imagery to "reveal" God's rule in the present, requiring immediate choices about our loyalties. Jesus called for a commitment to God's kingdom vis-à-vis Caesar's kingdom, a commitment that could lead to a confrontation to the death.

As well, we reject any kind of personal/social separation, as if Jesus' love-centered ethic is normative for his followers' personal lives in families, neighborhoods, and faith-communities, but another ethic of "responsibility" governs their actions as citizens. This "responsibility" ethic has traditionally been understood to call for violence on occasion, where enemies of one's nation-state become non-neighbors. Jesus did speak directly to political relationships from start to finish.[10] His most alluring temptation was *how* to shape his political practices, not *whether* to be political or not. The love command calls pacifists to seek wholeness in all areas of life but always in ways consistent with love. This calls us to see *all* areas of life both as places where we should participate and as lending themselves to being shaped by the call to love.

This is a call to think and act as if pacifism is *always* one's core moral value.[11] One does not limit the relevance of one's convictions by accepting a high level of incommensurability between pacifist convictions and the "real world."[12] The Bible contains myriad examples of prophets and teachers who understood the word of God, the message of Torah, the teaching of Jesus, to speak to the world of kings and empires, wars, and rumors of wars.

Pacifists will always challenge leaders who wield power to consider the requirements of respect and compassion for all people, and will expect that such challenges can be understood and acted upon. Because of the universal applicability of pacifist values, pacifists should also recognize

that their role need not always be one of standing outside the "corridors of power" beseeching decision-makers to take them seriously. Pacifists need not exclude themselves from the exercise of power in principle. The responsibility to practice consistent love should lead anyone in power to make decisions that are respectful and always move away from violence and injustice.

(4) *We are destined for wholeness; the key issue is* how *we reach that destination.* We may think of human destiny in two mutually reinforcing senses: destiny has to do (a) with our nature and purpose and (b) with our final outcome. A pacifist anthropology understands human beings to be capable of living at harmony with one another and with the rest of creation, with the hope that such harmony is the direction toward which we are moving.

This peaceable destiny may be derived from understanding human evolution to be grounded in the fundamental reality of cooperation (more than competition).[13] Of course, many evolutionists argue that humans are naturally inclined toward violence. This debate may be interminable, though it seems clear that debaters' assumptions provide a powerful influence on how ambiguous data are interpreted. Pacifist assumptions may not be easily vindicated, but neither are they easily refuted.[14]

The biblical story also seems to lend itself to various interpretations. However, the most fundamental orientation of the Bible assumes that human beings are indeed capable of moral responsibility.[15] Torah, the teaching of Jesus, and the moral exhortations of Paul all presuppose the likelihood of faithfulness. The call to peaceable living is doable in this life, which is why humans are accountable for their failure to live in peace.

The Book of Revelation – despite the tendency of many to read it as a book of violence – makes clear that human beings who so choose may indeed "follow the Lamb wherever he goes" (Rev. 14:4). Revelation portrays the culmination of human history in a healed community populated by reconciled enemies (Rev. 21–22; note especially the presence of "the kings of the earth" [21:24] and the healing of "nations" [22:2], both of which are specified earlier in the book and throughout the Bible as enemies of God and God's people). The message of Revelation speaks to the human need for hope and purpose. In the face of the overwhelming power of the idolatries

and blasphemies of the Roman Empire, Revelation promises an outcome of healing and restoration. The focus, however, is not on a pre-determined happy outcome of history regardless of humanity's actions but on the *means* to achieve that hopeful outcome.

Revelation portrays Jesus' path to peace, summarized in 1:5-6: "the faithful witness" who lived according to the love command and suffered martyrdom as a consequence, "the first born of the dead" whose witness God vindicated through resurrection, the "ruler of the kings of the earth" who reveals the true nature of the grain of the universe, and the one who makes of his followers "a kingdom, priests serving his God and Father." The message of Revelation thus illustrates the conviction that regardless of how certain we may be about the actual paradisical conclusion to human history, we may be certain about the only *means* for achieving that outcome. The New Jerusalem is home for those who embody the way of Jesus, following his path of love even in the face of overwhelming violence and domination. Revelation promises that in following this path, Jesus and his followers may hope to transform the very nations who have persecuted them through the ages.

(5) *We understand our social ethics in relation to the Powers – and the hope that they might be transformed.* An understanding of human beings as not inherently violent and having a peaceable destiny leads to paying close attention to the dynamics in human existence that do foster violence. If the terrible violence that bedevils our world does not originate in human nature, how do we understand its presence?

We may draw on New Testament language of "principalities and powers." A Powers analysis such as articulated by Walter Wink[16] suggests that violence has mostly to do with "fallen" social structures that shape our environment in ways which move us toward violence. The Powers are simultaneously created good, fallen, and redeemable.[17] We live our lives amidst these social dynamics that reach into every area of existence.

The "goodness" of the Powers means they are necessary for the functioning of human life. The Powers enable society to organize for accomplishing tasks needed to sustain life – for example, local government provides for public utilities, the Postal Service delivers our mail, colleges

educate, agricultural structures provide our food. The *purpose* of human institutions is to serve human well-being. The "fallenness" of the Powers means these structures tend to seek our loyalties in ways that foster alienation and conflict. We require organization for economic activity, yet some of the organizations that have evolved become hungry for more and more profit at the expense of environmental health. The nation-state meets many important human needs but also becomes an object of violence-enhancing idolatry. The "redeemability" of the Powers means the structures do not *have* to be idolatrous and destructive to human well-being. We do not have to have a criminal justice system that focuses more on punishment and privatized profit than on the healing of victims and offenders. We do not have to have an agricultural system that treats farming as an extractive industry rather than a sustainable and cooperative effort.

Wink argues that violence in our society stems from religious-like beliefs in the redemptive nature of violence. Hence, the Powers of militarism benefit from this myth of redemptive violence. Our nation goes to war because of the momentum created by those Powers shaping our country's values and practices, not because of careful moral discernment. We Americans believe (blindly, against the actual evidence) in the efficacy of investing more money in our military-industrial complex than does the rest of the world combined.

Pacifists argue that self-awareness about our core values (human community; suspicion of the story told by government and popular culture about the necessity of militarism; careful assessment of the true consequences of preparing for and making war) frees us from the spiral of violence our world currently is locked into. Such a freeing requires awareness of how the Powers shape our consciousness toward self-destructive, irrational policies and practices. The Powers analysis helps us understand the roots of violence in society,[18] the possibilities of resistance, and the hope for transformation. Pacifism plays an essential role in discernment. Pacifists suggest that the presence of violence is always likely a sign of the domination of fallen Powers; violence serves as kind of a canary in the mine signaling the presence of distorted loyalties.

(6) *The enemy is evil-doing itself, not any particular nation or group of human beings.* In our moral discernment, we should focus on stable

understandings of the values that we see as central – not on more fluid uses of values language that serve particular interests (fallen Powers). Only with stable understandings applied evenly may we hope actually to discern and respond in ways that address the true problems of violence and injustice.

Consider, for example, the issue of "terrorism." We can agree that terrorism is a bad thing and should be opposed. People of good will should also agree that terrorism should be opposed and overcome, regardless of its source. We start, then, with a reasonably stable definition of terrorism so we know what we are opposing. The US Army in the Ronald Reagan administration, facing the emergence of terrorism as a central national security theme, presented this definition: "The calculated use of violence or threat of violence to attain goals that are political, religious, or ideological in nature through intimidation, coercion, or instilling fear."[19] This definition may not be the best we could imagine, but it would surely strike most people of good will as reasonable and a good start. The key moral issue, then, is to seek a consistent and objective application of this definition. If terrorism itself is our problem and our responsibility is to resist it, we would oppose *any and all* incidents of "the calculated use of violence" to attain "political, religious, or ideological" goals.

When we follow a stable definition of terrorism and apply it consistently, we will see terrorism itself as our key problem – not any particular group of alleged terrorists. That is, if we truly oppose terrorism, we will not allow the rubric of terrorism to lead us to label only certain people as "terrorists" in a way that serves political agendas. We will be especially sensitive to the proclivity to use the label both to stigmatize political opponents in ways justifying violent responses to them and to justify acts that according to a stable definition of terrorism are terrorist acts themselves.

In his history of the use of car bombs, Mike Davis shows that the driving force in using such bombs has been covert American operatives and allies such as Israel.[20] This illustrates how tactics that clearly fit the US Army's definition of "terrorism" are not generally defined as terrorism when used by status quo powers. The use of terrorist methods (which by definition surely include aerial bombardments and "targeted assassinations"[21]) is immoral, regardless of who uses them. Pacifists could agree that terrorists must be brought to account for their actions; terrorist acts are indeed crimes

of the most heinous variety. However, such accountability must be applied consistently.

(7) *In the name of "realism," we should not trust our nation's power elite when they use violent methods.* While operating with an essentially optimistic anthropology that denies human beings are inherently violent, pacifists also take seriously the human proclivity toward selfishness and seeking advantage over others. However, in contrast to "realists" who highlight such proclivities (e.g., Augustine, Thomas Hobbes, and Reinhold Niebuhr), pacifists draw from this awareness of human sinfulness the opposite of support for coercive discipline from the power elite to "keep sinful humanity in line." Because of their realistic view of morality, pacifists insist that people in power are the ones least likely to be capable of careful, morally constructive uses of "limited" violence. In the name of "realism," pacifists argue for a strong attitude of suspicion toward justifications of violence coming from people in power. If humanity is shaped powerfully by sin and selfishness and thus prone to misuse of power, those most likely to be guilty of such misuse are the people with the most power.

So, pacifists counter the claim that pacifism is unsuited for the real world by saying that those who believe people in power tend to act objectively and in the service of genuine human security are the ones who are the most naïve and romantic.

Just one set of examples may be cited. A close, objective examination of the US war in Vietnam shows a large web of self-defeating, immoral policies that arose from ignorance, incompetence, and willful selfishness on the part of the American power elite. As the internal processes of the US government have become clearer in the years since 1975, their problematic character is more obvious. For many years after policy analysts understood that the Americans could not win this war, the government pressed on. The continuation of the war caused unimaginable death and destruction, not in hope of actually winning the war but mostly for domestic political concerns.[22]

To the extent that human beings, especially in groups, are shaped and motivated by selfishness and hindered from acting on the basis of neighbor love, we should be especially wary of giving the power of death-dealing

violence to people in leadership. Reinhold Niebuhr's "moral man, immoral society"[23] analysis contains wisdom. However, rather than concluding the "immorality" of groups should encourage more acceptance of the "rough justice" of order-based public policy, awareness of such immorality should instead lead to heightened resistance to allowing people in power to decide in favor of enhanced military power.[24] Pacifists should especially be wary of the temptation to accept the "rules of the game" made by people corrupted by holding death-dealing power. We indeed should take every opportunity to work within the system to reduce its reliance on violence.[25] However, we must also recognize the tendency toward corruption in these halls of power.

(8) *We may believe that the system always has the potential to make decisions for less (or no) violence, but a pacifist commitment to peace over loyalty to the system also requires us to stand aside on occasion.* Even though the nation-state's systemic dynamics tend consistently to select for violence,[26] pacifists understand that in each choice policy-makers make, options exist for less, rather than more, violence. So, we do have justification for advocating alternatives to the most violent actions in the midst of conflicts. Even more may we advocate farsighted policies that diminish the likelihood of conflicts emerging. Pacifists should join with others of good will, including those seeking to adhere to a just war theory that is applied rigorously,[27] in supporting and seeking to enact violence-reducing policies.[28]

Traditional historical discussions minimize or ignore altogether currents of creative nonviolence in world history. However, we are learning that such currents can indeed be identified.[29] Alternatives to violence do exist and have been followed.[30] Yet pacifists also recognize that their advocacy may be ignored, and nation-states may make irrevocable choices in favor of violence. In such cases, pacifists simply will not be able to play a public policy role while still adhering to their convictions about the centrality of love of neighbor.

This recognition of the need to "stand aside" does not stem from a quest for purity. Rather, it stems from a sense that pacifists' central calling is seeking actively to love neighbors, not to hold power or to further the interests of any particular nation state or other human institution. Pacifists

recognize that in the name of pursuing genuine peace they must at times seek other avenues of involvement than policy-making and state-centered activities. If the core criterion for appropriate action is seeking to love neighbors, pacifists will reject the claim that the only way to be "responsible" is to act within the paradigm of inevitable violence.

For example, numerous American pacifists were aware of the danger facing Jewish people in Nazi Germany in the 1930s. They actively sought to address that danger in numerous ways, tragically finding their efforts generally rebuffed by the American government.[31] When events evolved to the point of total war, pacifists turned their efforts to other problems, offering assistance to deal with the wounds of war and addressing other human needs (such as care for mentally ill people). They did not believe violence could solve the problem of Nazi hostility toward Jews, but when they faced a series of dead ends in seeking to save Jewish lives, they found other avenues to protect life.

The twentieth century saw the emergence of remarkable efforts by pacifists to meet human needs and thereby provide alternatives to violence-centered politics. Quakers with American Friends Service Committee, Mennonites with Mennonite Central Committee, and Brethren with the Brethren Service Committee created organizations that greatly expanded their work as needs increased. These works of service are a remarkable witness to the powerful commitment pacifists have made to being *responsible* and *relevant* in face of human security needs. And this witness stands as proof that commitment to love of neighbor may bear remarkable fruit, even when not channeled through the coercive dynamics of state politics.

Engaged Pacifism
These eight convictions concerning engaged pacifism may be summed up thus: We live most authentically as human beings when we love our neighbors. We best understand this call to love the neighbor as a call to consider each person as our neighbor and thus deserving of our love. That is, we love even those considered to be enemies; we love even those who are committing acts of evil.

Seeing the call to love neighbor as a commitment that cannot be superseded by any other cause or value leads us in two directions

simultaneously: (1) that we have a calling to engage, to actively resist evil, and to help vulnerable people, and that this calling applies to all areas of life; and (2) that however we do engage, we remain bound by the call to love wrong-doers and enemies. These two parts of our calling – actively engaging in resisting evil, and while doing so remaining committed to loving our adversaries – may be a particular burden for engaged pacifism. However, they are also a call to creativity.

In regard to the question of pacifist perspectives on strategies of intervention such as the International Criminal Court (ICC) and the Responsibility to Protect (R2P) doctrine, we may think both of general political support for governmental officials and of specific support for, and participation in, these strategies. Pacifists may support governmental officials who seek to involve their countries in institutions that respond to evil-doing with "police action" founded on international law and international cooperation. Such support especially contrasts with tendencies all too common in the US to oppose international collaboration in lieu of the mostly unilateral projection of American military power. Pacifists should also challenge officials to treat values and laws as stable entities that apply equally to all parties. Hence, for example, insofar as the ICC ignores violations of international law in incidents such as the US invasion of Iraq, we should be calling for more rigorous and morally consistent practices.

Pacifists will remain suspicious of the use of R2P philosophies that too easily justify violence and that in practice serve the interests of wealthy and powerful nations.[32] A key criterion will be whether the R2P proposals provide loopholes that would allow countries such as the United States to conduct their own military operations under the cover of R2P. Since pacifism concludes that violence is never consistent with the fundamental call to love all neighbors – and that this conviction is true of all violence – pacifists will not be able to offer direct support for, or participation in, responses to evil-doing that do rely on violence.

The fruitful work of non-governmental organizations (e.g., the peace church service committees) in enhancing human well-being in conflict situations without violence provides clear alternatives. The choice for pacifists is not either to support "necessary" violence at times in the name of responding to evil doing or else to withdraw into irresponsible purity.

Pacifists may actively participate in these alternative means to enhance well-being, and may also provide critical input to the practices of the ICC and R2P in hopes of moving those practices toward a consistent practice of neighbor-care. In the end, though, the discussion of responses to evil-doing should challenge people of good will, especially pacifists, to cultivate a healthy skepticism towards nation-states and the proclivity of the state to enhance its own power via violence. The nation-state as we experience it today is a human construct that needs to be critiqued, not deferred to, when it comes to responding to the human need for security.[33]

Notes

[1] Walter Wink, *Engaging the Powers: Discernment and Resistance in a World of Domination* (Minneapolis: Fortress Press, 1992), 3.

[2] See Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, 3rd ed. (Scottdale, PA: Herald Press, 2005) and Jarem Sawatsky, *Justpeace Ethics: A Guide to Restorative Justice and Peacebuilding* (Eugene, OR: Cascade Books, 2008).

[3] See Ivan J. Kauffman, ed., *Just-Policing: Mennonite-Catholic Theological Colloquium 2002* (Kitchener, ON: Pandora Press, 2004), and Gerald W. Schlabach and Jim Wallis, eds. *Just Policing, Not War: An Alternative Response to World Violence* (Collegeville, MN: Liturgical Press, 2007).

[4] The 3D Security Initiative was founded by Lisa Schirch, formerly Professor of Peacebuilding at Eastern Mennonite University's Center for Justice and Peacebuilding. The "three Ds" are development, defense, and diplomacy. The Initiative's website (www.3dsecurity.org) summarizes its focus thus: "The 3D Security Initiative is a policy voice for civil society and conflict prevention with a new take on human security: connecting policymakers with global civil society networks, engaging in civil-military dialogue, and increasing investments in conflict prevention and peacebuilding."

[5] The fruit of MCC's study project was published in Duane K. Friesen and Gerald W. Schlabach, eds., *At Peace and Unafraid: Public Order, Security, and the Wisdom of the Cross* (Scottdale, PA: Herald Press, 2005).

[6] For background leading about up to the point where the Mennonite-related efforts at creative engagement alluded to above became operational, see Leo Driedger and Donald B. Kraybill, *Mennonite Peacemaking: From Quietism to Activism* (Scottdale, PA: Herald Press, 1994).

[7] Jenny Teichman, *Pacifism and the Just War: A Study in Applied Philosophy* (New York: Blackwell, 1986), 1.

[8] This is the central argument of John Howard Yoder, *The Politics of Jesus*, 2nd ed. (Grand Rapids: Eerdmans, 1994).

[9] On this point, Gandhi captured the essence of Jesus' message better than the vast majority of Christians. See Joan Bondurant, *Conquest of Violence: The Gandhian Philosophy of Conflict* (Princeton: Princeton Univ. Press, 1958), 16-34.

[10] Again, see Yoder, *Politics*.

[11] See Gerald Biesecker-Mast and J. Denny Weaver, eds., *Teaching Peace: Nonviolence and the Liberal Arts* (Lanham, MD: Rowman and Littlefield, 2003); Nancey Murphy and George F. R. Ellis, *On the Moral Nature of the Universe: Theology, Cosmology, and Ethics* (Minneapolis: Fortress Press, 1996); and James C. Juhnke and Carol M. Hunter, *The Missing Peace: The Search for Nonviolent Alternatives in United States History* (Kitchener, ON: Pandora Press, 2001).

[12] For a critique of one attempt to guide pacifists for living with this incommensurability via a "two-language" analysis, see Ted Grimsrud, "Anabaptist Faith and American Democracy," in *Embodying the Way of Jesus: Anabaptist Convictions for the Twenty-First Century* (Eugene, OR: Wipf and Stock, 2007), 141-59.

[13] See Peter Kropotkin, *Mutual Aid: A Factor of Evolution* (Charleston, SC: Forgotten Books, 2003 [1902]); Ashley Montagu, *The Nature of Human Aggression* (New York: Oxford Univ. Press, 1976); and Mary E. Clark, *In Search of Human Nature* (New York: Routledge, 2002).

[14] See Wink, *Engaging the Powers*, 33-39.

[15] For a defense of this assertion, see my chapter, "Humanness: A Blessing or a Curse?" in *Theology as if Jesus Matters* (Telford, PA: Cascadia, 2009), 106-19. I also challenge the "nature as red in tooth and claw" perspective in the chapter, "This is God's World: So What?" in that same book, 75-89.

[16] Key writings by Wink include *Naming the Powers: The Language of Power in the New Testament* (Minneapolis: Fortress Press, 1984); *Unmasking the Powers: The Invisible Forces that Determine Human Existence* (Minneapolis: Fortress Press, 1986); *Engaging the Powers: Discernment and Resistance in a World of Domination* (Minneapolis: Fortress Press, 1992); and *The Powers That Be: Theology for a New Millennium* (New York: Doubleday, 1998). See also Ray Gingerich and Ted Grimsrud, eds., *Transforming the Powers: Peace, Justice, and the Domination System* (Minneapolis: Fortress Press, 2006).

[17] Wink, *Engaging the Powers*, 65-85.

[18] James Gilligan, *Violence: Our Deadly Epidemic and Its Causes* (New York: Putnam, 1996) argues for the social dynamics that lie at the heart of American violence, thereby providing support for a Powers analysis.

[19] *United States Army Operational Concept for Terrorism Counteration* (TRADOC Pamphlet No. 525-37, 1984).

[20] Mike Davis, *Buda's Wagon: A Brief History of the Car Bomb* (New York: Verso Books, 2007). See also an earlier version of Davis's research on the TomDispatch website (tomdispatch.com) posted April 11 and 13, 2006.

[21] See Jane Mayer, "The Predator War," *The New Yorker* 26 October 2009, 36-45, on one example of the CIA's "targeted assassination," authorized by President Obama, of a Taliban leader hiding in Pakistan. Baitullah Mehsud was finally killed in August 2009, in a drone missile attack that also killed eleven others. Mayer notes that the effort to kill Mehsud involved 16 missile strikes and killed perhaps as many as 321 people.

[22] See Marilyn Young, *The Vietnam Wars, 1945-1990* (New York: HarperPerennial, 1991), and John Prados, *Vietnam: The History of an Unwinnable War, 1945-1975* (Lawrence, KS: Univ. Press of Kansas, 2009).

[23] Reinhold Niebuhr, *Moral Man, Immoral Society: A Study of Ethics and Politics* (Louisville: Westminster John Knox Press, 2002 [1932])*.*

[24] See James Carroll, *House of War: The Pentagon and the Disastrous Rise of American Power* (Boston: Houghton-Mifflin, 2006), for one case where access to death-dealing power corrupted American leadership.

[25] Note the career of longtime American Friends Service Committee director Clarence Pickett, who used his direct access to President Franklin Roosevelt to good effect but maintained a consistent stance in opposition to state violence. See Lawrence McK. Miller, *Witness for Humanity: A Biography of Clarence Pickett* (Wallingford, PA: Pendle Hill Publications, 1999).

[26] Andrew Bard Schmookler, *The Parable of the Tribes: The Problem of Power in Social Evolution* (Berkeley: Univ. of California Press, 1983).

[27] See John Howard Yoder, *When War is Unjust: Being Honest in Just-War Thinking*, 2nd edition (Eugene, OR: Wipf and Stock, 1996).

[28] See Wink, *Engaging the Powers*, 220-29.

[29] See, for example, Juhnke and Hunter, *The Missing Peace,* and Peter Ackerman and Jack Duvall, *A Force More Powerful: A Century of Nonviolent Conflict* (New York: Palgrave Macmillan, 2001).

[30] See Gene Sharp, *Waging Nonviolent Struggle: 20th Century Practice and 21st Century Potential* (Boston: Porter Sargent, 2005).

[31] See Nicholson Baker, *The Beginnings of World War II, the End of Civilization* (New York: Simon and Schuster, 2008), and Clarence E. Pickett, *For More Than Bread: An Autobiographical Account of Twenty-Two Years' Work with the American Friends Service Committee* (Boston: Little, Brown, 1953).

[32] See the critique of Noam Chomsky, *Human Rights in the New Millennium* (London: Centre for the Study of Human Rights, 2009), drawing a distinction between two formulations of the Responsibility to Protect philosophy, one from the Global South reflected in the 2005 United Nations World Summit and the other from the Report of the International Commission on Intervention and State Sovereignty on Responsibility to Protect (known as the "Evans Report" for the leading role played by former Australian Foreign Minister Gareth Evans).

[33] Two recent, quite different, books enhance our awareness of the violent tendencies of nation-states: William T. Cavanaugh, *The Myth of Religious Violence: Secular Ideology and the Roots of Modern Conflict* (New York: Oxford Univ. Press, 2009) and James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale Univ. Press, 2009). For a challenge to the idea that in face of natural disasters we need state and military centered top-down order, see Rebecca Solnit, *A Paradise Built in Hell: The Extraordinary Communities That Arise in Disaster* (New York: Viking, 2009).

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Responsibility to Protect:
Development of the Concept, and a Critique

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With research assistance by Kirk Harris and Mila Susanti

Genocide and Mass Atrocities: A Problem in Need of a Solution?

As the Berlin Wall fell and the Cold War between the United States and the Soviet Union came to an end in the late 1980s and early 1990s, Western pundits and political scientists were euphoric. Widespread optimism was pervasive, as were predictions that humanity had reached "the End of History,"[1] in which the world steadily becomes wealthier and more democratic. Yet the collapse of the old order failed to lead to the establishment of the new and better one. Although the world was devoid of a major ideological-strategic conflict, such as that between the North Atlantic Treaty Organization (NATO) capitalist countries and the socialist Soviet bloc's Warsaw Pact, the 1990s were filled with just as much violence and warfare as previous decades. Often sparked by disintegrating Cold War structures, this violence frequently grew chaotic, as conflict situations spiraled out of control and the world witnessed ongoing rounds of genocide and ethnic cleansing. The interethnic warfare in Bosnia and Herzegovina from 1992 to 1995, the genocidal rampage that took place in Rwanda in 1994, and the chaos and total disintegration of Somalia throughout the decade are the most pronounced examples of this violence.

During the Cold War, the US and the Soviet Union were directly or indirectly involved in almost all local conflicts, but notable in each of the examples above was the relative lack of involvement of the international community. Violence in these conflicts was largely allowed to run its course. The overarching principle behind this inaction was the 1648 Treaty of Westphalia, which established the principle of non-intervention in the domestic affairs of sovereign states as the norm for international relations. In attempting to reconcile the contradictions between this long-established right of sovereignty and international commitments to prevent genocide, uphold human rights, and prosecute war crimes, members of the international

community tried to create a new principle to respond to the kinds of atrocities on such public display in the 1990s.

This new doctrine, nobly titled the "Responsibility to Protect," is the outcome of years of research studies and extensive negotiating between the UN and member states. As an idea, the Responsibility to Protect ("R2P," or sometimes "RtoP") is groundbreaking. It asserts that all states have the responsibility to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity, and that the international community has an obligation to help when states fail in this regard. In practice the doctrine remains bound to the idea that military force is an ultimate solution to intractable problems; it is also subject to manipulation by powerful nations. While I believe we must affirm the Responsibility to Protect, we must be conscious of the ways it can be manipulated for covert political goals, and we must repudiate the concept that protection is enhanced by military action.

Historical Roots of the Responsibility to Protect

The United Nations was formed after World War II as an organization of sovereign states that put forward the radical idea of outlawing war as a means of solving international conflict. It went so far as to prohibit all use of military force with the exception of self-defense when attacked[2] or when authorized by the Security Council under Chapter VII of the Charter in situations of grave threats to peace and international security.[3] The UN Charter actually prohibits international interference in all other cases: "Nothing contained in the . . . charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . . ."[4] In this sense, the Charter upholds the notion of sovereignty as a guarantor of international peace and security. By defending the territorial integrity of each state, the new UN system sought to protect the interests of all states by averting a repeat of World War II.

The organization's structure was established by the victors of that war, however, and tends to protect the interests of those powerful nations while often subjugating the interests of others. All decisions to authorize war, blockades, economic sanctions, or peacekeeping missions are made in the UN Security Council, which possesses "primary responsibility for the

maintenance of international peace and security."[5] The Council is composed of five Permanent Members (known as the P5: China, France, Russia, the United Kingdom, and the US) who have veto power, as well as ten Elected Members (the E10) who are chosen for a two-year term by regional groupings and who have a vote but no veto.

It is easy to see how this affects the decisions about where the UN sends peacekeeping troops. The Security Council was able to pass a resolution and send peacekeeping troops to protect the citizens of Sierra Leone or Liberia, but was unable to approve a resolution to send peacekeeping forces to protect the people of Chechnya from Russian troops (there would have been a Russian veto) or the people of Afghanistan from US and NATO troops (there would have been a US veto). The UN also does not have a police force or a standing army, so if the Security Council authorizes a peacekeeping force anywhere in the world, the force can go forward only if there are nations that offer the necessary police, soldiers, and/or military equipment.

Although it was established by sovereign states and operates largely to protect the interests of these states, the United Nations also houses several treaties and conventions meant to guarantee the rights of individuals within and across state boundaries. Chief among these is the Universal Declaration of Human Rights. In addition to upholding the personal, legal, and political rights familiar to Western democracies, the document radically affirms economic and social rights such as the right to decent working conditions, health, and education.[6] Another crucial document guaranteeing the rights of individuals, and an important precursor to the Responsibility to Protect, is the Convention on the Prevention of the Crime of Genocide, which was passed on December 9, 1948 by the General Assembly and entered into force January 12, 1951.

The Convention commits states to prevent and punish those who perpetrate or plan "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group,"[7] offering legal protection for populations who fear extermination at the hands of the state. The recently approved International Criminal Court (ICC) also claims the right to judge individuals for genocide, war crimes, or crimes against humanity when national governments are unable or unwilling to prosecute those individuals.[8] This landmark new body, created by the Rome Statute of 1999, has issued

several arrest warrants, but has yet to bring a case to trial.

Building on these formal institutions, the tragic events of the 1990s called into question the morality and efficacy of the norm of non-intervention in the affairs of sovereign states. Francis M. Deng (currently the Special Adviser to the UN Secretary General on the Prevention of Genocide) and his colleagues from the Brookings Institution were among the first to suggest that the concept of sovereignty needed reframing. Deng states that rather than being a shield behind which states and governments can barricade themselves from criticism, sovereignty is the ability or capacity of states to protect their citizens from violence and mass atrocities.[9] Framed in this manner, sovereignty is the normative function of the state rather than a default status that legitimizes its actions. The purpose of a government is to protect its citizens – that is simply what sovereign states do.

A parallel process to those discussed is the hopeful development of the European Union, which has expanded the notion of sovereignty to include most of a continent; but even among European nations there seems to be reluctance to cede state sovereignty too extensively in the direction of a continental union, much less in the direction of a world government that could guarantee the rights of, and protection for, all citizens. Reinterpretation of this notion of sovereignty as well as treaties to promote justice and human rights are all movements towards granting individual rights that transcend the rights of sovereign states. However, implementing these rights within sovereign states remains largely voluntary, and the UN's power to enforce these principles against the will of a state is left largely to moral suasion.

Introducing the Responsibility to Protect

Just as the tension between sovereignty and human rights is growing, in practice the international community, particularly the UN Security Council, has begun to change how it deals with issues of "international peace and security."[10] Despite the "debacle" of Somalia, the "pathetically inadequate" response to Rwanda, and the "lamentable failure" of the UN in the Balkans,[11] the decade of the 1990s did witness a growing willingness of the Security Council to respond to civil war, state failure, and other violent calamities that put civilian populations at risk. Although famine and violence in Somalia were largely internal matters, the Security Council chose to define the

situation as a threat to international peace and security, authorizing a Chapter VII intervention.[12] The Council also validated the intervention of regional organizations when it gave *ex post facto* blessings to the interventions of the Economic Community of West African States (ECOWAS) Monitoring Group (ECOMOG) in Liberia in 1992 and Sierra Leone in 1997.[13]

Support for interventionism gained additional voices outside of the UN itself. French Foreign Minister Bernard Kouchner and others went so far at the time as to claim a "right to intervene."[14] Such sentiments and actions signal an increasing awareness by some members of the international community of the cross-border implications of internal conflict and violence. They also point to a shift in how global and regional actors respond to crises of sovereignty when states are unable or unwilling to prevent atrocities against their populations, or worse, are complicit in these atrocities.

UN Secretary General Kofi Annan identified the problems with the non-interventionist approach in his addresses to the General Assembly in 1999 and 2000. In his 1999 address, Annan challenged member states to resolve the "dilemma of . . . humanitarian intervention," and declared that the UN's greatest challenge in the new century is to create unity behind the principle that "massive and systemic violations of human rights . . . should not be allowed to stand" while leaving open the option of "coercive" measures, undertaken by the international community in concert, to enforce accountability for such violations.[15] In presenting his landmark Millennium Report to the General Assembly a year later, Annan reiterated his challenge to protect vulnerable peoples, noting that in the decade of the 1990s, five million people were killed by internal wars alone. He stated that the international community must do a better job of preventing these conflicts in the first place, while asserting that "these threats . . . require us to think of security less in terms of merely defending territory, and more in terms of protecting people."[16]

International Commission on Intervention and State Sovereignty

This challenge laid down by the Secretary General was seized by the Canadian government. At the September 2000 plenary meeting of the UN, the government of Canada and several major private foundations announced the creation of a high-level International Commission on Intervention and State

Sovereignty (ICISS), co-chaired by Gareth Evans (Australia) and Mohamed Sahnoun (Algeria). In its report, presented to the Secretary General in 2001, the Commission outlined a doctrine termed the "Responsibility to Protect."[17] Their report, which attracted a great deal of praise and controversy, forms the ideological foundation for the present debate.

In the words of the Commission, the term "Responsibility to Protect" reflects "the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states."[18] The report examines three ways in which the international community discharges the responsibility to protect – the responsibility to prevent, the responsibility to react, and the responsibility to rebuild.

The ICISS report emphasizes the paramount importance of prevention efforts as the first element of R2P. The Carnegie Commission on Preventing Deadly Conflict estimates that the world spent approximately $200 billion on managing seven different major interventions during the 1990s, of which $130 billion could have been saved by a stronger preventative approach.[19] The ICISS report describes prevention efforts as falling into either of two categories. The first level of prevention efforts is directed at root causes and entails support for weak states at risk for the commission of mass atrocities. This means dealing with political situations by strengthening fragile democratic institutions and supporting appropriate constitutional arrangements, addressing economic needs such as development and trade, promoting legal protections for vulnerable groups, and pushing for security sector training and accountability.[20] The second level entails short-term efforts to directly prevent vulnerable situations from flaring up to the point where intervention is necessary. Political and diplomatic engagement, economic and political sanctions, offers of arbitration and adjudication, threat of prosecution, and deployment of observers are all instruments that the international community may use to intercede prior to a humanitarian crisis and military action.[21]

The most controversial proposal of the ICISS report is the "responsibility to react" – the idea that when a state is incapable of addressing, or refuses to address, a situation where a population undeniably

requires protection, "then interventionary measures by other members of the broader community of states may be required."[22] Such interventionary steps must meet six requirements: (1) An intervention must have a just cause, which the Commission limits to large scale loss of life that is the product of state action, neglect, failure, or policies of ethnic cleansing; (2) It must be motivated by the intention to halt or avert human suffering, should be multilateral, and have the consent of the population being "helped"; (3) Military action must be an operation of last resort; (4) The level of force must be the minimum necessary to fulfill the purpose of the intervention; (5) The intervention must have a reasonable prospect of success; (6) The intervention must have authority from the Security Council, the UN General Assembly's "Uniting for Peace" procedure, or a regional organization that has sought the Security Council's support for an intervention within its boundaries.[23]

The final step of R2P is the responsibility to rebuild. After an intervening force has met its goal of ensuring protection for the threatened population, it has the responsibility to repair the damages caused by the mass killing and the military response. Such reconstruction efforts entail peacebuilding measures, rebuilding infrastructure, providing security, undertaking disarmament, demobilization and reintegration of former combatants, supporting development, buttressing justice and reconciliation efforts, and building capacity and local ownership of the post-conflict process.[24]

The 2001 report of the International Commission on Intervention and State Sovereignty was a groundbreaking step in reordering the guiding principles of international responses to crisis situations. Building on the painful lessons of the 1990s, the Commission sought to reconcile the competing claims of strong states that felt justified in intervening to stop atrocities and smaller states that feared this rationale would become an excuse to undermine their governments. However, rather than offering a verdict on this debate, the Commission's articulation of a "responsibility to protect" attempted to change the focus of the discussion from the rights of states to the rights of individuals and vulnerable communities. The report shifted discussion from *legitimating* the use of force to *mandating* protection.

As grand as this vision was, it was neither universally accepted nor

binding. The report placed obligations on both strong and weak states to prevent humanitarian crises and accepted that military action would sometimes, albeit rarely, be necessary to respond to such atrocities. These requirements chafed against both those countries fearing intervention and those uncomfortable with the idea that they had a duty to prevent crises and respond to atrocities. Further, although the report cited prevention as the key component of R2P, the authors devoted most of it to the circumstances under which armed intervention would be acceptable, the subject they knew would be most controversial. This, combined with the tragic timing of the report, published only months after the 9-11 terrorist attacks, slowed down the development of the R2P doctrine.

The Adoption of R2P
Although focus was diverted from R2P, it was not lost. In 2004, the High Level Panel on Threats, Challenges, and Change, commissioned by UN Secretary General Kofi Annan, released its report on the major threats to international peace and security and identified policies to deal with these challenges. The report endorsed the R2P doctrine and reaffirmed the definition of sovereignty as a requirement of the state to protect its own people and meet its obligations to the community of nations.[25] In striking language, the Panel declared that "there is a growing recognition that the issue is not the 'right to intervene' of any State, but the 'responsibility to protect' of every State when it comes to people suffering from avoidable catastrophe…."[26] To meet this responsibility, the Panel described the importance of nonviolent means of averting or ending hostilities, while acknowledging that when such a response is insufficient to stop mass atrocities, the Security Council must be prepared to respond with force as a last resort.[27]

In his own report, "In Larger Freedom," released the next year, Kofi Annan returned to several themes he had covered in his Millennium Report five years earlier, including R2P. He declared that a globalized world calls for a holistic notion of security that deals with a wide range of threats, both traditional and unconventional, which must be met early, with a strong focus on prevention.[28] Most crucially, he affirmed R2P, placing special emphasis on the peaceful elements of the doctrine geared towards protecting human rights and civilian well-being, but affirming the role of the Security Council

to take more coercive action according to the UN Charter.[29]

The most crucial endorsement of R2P came later in that year, when the General Assembly passed a landmark World Summit Outcome Document that served to codify the doctrine as the UN's official position. The Outcome Document declares that all states have the responsibility to protect their populations from "genocide, war crimes, ethnic cleansing, and crimes against humanity."[30] It commits the United Nations to consider on a case-by-case basis, using Chapters VI and VII of the UN Charter, how to protect populations from these crimes using "appropriate diplomatic, humanitarian and other peaceful means."[31] Should these fail, UN member states may take timely action in the Security Council, leaving open the use of Chapter VII of the Charter, and in cooperation with regional organizations, where necessary. Member states committed themselves to helping all states build the capacity to protect their populations, and to assist states under stress before situations flare into open conflicts or crises.

In addition to marking the first time that an international body affirmed R2P and agreed to adhere to it, the Outcome Document is significant because of what it does and does not say. First, it limits the responsibility to protect to four crimes or atrocities: genocide, war crimes, ethnic cleansing, and crimes against humanity. Previous statements recognized "serious violations of international humanitarian law"[32] or large scale loss of life caused by state action, neglect, or failure as acceptable justifications for intervention.[33] Because of the ambiguity and non-universality of these standards, member states chose to use the more established definitions of genocide, war crimes, ethnic cleansing, and crimes against humanity as the foundation for R2P.

Second, the Outcome Document refers to Chapters VI and VIII of the UN Charter. Chapter VI deals with the powers of the Security Council to facilitate the peaceful resolution of disputes. It also empowers the Council to investigate threats to international peace and security and recommend their redress. Chapter VII empowers the Council to authorize various measures, including military action, to deal with these threats. The reference to Chapter VII in the Document is highly pertinent to the function of R2P. It affirms the role of the Security Council in sanctioning the use of force to intervene and halt the four violations cited in the text. While efforts to prevent these atrocities are given paramount importance, R2P is nonetheless a doctrine

that legitimizes military action.

Third, the Outcome Document gives the Security Council sole responsibility for authorizing military intervention to stop the four crimes listed. While the 2001 ICISS report declares that interventions authorized by the Security Council are preferable, it offers a number of alternatives to action by the Council, including action by ad hoc coalitions of willing states.[34] That the Document does not reference such coalitions of the willing precludes the possibility of R2P intervention ever being used against any member of the P5 or their close allies, and it noticeably restricts the circumstances in which military force may be legitimately used to respond to the four crimes.

Follow-up to the Adoption of R2P
The evolution of R2P did not end with the 2005 World Summit Outcome Document. In 2006, the Security Council twice referenced the General Assembly's endorsement of the doctrine in resolutions on the protection of civilians in armed conflict and the deployment of the African Union/United Nations Hybrid Mission in Darfur.[35] Security Council resolution 1674, on the protection of civilians in armed conflict, only briefly references R2P,[36] but its presence in the resolution is important. Endorsement of the doctrine obligates the Council, and by extension its members, to implement it. This implies that the Council will play a more robust role in identifying situations of elevated potential for genocide, war crimes, ethnic cleansing, and crimes against humanity, and, if necessary, authorize military action to respond to these crimes.

This endorsement of R2P was first tested one month after Resolution 1674, when, in response to the crisis in Darfur, Sudan, the Security Council passed Resolution 1706 authorizing the African Union/United Nations Hybrid Mission in Sudan (UNAMID). UNAMID was the first Council action to invoke R2P. It is noteworthy that this action was military in nature. The tragedy in Darfur is awful and worthy of the highest levels of international attention and condemnation. Yet, despite all the safeguards built into the doctrine, it is particularly troubling to me that its first implementation would be in a resolution authorizing a military force.

R2P and the Potential for Manipulation

Darfur illustrates the problems and limitations of the Responsibility to Protect. Although there is generally strong moral support for R2P, when one puts it into practice problems arise. My first concern lies in the potential for the doctrine to be subverted to justify self-serving military intervention by powerful nations. My second and even greater objection is with the moral legitimacy and assumed efficacy of armed intervention.

As for the first concern, despite the helpful words about prevention and rebuilding after intervention, when stripped to its bones R2P is in essence a 21st-century "just war" theory. As with all war justification, the final decision on whether a war is "just" depends largely on who is doing the analysis. All wars are justified in the eyes of the nations that initiate them. We must remember that Hitler invaded the Sudetenland in 1938 in a humanitarian intervention to protect the oppressed civilian population. Further, although R2P requires the approval of the UN Security Council (which was never given), after the rationales of "weapons of mass destruction" and "Al Qaeda" had vanished, George Bush and Tony Blair used R2P to justify their invasion as the protection of the Iraqi people from the tyranny of Saddam Hussein. In 2004, Prime Minister Blair delivered a speech in his home constituency justifying the Iraq war in which he declared that "we surely have a responsibility to act when a nation's people are subjected to a regime such as Saddam's."[37] This after-the-fact justification of a war that has resulted in the deaths of tens of thousands of Iraqis and generated 2 million refugees and 2.7 million internally displaced persons[38] is sadly demonstrative of how far countries will go to claim moral grounds for their actions.

In today's polarized and politicized world, only the five permanent members of the Security Council, or countries with very close allies in that group, can trust the Council with deciding when the world community should intervene to protect vulnerable civilian populations. Historically, imperialist ventures have always been cloaked in noble sentiments like bringing civilization or Christianity to benighted populations, and the citizens and soldiers of those nations, if not always their leaders, actually believed the rhetoric. King Leopold II of Belgium, who founded one of the most brutalized colonies in Africa, used his membership in the Aborigines Protection Society and an Anti-Slavery Conference in the late 19th and

early 20th century to establish his claim to the Congo so as to protect the Congolese from Arab slave traders.[39]

R2P and the Call to "Do No Harm"
If we live in a world where horrible things are happening, and where "spin" and disinformation distort our knowledge of these events, how do we fulfill our responsibility to protect? As Mennonites we believe in following Jesus' teaching and example in using the power of love and truth to confront hatred and oppression. Genocide, war crimes, ethnic cleansing, and crimes against humanity are very real, and we have a responsibility to protect that should go even beyond these definitions. As people faithful to God's call, that responsibility includes poverty, malnutrition, HIV/AIDS, education, and development. From God's question to Cain (Gen. 4:9), to Jesus' parable of the Good Samaritan (Luke 10:25-37), Scripture makes it very clear that we are our "brother's keepers" and have a responsibility to protect all who are vulnerable. My problem with R2P is not the recognition of that responsibility but the suggestion that when all else fails, war is the best solution.

In fulfilling our responsibility to protect, the means we use must be consistent with the ends we hope to achieve. A cornerstone for understanding this is one of the oldest binding contracts, which is still used in the medical profession today, the Hippocratic Oath (c. 400 BC), which can be summarized as "First, do no harm." The German/American philosopher Hannah Arendt pointed out that since we cannot know the results of our actions, the means we use are often more significant than the ends we hope to accomplish. What she wrote in *On Violence* in 1970 could have been written about the current bodies proposing R2P:

> [T]here are, indeed, few things more that are more frightening than the steadily increasing prestige of scientifically minded brain trusts in the councils of government.…[T]hey reckon with the consequences of certain hypothetically assumed constellations without, however, being able to test their hypotheses against actual occurrences.…The end of human action, as distinct from the end products of fabrication, can never be reliably predicted. The means used to achieve political

goals are more often than not of greater relevance to the future world than the intended goals.[40]

Nonviolent Alternatives to R2P: Vietnam
How can people of faith, using the power of love and truth, accept our responsibility to protect vulnerable populations while confronting enormous and very powerful evil? I don't have a set formula for this, but I can tell of my personal experience attempting to act out this principle. During the War in Vietnam, many Americans, including me, believed that the good people of South Vietnam were being attacked by the Godless Communists of North Vietnam. After the Gulf of Tonkin Incident, we were told that an American ship was hit in an unprovoked attack by the North Vietnamese. In response, the US government sent 500,000 American military personnel to try to rescue the people of South Vietnam.

Not content with giving the US government the last word, the Mennonite Central Committee and Vietnam Christian Service also sent me and about 150 other pacifists to the South to teach, rebuild bombed-out schools, and develop sustainable livelihood projects. Years later, we learned that the Gulf of Tonkin Incident had been fabricated by our government, and that Ho Chi Minh, though a Communist, was primarily a nationalist who favored good relations with the US, partly as protection against Vietnam's large Communist neighbor, China. Both the US soldiers and the MCC service workers initially misunderstood the dilemma of the Vietnamese people we were trying to protect. The US government, supposedly after all other options had failed, used military force to try to "protect" the South Vietnamese. The US military ended up killing 5 million Vietnamese and losing 58,000 American soldiers.

MCC used only nonviolent methods to try to protect the people of South Vietnam, and although I cannot report on the rest of the MCC programs, by the time I left Tam Ky, the village where I worked, 4,000 Vietnamese children had learned to read and write Vietnamese in schools we had organized using Vietnamese high school students as teachers, and 50 Vietnamese families were supporting themselves through a Bamboo Crafts Cooperative and a Sewing Cooperative that we started. When the US military pulled out in defeat in 1975, the American government broke diplomatic

relations with Vietnam, and instituted sanctions and a trade embargo that lasted for the next 19 years. Today, economics has supplanted geopolitics and the US is one of Vietnam's largest trading partners. Through it all, MCC continued its programs to protect and support the people of Vietnam. Our programs continued after the troops left, and we have sustained that work ever since.

Nonviolent Alternatives to R2P: Bosnia

Perhaps the most difficult struggle I ever faced in trying to carry out my responsibility to protect was during the war in Bosnia. At the end of the Cold War, Yugoslavia started to dissolve into the various republics formerly comprising the unified state. When Bosnia voted to secede from Yugoslavia in 1991 and become a multi-ethnic republic under a Muslim president, Serbia, the largest of the former republics, decided to arm the ethnic Serbs in Bosnia and drive out all the citizens who were not ethnically Serb. The situation burst into a full-fledged ethnic war, with the Serbs, who had inherited the Yugoslav military's weapons, fighting and trying to "ethnically cleanse" the country of the largely unarmed Bosniak civilian population. Hundreds of thousands of civilians were killed, and millions were driven from communities where their families had lived for hundreds of years.[41]

It was complicated for me, in that the Serbs were nominally Orthodox Christians while the Bosniaks were nominally Muslim. Arkan (Zeljko Raznatovic), the notorious leader of the Serbian "Tiger Militia" responsible for the ethnic cleansing of scores of Muslim villages stated, "We are fighting for our faith, the Serbian Orthodox Church. We are fighting for a united Serbian state. This party will believe in God and Serbia."[42] How could I, as a Christian pacifist, credibly respond to a genocide where "Christians" were slaughtering "Muslims" in the name of God?

I struggled for months and finally joined some Muslim friends to set up the Bosnian Student Project, a program of the Fellowship of Reconciliation, which found homes and schools for Bosnian students who were unable to continue their education. We developed a network of allies in Bosnia and Croatia to identify qualified students and help them get to Croatia for visas and flights to the US. In the States we developed a network of Christians, Muslims, and Jews who would find schools willing to give full scholarships

to qualified students, and families who would host the students while they studied. We required host families to love and accept the Bosnian students as they were, helping them to attend mosque if they were interested (most of the students were from Muslim or mixed families) or inviting them to attend the house of worship of the host family if they were interested. During the last three years of that war we brought 162 Bosnian students out of the war zone and into some of the best American high schools, colleges, and universities. Almost all the students completed college, with many staying on to finish Masters and Doctoral degrees.

United Nations efforts to use military force in the protection of Bosniaks during the war was a disaster. The mandate of the UN Protection Force (UNPROFOR) for most of the war was only to protect UN relief operations, not the civilian population (mandates are determined by the Security Council, which was divided on the issue of Bosnia). In 1993 the UN designated a number of Bosnian towns and cities as a "Safe Area," and sent small contingents of armed UN soldiers to protect civilians in those places.[43] Srebrenica, a small southeastern Bosnian city of about 40,000, was a "safe area" where 400 Dutch UN Peacekeepers were stationed. In July 1995, Serb military forces overwhelmed these 400 soldiers and captured the Srebrenica "safe area." The Bosniak women and children were separated from the men and boys. The women and young children were loaded on city buses brought in from Serbia and delivered to the Bosnian city of Tuzla. The 8,000 Bosniak men and boys were slaughtered over three days and buried in mass graves nearby.

Shortly after the end of the war I was in Bihac, Bosnia, visiting the family of a student who lived in my home during the war. Samir's family had invited me to a picnic attended by General Dudakovic, the legendary Bosnian general who is credited with saving the city of Bihac and the whole northwestern corner of Bosnia; after the war he went on to become the General Commander of the Army of Bosnia and Herzegovina. I was worried about the encounter, because I knew that one of the students in the Bosnian Student Project had been an active duty soldier under his command before coming to the US to participate in our program. I was astounded when General Dudakovic said he not only knew that Igor had a scholarship in the US before he issued him a 3-day pass, he also had given him $500

to bribe the guards at the Croatian border. "By saving and educating the brightest and best of the Bosnian youth," he explained, "your organization contributed more to the future of Bosnia than the UN, any other NGO, or even any government."

Since the results of our actions when trying to protect vulnerable populations, whether using military force or the power of love and truth, "can never reliably be predicted," the only thing we can say for certain is that when love and truth are used, rather than armed force, no additional members of the vulnerable population will be hurt by our actions. Jesus understood this when he asked his followers to abandon the old ways of dealing with evil, and to follow his new path of love and compassion.[44]

Notes

[1] Francis Fukuyama, *The End of History and The Last Man* (New York: Avon Books Inc., 1992).

[2] United Nations Charter, Article 51.

[3] UN Charter, Article 42.

[4] UN Charter, Article 2.7.

[5] UN Charter, Article 24.

[6] "Universal Declaration of Human Rights," United Nations High Commission for Human Rights; www.unhchr.ch/udhr/lang/eng.htm, accessed 10 July 2008; see particularly Articles 22-28.

[7] "Convention on the Prevention and Punishment of Genocide," United Nations High Commission for Human Rights; www.unhchr.ch/html/menu3/b/p_genoci.htm, accessed 10 July 2008, article 2.

[8] "Rome Statute of the International Criminal Court," International Criminal Court, 17 July 1998, www.icc-cpi.int/library/about/officialjournal/Rome_Statute_English.pdf, accessed 10 July 2008; also circulated as UN Document A/CONF.183/9.

[9] Rachel Davis, Benjamin Majekodunmi, and Judy Smith Höhn, "Prevention of Genocide and Mass Atrocities and the Responsibility to Protect: Challenges for the UN and the International Community in the 21st Century," *The Responsibility to Protect Occasional Paper Series*, International Peace Institute, June 2008, 5. See also Francis Deng, "MacArthur Foundation Award for International Justice – Panel Discussion," 20 March 2008, New York City; http://secondslog.blogspot.com/2008/03/opening-of-international-justice-center.html.

[10] In the UN Charter, Chapter V, Article 24, the Security Council is given "primary responsibility for the maintenance of international peace and security."

[11] Gareth Evans, "The Responsibility to Protect: Moving Towards a Shared Consensus," in *The Responsibility to Protect: Ethical and Theological Reflections*, ed. Semegnish Asfaw et al. (Geneva: World Council of Churches, 2005), 4.

[12] Ibid., 4.

[13] Gareth Evans, Mohamed Sahnoun, et al., *Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001), 16, 48 (Sections 2.25, 6.5).

[14] Evans, "The Responsibility to Protect: Moving Towards a Shared Consensus," 4.

[15] UN Department of Public Information, 1999 (A/54/398); www.un.org/News/ossg/sg/stories/statments_search_full.asp?statID=28, accessed 8 July 2008.

[16] UN Department of Public Information, 2000 (A/54/PV.94); www.un.org/millennium/sg/report/state.htm, accessed 8 July 2008.

[17] *Report of the International Commission on Intervention and State Sovereignty*, Evans, Sahnoun, et al.

[18] Ibid., viii.

[19] ICISS Report, 20 (Section 3.7).

[20] ICISS Report, 23 (Section 3.21-3.24).

[21] ICISS Report, 24-25 (Section 3.26-3.33).

[22] ICISS Report, 32 (Section 4.16).

[23] ICISS Report, 32-37, 47-48 (Section 4.19-4.42, 6.2-6.7).

[24] *Report of the International Commission on Intervention and State Sovereignty*, Evans, Sahnoun, et al., 39-43 (Section 5.1-5.40).

[25] "A More Secure World: Our Shared Responsibility – Report of the High-Level Panel on Threats, Challenges, and Change," United Nations Department of Public information, 2 December 2004, A/59/565, 22 (paragraph 29); www.un.org/secureworld/report.pdf, accessed 8 July 2008.

[26] Ibid., 56 (Paragraph 201).

[27] Ibid., 57 (Paragraphs 202-205).

[28] Kofi Annan, "In Larger Freedom," UN Department of Public Information, A/59/2005, Paragraphs 77, 81; www.un.org/largerfreedom/chap3.htm, accessed 8 July 2008.

[29] Ibid., Paragraph 135.

[30] "2005 World Summit Outcome," United Nations Department of Public Information, A/RES/60/1, 24 October 2005, 30 (Paragraphs 138-139); http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement, accessed July 9, 2008.

[31] Ibid., 30 (Paragraphs 138-139).

[32] "A More Secure World," 57 (Paragraph 203).

[33] ICISS Report, 32 (Section 4.19).

[34] ICISS Report, 32-37, 47-48 (Sections 4.19-4.42, 6.2-6.7).

[35] "Key Documents on the Responsibility to Protect," International Crisis Group; www.crisisgroup.org/home/index.cfm?id=4521&l=1#docs, accessed 9 July 2008.

[36] S/RES/1674, United Nations Department of Public Information, 28 April 2006; http://daccessdds.un.org/doc/UNDOC/GEN/N06/331/99/PDF/N0633199.pdf?OpenElement, accessed 9 July 2008.

[37] 5 March 2004, "Blair Terror Speech in Full," BBC; http://news.bbc.co.uk/2/hi/uk_news/politics/3536131.stm, accessed 10 July 2008.

[38] United Nations High Commission for Refugees (UNHCR); www.unhcr.org/cgi-bin/texis/

vtx/iraq, accessed 10 July 2008.

[39] Adam Hochschild, *King Leopold's Ghost* (New York: Mariner Books, 1988).

[40] Hannah Arendt, *On Violence* (New York: Harcourt, Brace & World, 1970).

[41] At the conflict's peak, the UN High Commission for Refugees assisted some 3.5 million displaced persons in Bosnia and 700,000 refugees; www.unhcr.org/cgi-bin/texis/vtx/balkans-country?country=bosnia, UNHCR, accessed 10 July 2008.

[42] "An Outlaw in the Balkans is Basking in the Spotlight," John Kifner, *New York Times*, 23 November 1993, 1.

[43] Security Council Resolution 819, 16 April 1993; http://daccessdds.un.org/doc/UNDOC/GEN/N93/221/90/IMG/N9322190.pdf?OpenElement

[44] Matthew 5: 38-48.

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To Intervene or Not to Intervene:
Is That the Question?

H. Martin Rumscheidt

Introduction

This essay seeks to assist the churches with the theological quandary that the "doctrine"– for lack of a better term – of the responsibility to protect vulnerable people puts them in. In addition, it aims to provide a theological approach to the dilemma that especially confronts those who espouse an ethic of nonviolence in searching for how to respond to the plight of people threatened with aggravated harm and crying for protection. The obligation to come to the neighbor's assistance in such times, as formulated in the biblical commandment to love one's neighbor, also creates quandaries for those seeking to keep a similar commandment not to take another's life that appears in nearly all of humanity's sacred texts. The theology of this essay holds that it is the neighbor in need who matters, and not the quandary of intervention or non-intervention.[1]

After briefly clarifying the issue to be addressed, and acknowledging that the search for a nonviolent world embraces diverse and at times opposing positions, all of which must be honored rather than judged, I will discuss the "doctrine" of the responsibility to protect (R2P). The World Council of Churches' invitation to its member churches to develop theological responses in accordance with their understanding of the Christian faith and tradition is highlighted. As a member of the United Church of Canada, I approach this invitation from the perspective of the Reformation tradition and especially from the theologies of Karl Barth and Dietrich Bonhoeffer. The reality of the destruction of vulnerable peoples by Germany's National Socialists, in particular neighbors of Jewish descent, stimulates my reflection on intervention with or without armed force.

In what follows, both intervention and non-intervention in relation to R2P, if depicted as ethical virtues or obligations, are identified not as moral choices between good and evil, right and wrong, but as courses of action that render their actors guilty. There is, as will be argued, culpable violence

and culpable nonviolence; neither can claim the moral high ground when it comes to how vulnerable people are to be protected.

The theological-ethical orientation presented here maintains that the people crying for protection have ethical priority over the ethical principles of those who may or may not intervene. Or, as the essay will develop the point, the commandment to love the neighbor overrides the morally equivalent commandment not to murder. The final part focuses on Bonhoeffer's reflections, during the course of the "final solution of the Jewish question" and the planning of the coup d'état and murder of Hitler, on how freely chosen action to intervene with violent force or not opens the door to accept culpability freely and to give ourselves over utterly to the judgment of God's mercy, knowing we can live before God with our guilt.

In relation specifically to the R2P "doctrine," this essay seeks to assist churches in responding theologically to the stipulation that under clearly defined circumstances nations may be called upon to deploy military forces in order to aid people in aggravated harm's way. The ethical issue for the churches is whether they should or should not call on their national governments to deploy their armed forces in military interventions. For churches related to other churches in ecumenical relationships, this means working through with one another the implications of following Christ in the situations R2P speaks about. This is where the matter of guilt before God *and* the neighbor must be addressed with urgency.[2]

The essay wants to move the R2P dilemma away from the moral decision-making process, based on the rigidity of firmly held principles of right and wrong, good and evil, to the more flexible space of discerning what the responsibility of religious persons and communities is *before* God and *to* the endangered neighbor.[3] I argue that the exercise of regulated violence as proposed by R2P can be given theological and moral support by the churches in calling on a nation's government to send the troops to protect people.

Yes, "[w]ar is to be avoided, the use of force is to be minimized, and conflict is to be resolved as much as possible in the interests of justice and without resort to violence."[4] This statement by Dr. Ernie Regehr, the co-founder, former executive director and now senior researcher of the Canadian ecumenical coalition *Project Ploughshares,* is accepted without

reservation in this essay. In addition to this clear formulation of what is demanded of churches and Christians in their discipleship, the obligation to prevent conflicts from erupting and, should every effort to prevent them fail, to rebuild the conflict-torn communities, are equally affirmed here. It may be useful, therefore, to state at the outset that neither war nor the theory of just war is at issue in this essay. What is at issue are the cries for protection of vulnerable peoples in aggravated harm's way and how those cries are to be answered by Christian communities and individuals. Is the answer to be given in terms of the use of force and as a matter of Christian conscience, or in terms of pacifist nonviolence or a contextual decision to delay intervention until it is clearly a last resort?

What is proposed here fully acknowledges and respects that in the Church there are different and indeed opposed positions based in the same embrace of Jesus, the Prince of Peace, and in the same determination to follow him. These positions are not rejected but honored as fully valid and faithful. An "either-or" approach is not at work here.

WCC 2006 Assembly and R2P

Meeting in Porto Alegre, Brazil, in 2006, the World Council of Churches adopted a report entitled "Vulnerable populations at risk: Statement on the responsibility to protect." The Assembly approved the report's resolutions through consensus.[5] Its understanding of what R2P means is that the concept

> shift[s] the debate from the viewpoint of the interveners to that of people in need of assistance…. This innovative concept focuses on the needs and rights of the civilian population…. Hence, the shift from intervention to protection places citizens at the centre of the debate…. The churches are in support of the emerging international norm of the responsibility to protect…. [T]he responsibility to protect and serve the welfare of its people is central to a state's sovereignty. When there is failure to carry out that responsibility, whether by neglect, lack of capacity, or direct assaults on the population, the international community has the duty to assist peoples and states, and in extreme situations, to

intervene in the internal affairs of the state in the interests and
safety of the people.[6]

This passage spells out the "what," the substance of the assertion that it
is an ethical duty to respond to the cries of the vulnerable. It is in the "how" or
the form of the kind of "intervention" described here that the diversity in the
churches' support of the R2P norm becomes apparent. Behind a subsequent
statement on the WCC report lie different and opposing positions about the
use of force or, more accurately, the application of violence. That statement
says:

> In calling on the international community to come to the aid
> of vulnerable people in extraordinary suffering and peril, the
> fellowship of the churches is not prepared to say that it is never
> appropriate or never necessary to resort to the use of force for
> the protection of the vulnerable. This refusal in principle to
> preclude the use of force is not based on the naïve belief that
> force can be relied on to solve intractable problems. Rather,
> it is based on the certain knowledge that the objective must
> be the welfare of the people, especially those in situations of
> extreme vulnerability and who are utterly abandoned to the
> whims and prerogatives of their tormentors. It is a tragic reality
> that civilians, especially women and children, are the primary
> victims is situations of extreme insecurity and war.

Even in its careful phrasing, declaring that "the fellowship of the
churches is not prepared to say that *it is never appropriate or never necessary
to resort to the use of force* [= violence] *for the protection of the vulnerable*"[7]
is a challenge, to put it gently, to principles of pacifism or nonviolence
held by many of the "fellowship" of Christians as matters of faith if not as
matters of *status confessionis*. But the Assembly of 2006 clearly recognized
and affirmed – felicitously, in my view – that "some within the churches
refuse the use of force in all circumstances. Their form of responsibility
is to persist in preventative engagement and, whatever the cost – as a last
resort – to risk non-violent intervention during the use of force." [8] And, in
acknowledging this form of Christian witness, the Assembly added three
clear deeply theological/ethical convictions.

> The churches do not … believe in the exercise of lethal force to bring in a new order of peace and safety. By limiting the resort to force quite specifically to immediate protection objectives, the churches insist that the kind of long term solutions that are required … cannot be delivered by force.

> The use of force for humanitarian purposes can never be an attempt to find military solutions to social and political problems, to militarily engineer new social and political realities. Rather, it is intended to mitigate immediate threats and to alleviate immediate suffering while long-term solutions are sought by other means.

> The force that is to be deployed and used for humanitarian purposes must also be distinguished from military war-fighting methods and objectives. The military operation is not a war to defeat a state but an operation to protect populations in peril from being harassed, persecuted or killed.[9]

In these statements, the WCC acknowledges that the difficulty contained in the "doctrine" and practice of R2P derives from its calling for a decision between two unpleasant and wicked issues, not between clear-cut good and evil. In his article "Culpable Nonviolence: The Moral Ambiguity of Pacifism," Ernie Regehr calls it "a devil's choice . . . because it is not a simple choice between nonintervention that abandons people in perilous circumstances and military intervention that liberates them. The choice for military intervention, even for explicitly humanitarian purposes, runs the risk and the likelihood that peril will be expanded rather than alleviated."[10]

The issue is which kind of force is to be employed: the force of nonviolence, such as that used by Mahatma Gandhi, or the force of violence such as that used by NATO forces in the Balkans? If we want to be involved at all, how do we make an ethical decision or present a theological case when the schemata of "good vs. evil" are not the point but instead the murky question of which of the sinful options to go with?

From a theological perspective, to intervene or not to intervene with military force [= violence] is not the question. When striving for a model of the churches' conversation that says "No" in principle to resorting to

violence but addresses our responsibility in a world where violence is being used, we find the question becomes how does faith in God, following God's commandments, shape our understanding and hence our actions of responsibility before God and to the neighbor? What concrete and contextual shape does discipleship call for, when the cries of vulnerable people are heard and to be acted upon? How do we stand *with* them before God?

It may help to cite an actual case here. Reporting on an international assessment team's fact-finding tour to the southern Sudan, Regehr writes:

> When the Sudanese [internally displaced persons] asked why the churches were not calling for immediate military intervention to stop the bombing and expulsion, one articulate young man, discovering that I was a Mennonite, pressed the point even harder. Mennonites, he argued, have a reputation for compassion and peacemaking, and if they really were for putting people first, wouldn't they be leading the call for just such relief? Military intervention to protect those who are utterly without protection would surely be a supreme act of compassion, he challenged. I explained that our refusal to call for military protection was not evidence of callous indifference but was part of a principled commitment to nonviolence. He wasn't impressed. How, he asked (as I knew he would as soon as I had uttered my stock answer), is the principle of nonviolence honoured by the international community's refusal to lift a single finger against ceaseless, egregious violence directed at unarmed and unprotected people in southern Sudan?

> The failure of the international community to bring protection to the vulnerable of Sudan makes them, in their own eyes and experience, victims of inaction – and for them, whether that inaction is the product of indifference or of a principled commitment against military intervention amounts to the same thing.[11]

What responses are open to Christians in face of such cries for help and neighborliness?

The theological argument I am presenting refuses to approach this question in terms of the false dichotomy of nonviolence versus justice. Seeking God's justice and doing it is as integral to those whose faith in and obedience to God rejects military intervention on behalf of vulnerable populations as it is to those whose faith in and obedience to God supports it. As well, the argument does not approach the Bible, to which Christian faith appeals, as the referee for our stories, positions, and decisions; it maintains instead that, in our diverse concrete situations and contexts, we regard and use Scripture as the deep source of those stories, positions, and decisions.

"Using" the Bible means appealing to its language and spirit as the authority for thinking and acting appropriately and responsibly in following Jesus. The controversy of God with the people of Israel, addressed in the sixth chapter of the prophecy of Micah, has a classic statement to which churches today readily appeal: "It has been told to you, my people, what is good; and what does the Holy One require of you other than to do justice, to love in kindness, and to go humbly with your God?"[12]

The Bible and Principles

An excursus here will provide the biblical basis of the theological insistence that the neighbor has priority even over strongly affirmed principles. Throughout, the First (aka "Old") Testament wrestles with the question of how justice is to be done, how love is to be exercised in kindness, and how people are to walk humbly with God. Further, it commands readers and hearers "Do not kill!" or, as I prefer to translate the Hebrew, "Murder Not!" In the Second (aka "New") Testament, Jesus provides a further formulation of how the people of God are to walk in the way of justice, kindness, and humility. Asked what is the first and greatest of God's commandments, he replied: "Hear, O Israel, Adonai our God, Adonai is one; love Adonai, your God, with all your heart, all your soul, all your might. And love your neighbor who is like you" (Mark 12: 28-31).[13]

Jesus' reply, bringing together Deuteronomy 6:4 and Leviticus 19:18, points to love as the soul of his Bible, the Torah. What has to be recognized is that the Torah's sense of "love" embraces both the love of God for humans and the love of humans for God. This means that in *our* loving God in the manner of the greatest commandment – in doing justice, loving kindness,

and walking in humility with God – God's *own* will on how to be God to and for us is being fulfilled. Correspondingly, in God's loving us creatures (and all other creatures!), in blessing, inspiring, healing, forgiving, and guiding us, our desire to be what God wills for us is answered. Thus, God is God and humans are humans only in the mutuality of the love the Bible envisions: in God's love for us and for our neighbor (who, precisely because of God's love, is like us) and in our love for God and for the neighbor.

An essential condition for this love to be the love the Bible speaks of is that it is given freely and for its own sake. Thus, to love in freedom is to give ourselves to the neighbors, to be for them before they call upon us and certainly when they do so. And to be for them, as the Bible demonstrates in ever different variation, is to be there responsibly; that is, in their concrete context, in the situation they are experiencing and out of which comes their cry for our appropriate presence. In this understanding of love, priority unquestionably belongs to God's call on us to be the people of God's love and equally to the neighbors' call on us to be the neighbor to them. In God's covenant-faithfulness to humans, there is, as Scripture testifies, a predilection for the marginalized, the weak and helpless, the abandoned, oppressed, and exploited; recent theology speaks of it as "the preferential option of God for the poor." Theirs is a "commanding voice," as Rabbi Emil Fackenheim puts it. For our discussion, the cries of vulnerable peoples for protection are a commanding voice to both God and to us humans.

Ernie Regehr's account of his conversation with the young southern Sudanese man makes the case for claiming that the cries of vulnerable peoples have priority over commitment to a principle. His experience of that conversation in the context of the internally displaced persons' camp was an encounter with the commanding voice and its priority over an article of faith. But it was more than that. It was a moment where his faith in God called him into responsibility and into the freedom that faith creates for responsibility. If Mennonites really were putting people first, then calling for military intervention would surely be a supreme act of compassion; that was the challenge to be met. And how is the principle of nonviolence honored if there is no intervening action commensurate to the ceaseless, egregious violence directed at unarmed and unprotected people?

Bonhoeffer's View from Below

In the posthumously published collection of Dietrich Bonhoeffer's prison writings and letters, there is an extended memorandum he composed just before his arrest in early 1943 by the Nazis. Entitled "After Ten Years," it contains reflections for those with whom he was involved in the plot to assassinate Hitler. I draw on two of them in developing the theological argument made here. In "The view from below" and "Who stands firm?" he writes:

> It remains an experience of incomparable value that we have for once learned to see the great events of world history from below, from the perspective of the outcasts, the suspects, the maltreated, the powerless, the oppressed and reviled, in short from the perspective of the suffering. If only during this time bitterness and envy have not corroded the heart; that we come to see matters great and small, happiness and misfortune, strength and weakness with new eyes; that our sense for greatness, humanness, justice, and mercy may have grown clearer, freer, more incorruptible; that we learn, indeed, that personal suffering is a more useful key, a more fruitful principle than personal happiness for exploring the world in contemplation and action.

> Who stands firm? Only the one whose ultimate standard is not his reason, his principles, conscience, freedom, or virtue; only the one who is prepared to sacrifice all of these when, in faith and in relationship to God alone, he is called to obedient and responsible action. Such a person is the responsible one, whose life is to be nothing but a response to God's questions and call.[14]

What Bonhoeffer calls "the view from below" and the biblical conception of "the neighbor" – the late German theologian Dorothee Soelle called the concept of the neighbor the greatest gift, on the inter-religious scale, of the Jewish people to humankind[15] – interpret and shape each other decisively. The former clears the way for seeing the priority of the vulnerable for God's passionate covenant-justice love (Hebrew *chesed)* and, as a consequence, what being a neighbor to the vulnerable demands. The latter

clears the way for the "new eyes" to see that our credibility as neighbors to vulnerable populations is based on accepting the priority of their cries for protection over our reason, principles, conscience, etc.

If we accept the remarkable interpretation of love as it manifests itself in the covenant of God with God's creatures, namely that in our "doing neighborliness" how God wills to be God to and for us becomes fulfilled, something remarkable happens: the commanding voice of those who suffer becomes God's voice crying out to us, appealing to us so to act now that God can be God to the vulnerable as well as, if not indeed primarily, to those who bring them help. Our credibility in "doing neighborliness" derives from the appropriateness of our actions towards the suffering neighbor.

If we interpret Regehr's reflection on his experience in southern Sudan in terms of what Bonhoeffer says in "Who stands firm?" we may say that Regehr's faith in God was called at that moment into responsibility. Secondly, the sensibility of his faith for the situation – for the actual, concrete reality that the Sudanese people there were living in – freed him for a decision about what to do and for accepting responsibility for that decision and its consequences. The free and responsible action of one who follows Jesus, according to Bonhoeffer, is not to apply an already existing, pre-designed ethical or theological principle or doctrine. For, if it were an action of that kind, it would be "unfree" in the sense of satisfying only the motive of having a good conscience, of feeling justified by having kept a good conscience, of doing what allows one to live with an unsullied conscience.

The explanation that "our refusal to call for military protection was not evidence of callous indifference, but was part of a principled commitment to nonviolence" failed to impress the young Sudanese and, more important, also failed as a justification for refusing to call for such protection on the basis of the principle of acting nonviolently. If we look for "the view from below" in Regehr's description, we find it in what he writes about watching the burial in "the ever-expanding field designated as the graveyard." His view from below takes the form of a mathematical calculation related to the estimated two million people claimed by war in Sudan since 1983. "[T]hat comes to about 100,000 per year, and that's 2,000 per week and 300 a day. … After September 11, 2001, *The New York Times* ran personal accounts of the victims, at least momentarily rescuing all those who had died from

anonymity, putting a face on the statistic, giving public acknowledgment to loss. For the victims of Sudan to be similarly acknowledged it would take 300 photos and brief biographies each and every day for the next twenty years. And that would do it only if the killing stopped today – *which it won't.*"[16]

The expression attributed to Saint Augustine of Hippo, "Love God and do what you will," signals something of the character of free, responsible action. In loving God and the neighbor as the Bible specifies it, we are set free to decide what is appropriate and necessary action in a given concrete situation without advance assurance that we are justified (or "righteous") before God in what we will to do. Augustine, like Bonhoeffer, captures the component of "freedom" in the relationship between God and humans and between humans that is implied in the word "love." It is precisely in God's freedom that God loves all creatures; were it not for this freedom, the love with which God binds himself/herself to the creatures would be something other than love. Thus, to love God and to do what we will means to decide in freedom what is seen as appropriate and necessary in and for the love we show to God and neighbor.

This is the point Bonhoeffer wrestled with when he composed the essay "After Ten Years" at Christmastime in 1942. The circle of conspirators had concluded that resort to violence was inevitable if Hitler was to be removed from power. But "to kill or not to kill" had become the deeply troubling question. To some of them, the divine commandment was clear and absolute: "*Murder not!*" To others, resorting to the violence of murder would stress conscience beyond endurance; to yet others, the principled commitment to what is honorable, for example not reneging on an oath, was sacred. Bonhoeffer rejects none of those positions but submits them to the perspective "from below," from how those who suffer see things. Two excerpts from what he wrote at that time suffice to grasp where he is going.

> The man of *conscience* has no one but himself when resisting the superior might of predicaments that demand a decision. But the dimensions of the conflict wherein he must make his choices are such that, counseled and supported by nothing but his very own conscience, he is torn apart. The innumerable respectable and seductive disguises by which evil approaches him make

> his conscience fearful and unsure until he finally settles for a salved conscience instead of a good conscience, that is, until he deceives his own conscience in order not to despair. That a bad conscience may be stronger and more wholesome than a deceived one is something that a man whose sole support is his conscience can never comprehend.[17]

Not long before composing "After Ten Years," he had penned these sentences in his study on ethics, a work that remained unfinished. Asking who can endure (i.e., who stands firm), he says:

> Only the person who combines simplicity with wisdom can endure.… A person is simple who in the confusion, the distortion, and the inversion of all concepts keeps in sight only the single truth of God.… Because of knowing and having God, this person clings to the commandments, the judgment, and the mercy of God that proceed anew each day from the mouth of God. Not fettered by principles but bound by love for God, this person is liberated from the problems and conflicts of ethical decision, and is no longer beset by them. This person belongs to God and to God's will alone.… The person is wise who sees reality as it is, who sees into the depth of things. Only that person is wise who sees reality in God.… Wise people know the limited receptivity of reality for principles, because they know that reality is not built on principles, but rests on the living creating God. So they also know that reality can be helped neither by the purest principles nor with the best will, but only by the living God. Principles are only tools in the hands of God; they will soon be thrown away when they are no longer useful.[18]

These astute insights of Bonhoeffer allow us to recognize two important things. One is that what drives much of the debate about R2P, especially as it touches Christians, is precisely the question of how we are to stand before God and the neighbor with a good, bad, or salved conscience. The other is that as long as conscience is the key component in the discussion, the reality of God's mercy, grace, and forgiveness is obscured, even denied, for what allows us to stand before God is not our conscience but God's love alone.

The "commandments, the judgment, and the mercy of God" to which simple and wise persons cling are but another way of speaking of God's love, of the God who loves in freedom. Thus, when it comes to making ethical-theological decisions and acting in accordance with them in a concrete situation, to see reality in God is to throw oneself on God's judgment and mercy. What simple, wise persons – persons of faith – do here is to open themselves unconditionally to accountability for the actions taken freely and responsibly in that situation. That accountability and responsibility is truly authentic, and therefore truly free, when it is radically open to accepting and confessing guilt.

This is the surprising and amazing turn in Bonhoeffer's reflection. It helps us to break free from the "either-or" of pacifism and just war, violence and nonviolence, and to accept the claim by both sides seeking to be faithful in following Jesus. It also provides a way of living with the quandaries that arise when God's commandments are in conflict for those striving to live by them.

Liberation for Guilt

In relation to R2P, the issue if seen in this perspective is not which choice is justified before God and which is not, or whether a decision for one course of action leaves us non-culpable while a decision for another renders us culpable. It is not even a matter of which culpability we choose. The issue is that radical openness to God and willingness for responsibility for the neighbor materializes itself in liberation for accepting culpability.

> What bears and sustains such openness and willingness is the knowledge that the world, including the political world … is accepted, judged and renewed by God. That openness and willingness live in the faith which learns from Christ that the norms of Christ's commandments are firm, that they call and bear us *and* that, even when we break the commandments in sensitivity for our fellow human beings and their security, thereby taking guilt upon ourselves, *we are not abandoned by Christ* . . . . 'Free responsibility' is founded in a God who calls for the free venture of faith into responsible action and who promises forgiveness and consolation to those who on account

of such action become sinners. Here forgiveness relates to the personal guilt that is unavoidable for those who take a stand and act upon it, accepting the risk of free responsibility and thus burdening their conscience.[19]

Liberation for accepting culpability is an elaboration of what is found in both the term and the description of Regehr's "culpable nonviolence." The freeing dimension of that term and its approach to culpability is that it allows different, even radically opposite approaches to genocide and other horrors to live both with the guilt arising from, as the young Sudanese put it, the international community's refusal to lift a single finger against ceaseless, egregious violence directed at unarmed, unprotected people, and with the guilt arising from taking military action, knowing that people will be killed and that peril might be expanded rather than alleviated.

What a recent interpreter of Bonhoeffer called "liberation to accept guilt"[20] is a direct consequence of seeing reality in God. It characterizes those who, because they know and have God, cling to God's commandments, judgments, and mercy alone; they belong to God and to God's will alone.

Transposed into the context of "the responsibility to protect" and its inclusion of the option to resort to military intervention in order to protect vulnerable peoples as an appropriate and necessary action, belonging to God and to God's will alone enables us consciously and freely to burden ourselves with culpability in the actions we deem responsible. It lets our accountability to God and to neighbors rest on the covenantal promise of forgiveness made by God and, consequently, lets us know that we can live with our guilt, our culpability before God. In Bonhoeffer's words:

> I believe that God can and will let good come out of everything, even the greatest evil.… I believe that even our mistakes and shortcomings are not in vain and that it is no more difficult for God to deal with them than with our supposedly good deeds. I believe that God is no timeless fate but waits for and responds to sincere prayer and responsible action.[21]

Notes

[1] This paper addresses itself to the church as the community of those who follow Jesus, and not to the state or the community of nations. The author assumes that when the churches address the governments of an individual state or of communities of nations, they will do so on the basis of theological conviction and argument.

[2] In a recent private conversation among theologians and peace-workers, a comment overheard by one of the group at a conference on R2P brought into clear focus what forms nonviolent culpability may take. The comment was to the effect that followers of Christ committed to nonviolence may have to put up with the inconvenient fact that sometimes innocent people may have to suffer for the convictions of the nonviolent ones. Such a view clarifies the issue that this essay seeks to address.

[3] This point was driven home at a recent conference of Holocaust scholars whom Father Patrick Desbois, author of *The Holocaust by Bullets: A Priest's Journey to Uncover the Truth Behind the Murder of 1.5Million Jews* (New York: Palgrave Macmillan, 2008), was invited to address. He said that we cannot build a world of peace and demand Abel's blood be silent, and that our problem is not the existence of God but how we can stand before God with all the murdered; to stand with them and say to God: here we are! We dare not obliterate the murdered in order for us to believe in God today. The ground under our feet keeps moving with Abel's blood. Here the cries of Abel's blood – a metaphor for victims lacking the protection of their own states and crying for help from the outside – clearly have priority over the principles, however well-reasoned, of those to whom they address their cries.

[4] These words encapsulate the basic convictions of the Project Ploughshares coalition. It is cited in Roger Hutchinson, "The Limits of Ethics in a Militarized World," an address delivered during a Project Ploughshares consultation and cited in *Defence Beyond Borders: A Consultation on Canada's Military Responsibilities in the Emerging World Order*, Ploughshares Working Papers, 93-2 (Waterloo, ON: Project Ploughshares, 1993), 26-30.

[5] The report is available on the WCC website at: www.oikumene.org/gr/resources/documents/wcc-commissions/international-affairs/responsibility-to-protect/vulnerable-populations-at-risk

[6] Ibid.

[7] Italics and insertion added. Here the Assembly appears to acknowledge one of the problematic aspects of ethical or theological systems. Since it is conceivable that such systems so strictly codified as to allow no flexibility will fail in some situations, ethics and theology should demand a combination of guiding principles or rules and allowable exceptions. Thus the statement leaves the door open to flexibility in relation to the R2P component of "reaction" or, specifically, intervening with military force. And instead of capitulating to the inflexibilities of the either-or between absolutist and contextualist approaches, the Assembly invites a distinction between fundamental convictions and conclusions reached about concrete actions required to support people in need, and shows how some of those conclusions could be supported by communities with differing or opposing positions. (I am grateful to Professor Roger Hutchinson for this insight.)

[8] Ibid.

[9] Ibid.

[10] Ernie Regehr, "Culpable Nonviolence: The Moral Ambiguity of Pacifism," in *Voices Across Boundaries*, Summer 2003, 42.

[11] Ibid., 39.

[12] Micah 6:4.

[13] This is how the translation of the Jewish Scriptures by Martin Buber and Franz Rosenzweig renders the texts cited by Jesus. See *Die Schrift* (Gütersloh: Gütersloher Verlagshaus, 2007), 220 and 149.

[14] Dietrich Bonhoeffer, *Letters and Papers from Prison*, DBWE 8 (Minneapolis: Fortress Press, 2009), 52 and 40.

[15] Dorothee Soelle, *The Mystery of Death* (Minneapolis: Fortress Press, 2007), 33.

[16] Regehr, "Culpable Nonviolence," 40. Emphasis added.

[17] Bonhoeffer, *Letters and Papers from Prison,* 39.

[18] Bonhoeffer, *Ethics*, DBWE 6 (Minneapolis: Fortress Press, 2005), 81-82.

[19] Martin Rumscheidt, "Discipleship between conflicting commandments: Bonhoeffer in the conspiracy against Hitler," in *Analecta Bruxellensia* 13 (2008): 19.

[20] Sabine Dramm, *Dietrich Bonhoeffer and the Resistance* (Minneapolis: Fortress Press, 2009), 241. The German original has *Befreiung zur Schuld*, which I translate as "liberation for guilt."

[21] Bonhoeffer, *Letters and Papers from Prison*, 46.

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Just Policing, Responsibility to Protect, and Anabaptist Two-Kingdom Theology

Gerald W. Schlabach

Mennonites committed to Anabaptist two-kingdom theology do not need to fear that the agenda I first proposed in 2002 for a threefold conversation within and between pacifist and just-war Christians concerning the ethics of "just policing" will require them to compromise their deepest convictions about Jesus' call to follow him through a consistently nonviolent love of enemies.[1] The most common misunderstanding of the "just policing" proposal has been just this, that it assumes Christians are ready for a grand compromise – as though they could settle their long-standing differences over war and the use of lethal violence if only they would quickly agree on a common ethic of domestic and international policing.[2]

In fact, the proposal calls each tradition to greater faithfulness to its stated convictions, both through greater internal coherence ("coming clean" about the status of policing within their respective ethics) and through lived practices. Lived practices constitute embodied arguments, and are the only way either that one side might conceivably convince the other or that together they might perhaps develop some new consensus. Meanwhile, whether or not the two traditions ever do converge, the just policing proposal gathers up conceptual tools for responding to those tough ethical challenges of genocide, and ensuing calls for humanitarian military intervention, that have led to a new international doctrine of "the responsibility to protect" (R2P). These tools are not only compatible with nuanced versions of Anabaptist two-kingdom theology but can help Mennonites frame, name, and guide their responses to the cluster of issues surrounding R2P.

How to Proceed: Embodied Arguments, Middle Axioms

The very fact that I was asked to contribute to the present issue of *The Conrad Grebel Review* on R2P may reflect misconceptions about just policing, at least as I have presented it. R2P and just policing do not necessarily come in the same package; they are not two proposals under different names for

what would be essentially the same thing – a new international system that all Christians supposedly could support, in which potentially lethal force is used only to apprehend those who perpetrate crimes against humanity and go unpunished by their own nation states, either because those states harbor such criminals or are failed states, or because the leaders of those states are the perpetrators. To be sure, advocating and working for the international rule of law along these lines is a perfectly legitimate way for just-war Christians to respond to my proposals as they to seek to insure that the use of potentially lethal force is truly an exceptional last resort. For, if they do that, it is possible that "what once was claimed to be 'just war' would finally be just because it would just be policing not war."[3]

But that is only half the story, half the agenda. And if a slowly developing international regime based on the rule of law is possible, it is primarily the responsibility of just-war Christians (and of course their counterparts in the secularized just war tradition also known as the domain of international law) to help demonstrate this through the lived arguments of their own practices. Christian pacifists can and perhaps should remain agnostic about the prospects for such a project, supporting it only as a "middle axiom." A middle axiom, in this case, is a thesis urging those who live by a different ethical system that, if they cannot find it within themselves to do what pacifists believe to be right, non-pacifists should at least live up to their own highest stated moral commitments.[4]

The proper response of pacifists to the agenda of just policing is not to compromise, therefore, but to bring to the ecumenical table concrete historical examples and developing contemporary practices that show how it is possible to protect vulnerable peoples in nonviolent ways. This *does* require Christian pacifists to recognize that all communities, including the church, need to exercise the police function in some way.[5] But once pacifists make the mental adjustment that allows them to realign their vocabulary with actual best practices, historic peace churches can point to examples ranging from Amish and conservative Mennonite disciplinary practices, to the unarmed peace officers and conflict mediators who functioned in Mennonite colonies of the Chaco when the Paraguayan state apparatus remained distant, to the pilot project in civilian-based defense that constitutes Christian Peacemaker Teams at its best.[6]

The closest thing to a compromise that the just policing agenda asks of Christian pacifists, then, is a willingness to work in appropriate coalitions whereby parties with distinctive moral commitments cooperate to achieve those more-and-less limited objectives they hold in common, while preserving their respective identities – doing so in part by reserving the right to pull out of such coalitions if conscience requires. But such coalitions are already happening and have happened for a long time. Whether working in Vietnam in the 1960s or Iraq in the 2000s, Mennonite Central Committee has had to form limited coalitions with civil and even military authorities in order to do its relief and development work, even while struggling to define those limits in such a way that their Christian witness would not be eclipsed or confused with American imperialism.[7]

Back at home, peace church Christians have entered into coalitions with stringent just-war Christians who sometimes bear labels like "nuclear pacifist" or "modern war pacifist" because they resist some wars and certain kinds of weapons precisely on just-war grounds. World War II-era conscientious objectors who famously exposed the degradations of the mental health system and then went on to careers as reform-minded mental health professionals, sometimes working in government, can be thought of as working in coalition. The restorative justice practitioners who invented victim-offender reconciliation programs and negotiated their way into the criminal justice system now work in coalition in much the same way. A Mennonite pastor, voluntary service worker, or active neighbor in a violence-ridden urban setting who cooperates, where conscientiously possible, with community-wide efforts that give young people alternatives to drug dealing and gang life – but also involve police cooperating under the rubric of "community policing" – is working in coalition. The point is that all I have done in proposing the agenda of just policing is to draw on domestic examples to give international examples an analogical name: international "community policing."

The practical sandals-on-the-ground question before us is whether this historic peace church pattern of forging alternatives and forming coalitions can extend the peacemaking witness into the face of active genocides and hot wars in which egregious human rights abuses are endemic. The field of peace and conflict studies, with peace church theorist-practitioners playing leading

roles, has done much to demonstrate what can and must be done to prevent the outbreak of violence. But even if we agree that violence prevention is the most important work that any society, church, or peacebuilder can do, and should thus receive the bulk of our attention, sometimes it is still too late. Stopping, and *not only preventing*, such violence is a challenge that remains and is the toughest nut to crack for *all* ethical systems that take up the problematics of violence.

The involvement of non-pacifist Christians in efforts to break through scruples against intervening in the internal affairs of other sovereign nations is part of the response of conscientious just-war thinkers to this toughest of moral challenges. The scruples in question were built into the Westphalian international system until very recently, when the United Nations conceptually grounded sovereignty in the responsibility of governments to protect all those subject to their rule.[8] The core principle of R2P is that a government's legitimate claim to sovereignty is based on its responsibility "to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity." A government that fails to do so, or itself becomes a threat to the security of those within its borders, thus forfeits its claim to sovereignty; the international community is then not only permitted to intervene but has a duty to intervene.

Elegant and ground-breaking as this formulation is, it is not yet entirely clear whether or how it will work. Informed by the Realist school of international relations, one key objection from a rightward direction is how a nation or nations will marshal political support for spending "lives and treasure" where national self-interest is not immediately at stake, however noble the cause. Informed by histories of colonialism and Western domination, one key objection from a leftward direction is how a universal obligation to intervene, anywhere around the globe anytime egregious human rights violations are occurring, can possibly translate into anything short of an imperialist project. Perhaps, for the sake of those vulnerable peoples who oblige Christian neighbor love and will benefit from somewhat less violence, pacifists may share in a very guarded hope that just-war thinkers and international diplomats will be able to square these circles. Simply articulating the responsibility to protect, however, is not yet to have operationalized it.

Meanwhile, any pacifist alternative or nonviolent version of R2P would require some very sophisticated strategic thinking, thoroughgoing training, and courageous mobilization. Practitioners would need to know when to use a conflict resolution model and when to use a Gandhian interventionist model, being trained in both. And in the context of genocides and hot wars, at least, the Gandhian interventionist model is barely off the drawing boards – not so much because it is utopian as because it suffers from a classic chicken-and-egg problem. It is realistic to imagine that with enough international (not just Western) peacebuilders, religious leaders, and wise elders flying into a Rwanda or Kosovo at a critical juncture – unarmed except with moral power and sociopolitical finesse – disaster could have been averted. But until this happens a time or two, what no one has quite figured out is how to recruit the critical mass of courageous soldiers of nonviolence needed for such a venture. While such a practice and the institutions needed to effect it are desperately needed, are imaginable, and can build on pieces already in place, nonviolent R2P – that is, a responsibility to protect nonviolently – may not be utopian delusion but it is clearly not yet operational either.

So, how do we live and act in the gap between imaginable possibility and currently operationalized resources? Precisely because just policing is a multi-level agenda for mutually informed discernment, not a developed proposal for international policing as an alternative to war (and thus not the same thing that R2P is or aspires to become), it invites different traditions to respond to these challenges in their own ways and offers a few pointers for doing so. That includes peace church people who are not prepared to sign on to "just policing" if it merely constitutes a rectified version of the just war tradition. And it even includes the Mennonites among them who ascribe to nuanced versions of Anabaptist two-kingdom theology.

Anabaptist Two-Kingdom Theology Today
Before elaborating upon this claim, however, it is worth noting that pacifists who do not hold, or do not think they hold, or have not even heard of Anabaptist two-kingdom theology are functionally in pretty much the same boat. Anabaptist two-kingdom theology frankly recognizes that in the overlap between Jesus' inauguration of God's Reign and a coming fullness of God's Reign, societies-at-large simply are not prepared to live according

to Jesus' ethic of nonviolent love but Christians are called to begin doing so anyway. It does this without ascribing either to a Manichaean dualism that sees divergent ethics of war and peace as perpetually inevitable or to a Lutheran two-kingdom theology way of legitimating divergent ethics for the same people as they fulfill different roles. The nuance in what I am calling "nuanced two-kingdom theology" is necessary for Christian pacifists who believe that the demands of neighbor love and witness to God's Reign disallow any contentment concerning this gap between Jesus' ethic and the dominant ethics of "the world" and thus require them to work for justice and peace even in systems that do not recognize Jesus or his way. To do so, after all, requires sophisticated translation skills in order to propose the good (or at least the better) in terms accessible to others without buying into all of their values and presuppositions.

Even a pacifist who is more optimistic than Mennonites have traditionally been about the possibilities of reform or revolution – the liberal pacifist, or the Gandhian peace activist, or the secular student of Gene Sharp, who charted a course for nonviolent civilian-based defense[9] – is going to have to operate within the framework of some duality, which will not be unlike the one that Anabaptist two-kingdom theology tries to navigate. Even without a Christian eschatological theology in which Jesus' proclamation of the Reign of God is what maps the overlap between a coming "not yet" and a present "already," anyone who believes that wholly nonviolent ways of protecting vulnerable peoples are possible[10] is also going to have to figure out how to live "between the times." Such a person will have to navigate through what John Howard Yoder called "duality without dualism"[11] in *some* way in order to advocate less-than-complete policy solutions as next steps toward their distant but imaginable future, and do so in terms comprehensible to others but without selling out their deeper hopes and convictions. And in some cases they may need the honesty and fortitude to be silent, admitting that for some situations they do not now (right now! – in time to save *these* lives) have operationalized nonviolent solutions ready to roll out.

In 1997, the Peace Committee charged with providing theological guidance especially to international programs of Mennonite Central Committee faced this harsh and tragic prospect forthrightly.[12] After struggling mightily with all the issues at play here, the committee concluded:

> We will not call for humanitarian military intervention. We appreciate that there may be tragic situations where we have no alternative course of action to suggest. This could be either because our understanding is incomplete or because we cannot see a possible nonviolent solution. In situations like these, we may choose to publicly neither oppose nor support an international intervention. We would remain silent, not to disengage or to avoid action or to legitimate violence, but in recognition of the tragic and ambiguous nature of the situation.

Being "silent" in such a case was as much a spiritual discipline as a literal silence. For, as the statement continued, the committee did promise to speak, albeit in the mode of commentary rather than either support or opposition:

> Governments, however ... are required to act. Part of our responsibility at such times is to stretch the imaginations of both those who must act and those who can choose whether to act or not. In this light, we will frequently comment on humanitarian military interventions that governments or international bodies decide to take.

Still, if some would expect these well-placed representatives of a historic peace church to actively oppose every last war, the committee did not simply refrain silently; it bravely added: "We acknowledge that such interventions can, in some situations, save lives."

Actually, an un-nuanced, stark Anabaptist two-kingdom theology espoused by a certain kind of conservative Mennonitism would have no problem being silent and, in a way, no problem affirming a "responsibility to protect" on the part of governments. By one reading, after all, this is simply Romans 13. Indeed, whatever the mechanism and the sense in which God ordains or institutes or places into order the "governing authorities" (NRSV), they clearly are at their best when they are not a threat or "a terror to good conduct, but to bad" – and by logical implication are at their worst when they instead protect bad conduct or even become a terror to the good conduct of vulnerable innocents themselves.

But of course matters are not quite so simple in Mennonite social

ethics today, for at least three reasons: First, R2P presents a problem to nuanced two-kingdom theology that it would not necessarily have presented to an older, starker, two-kingdom theology. This is the case precisely because more activist socially-engaged Mennonites have been nuancing their position for decades now with hopes and biblical truths that were already at home in various versions of what some of us have lumped together as "one-kingdom theology." The Protestant Social Gospel, Calvinist social ethics, liberation theology, and Catholic social teaching have all reminded Mennonites that this is still God's world, that God is still at work in it, and that God calls Christians to participate in its redemption within history even if God alone can bring that redemption to its fulfillment in the eschaton. All the problems of how to do this work – as followers of Jesus who prioritize God's work through the church rather than either the state or progressive social movements, but who do not dismiss God's work outside of the church either – follow from what is arguably an attempt not just to be ecumenically generous and open to the truths of other Christian traditions but also to be more, not less, biblical.

Second, the formulation of "middle axioms" by which nuanced two-kingdom thinkers seek to articulate their policy recommendations faithfully but in the idiom of someone else's ethic is, like any translation, very hard work. On the one hand, one must keep one's ethical moorings, always remembering the pre-eminently Christian reasons one has entered into the public policy realm in the first place. On the other hand, if the object is to communicate in terms accessible to those acting out of other motivations and reasons, then for the sake of elegant communication, one must strip one's message somewhat of one's own reasons and presuppositions. (Standing before God in the domain of conscience, one may be like math students who are obliged to "show their work" on a test. But standing in the public domain, one often needs bullet points for an "elevator speech.") And then, still others may wonder if one has sold out, and no doubt there is always a danger that one will sell out. In every case, the formulation of middle axioms requires clear communication, with careful attention to a variety of audiences, who nonetheless may overhear the discourses meant for others, at every turn.[13]

Finally, a third reason that R2P and the challenges surrounding it are

more complicated for a nuanced two-kingdom theology than for a stark one is a reason that the MCC Peace Committee had the courage to name. In the face of truly tragic situations in which the preventive work of peacebuilding has been absent or has come too late, we may simply not know what to say, much less do. (And if all were honest, the "we" here could no doubt include just-war thinkers, not just pacifists.)

Humanitarian Military Intervention in this Light

My call for attention to "just policing" has anticipated this eventuality from the beginning, however. In a way that I regret not elaborating upon, the very first sentence of the first version of my initial paper on just policing deliberately left an opening for an Anabaptist two-kingdom appropriation of the just policing agenda:

> If the best intentions of just-war theorists were operational, they could only allow for just policing, not warfare at all; if Christian pacifists can in any way support, participate, *or at least not object* to operations with recourse to limited but potentially lethal force, that will only be true for just policing. [Emphasis added.][14]

To *not object* to a humanitarian military intervention as the MCC Peace Committee said it might not always do, and to have even less reason to object to a humanitarian intervention through the operation of international policing, is a double negative. It is not a positive endorsement. In pure mathematics a double negative may equal a positive, but within the contingency of social affairs it is rarely if ever the same thing.

In this case the double negative maps the very nuance required for a nuanced two-kingdom theology. For, simultaneously, the concept of "just policing" offers a "middle axiom" that Christian pacifists can take to non-pacifists while also providing pacifists with a criterion for deciding when not to object at least to some "operations with recourse to limited but potentially lethal force." It says to just-war Christians and to public policy-makers: If you are not yet able to engage in a process of transarmament that develops nonviolent forms of civilian-based defense and nonviolent intervention, at least turn your putatively just wars into just policing. And it says to pacifists: The difference between policing and warfare may not be clean enough for

us to participate in the first though not the second, but there are enough differences that the more a military action looks like a police action, the less objectionable it becomes.[15]

In fact, even if the MCC Peace Committee had not ventured to admit that in some situations Christian pacifists may not support but nonetheless cannot object to certain military actions, people in their position would sometimes have to make exactly these decisions. Because here is what has happened: Over the course of the last five decades or more, the intellectual and bureaucratic leadership of the largest and most prominent Mennonite denominations in North America[16] has come to a rough consensus not only that some kind of public witness concerning war and social injustice is compatible with their call to follow Jesus in the way of nonviolent love, but that Christian discipleship may positively require it. How deeply to engage the social order, which social issues should take priority, whether and at what level Mennonites should carry that witness into corporate and government office, what to do next if society actually attends to a prophetic witness and asks for help in institutionalizing the changes called for – any and all of these questions remain subject for ongoing debate, but are intelligible only within a consensus that *sometimes* it *is* appropriate for Christians to witness not only through the pattern of their lives but by speaking out in the public realm.

But *sometimes* implies *not always*. Not on every issue. Probably not where Mennonites bring no specific expertise – the kind of expertise they have brought in the case of conscientious objectors working in mental health facilities in World War II, or when MCC workers have returned from any number of underreported regions around the world.[17] And not with a blanket opposition to every last war through efforts that would squander time, energy, resources, political credibility, or Christian hope. The reason is not that Mennonites can positively support any war, or that any war can be compatible with Jesus' Kingdom ethic, or even that international policing can be anything more than a provisional improvement, but rather that it is foolish to act as though "the kingdoms of this world [are just about ready to] become the Kingdom of our Lord, and of his Christ" (Rev. 11:15, KJV).

In other words, once Mennonites have abandoned a stark two-kingdom theology and the strictly "sectarian" sociology it implies in favor

of a nuanced one (which is neither to abandon the witness of a distinct sociology nor to rule out the possibility of conscientious "withdrawal" from some systems and some institutions), then they will have to make some prudential judgments. Advocacy offices in Ottawa, Washington, the United Nations, and for that matter Kinshasa or Bogota will have to decide where to invest the resources and staff time that are always too scarce in the face of the injustices of a fallen world. Congregations will have to decide which issues are priorities to place before potential volunteers and to program into Christian education hours. Whether cautious and pessimistic about the prospects for public witness, or zealous and optimistic, then, as soon as Mennonites recognize that public witness is *sometimes* appropriate, they will have to recognize the need to decide when it is *not*.[18]

Commenting on the US-led, UN-sanctioned intervention in Somalia in 1992-93 from within an implicitly two-kingdom framework, Mennonite ethicists Ted Koontz and J. Richard Burkholder took exactly this approach in an article widely reprinted in the Mennonite press.[19] They emphasized that the church's primary calling is "positive peacemaking" which responds to injustices in a way that builds "just and nonviolent social structures that make for peace." "Negative peace," by contrast, is simply the absence of armed conflict: "While positive peace is much preferable, negative peace is a 'good' thing when compared to injustice and chaos." Pacifist Christians who insist their vocation is "working nonviolently toward positive peace" and never to engage in military action do not need to deny that "[s]uperior military force can, in fact, bring about the end of armed conflict, leading to negative peace." To be sure, they should resist every "illusion" that military intervention "will really bring any kind of lasting peace."

Nonetheless, wrote Burkholder and Koontz, "We recognize . . . that one task of government is to keep negative peace. A limited and controlled peacekeeping operation is something for which to be thankful, relatively speaking, when we consider the ways troops have been used in [the] past – or the much more destructive purposes for which they have been trained." Anticipating what the MCC Peace Committee would say a few years later, Koontz and Burkholder suggested that for Mennonites it might be "a time for silence" in which they would "neither condemn nor advocate this particular use of military force" – though it was no less "a time for action" in the form

of redoubled support for positive peacemaking efforts.

I want to be clear: Humanitarian military interventions to stop egregious human rights abuses should not get a blank check. Such actions will need scrutiny and "comment," as the MCC Peace Committee put it, to test whether they really are humanitarian rather than guises for imperial expansionism or simply new expressions of a misguided "white man's burden." Likewise, if the new international doctrine of responsibility to protect is part of the slow construction of an international order based on the rule of law in which nation-states increasingly limit their threat and use of armed violence to actions that look more and more like policing, the process will require plenty of scrutiny and critique simply to succeed on its own terms. We know from domestic policing, after all, that not all forms amount to just policing, that "crime-fighting" models are themselves perniciously militarized, and that community policing models are often fragile at best.[20]

But insofar as humanitarian interventions do approximate what they claim to be – especially insofar as they avoid blunt-force military strategies while seeking to attain the greater precision of accountable police actions that succeed at using the least amount of armed force needed to apprehend war criminals – it will be an act not only of foolishness to oppose them but of ideological hubris. For none of us, neither pacifist nor just-war, has good non-tragic answers to these toughest of cases. If just-war Christians really can help nations operationalize their claim that violence may be limited to these toughest exceptional cases, pacifists should not wish them to fail. And in the meantime, the real-even-if-still-too-fuzzy distinction between warfare and policing that comes with the very *notion* of just policing can help guide pacifist prudential judgments about when to "oppose" and when to practice the discipline of "silence."

Yes, if just-war Christians ever succeed at rendering war so exceptional as to approximate the best practices of policing, Mennonites and other Christian pacifists will have one fewer reason to remain pacifist. Since there are other quite biblical reasons to be pacifist, the loss of this essentially consequentialist argument for pacifism (namely, that the just war tradition has not consistently achieved its stated objectives anyway) may not be decisive, even if we see an improved track record for just-war-turned-just-policing. In any case, the question is one that pacifists can defer until

just-war Christians do their own difficult work. Somehow, though, simply to have imagined out loud the prospect that pacifists might someday face the crisis that this question would conceivably provoke seems to have unnerved a few Mennonites, for whom the preservation of group identity is never a distant anxiety. All I can do is repeat: There is another way that just-war and pacifist Christians might continue moving closer to one another, in the hope that war could cease to be a church-dividing issue. That is for historic peace churches to do their own work, arguing through their own embodied practices, to show that nonviolent ways of policing and protecting vulnerable peoples either exist or can be invented.

An ideological skepticism insisting that non-pacifist Christians can never succeed at their side of the just policing agenda, thus rectifying the "just war" tradition so that it *just* allows for policing, is uncharitable and a distraction. Pacifists have enough of their own work to do. Arguing that their just-war counterparts must inevitably fail, perhaps so that pacifists can feel more secure in their peace church identities – or even (God forbid) self-righteous – will lead neither to their own church's faithfulness nor to a larger church unity. And that would be an *avoidable* tragedy.

Notes

[1] My initial article aimed at a limited audience – a handful of scholars involved in what we called the Mennonite Catholic Theological Colloquium, which in turn aimed to make its work available to the delegations from the Mennonite World Conference and the Pontifical Council for Promoting Christian Unity engaged in a bilateral international dialogue from 1998 to 2003. That initial draft is available as "Just Policing: How War Could Cease to be a Church-Dividing Issue," in *Just Policing: Mennonite-Catholic Theological Colloquium 2002*, ed. Ivan J. Kauffman, Bridgefolk Series, no. 2 (Kitchener, ON: Pandora Press, 2004), 19-75. A revision of that article appears under the same title in the *Journal of Ecumenical Studies* 41. 3-4 (Summer-Fall 2004): 409-30. I have since expanded this material into the three chapters under my byline in Gerald W. Schlabach, ed. and lead author, *Just Policing, Not War: An Alternative Response to World Violence*, with Drew Christiansen, S.J., et al. (Collegeville, MN: Liturgical Press, 2007).

[2] No doubt some of the responsibility for this misreading has been my own. In hindsight, my initial 2002 essay could have been clearer, and in successive revisions I have tried to say more forcefully that "the just policing proposal" is a proposal for two distinct conversations within historic peace church and just war affirming churches respectively, though within hearing range of one another, so that we might goad one other to our respective forms of faithfulness through a third overarching conversation. Further, a self-reflective scholar

inevitably sorts out "what was I thinking?" through ongoing debates with other scholars, and this too has happened for me. Still, though I might wish to have been clearer at some points, I do believe that from the beginning, the structure of my arguments has been such that readers in both traditions have been invited to do their own homework first, before pressing for a grand compromise.

[3] Schlabach, *Just Policing, Not War: An Alternative Response to World Violence*, 70.

[4] For further elaboration on the notion of middle axioms, see John Howard Yoder, *The Christian Witness to the State*, Institute of Mennonite Studies Series, no. 3 (Newton, KS: Faith and Life Press, 1964), 31-33, 39-44, 71-73; Duane K. Friesen, "In Search of Security: A Theology and Ethic of Peace and Public Order," in *At Peace and Unafraid: Public Order, Security and the Wisdom of the Cross*, ed. Duane K. Friesen and Gerald W. Schlabach (Scottdale, PA: Herald Press, 2005), 59-60. Friesen goes on to put the notion into use on 68-75.

[5] Gerald W. Schlabach, "Just the Police Function, Then," *The Conrad Grebel Review* 26. 2 (Spring 2008): 50–60.

[6] Efforts such as the latter are particularly important if historic peace churches are to meet, in practice, the important objection that Reinhold Niebuhr would raise if he were to write *Moral Man and Immoral Society* today, namely that even if nonviolent policing is possible in face-to-face communities, it could never become the norm in complex industrialized societies or in international affairs.

[7] I hope I do not invite controversy by describing matters this way. I am only observing that to work at all in some places where the need is greatest (as NGOs like to say when they solicit charitable donations) one must have some relationship with governing authorities, even or especially when these are occupying forces whose occupation one does not approve of. Precisely because social and physical infrastructure in these cases is broken down, strained, or threatened, basic activities such as travel and food importation are all the more likely to require cooperation with authorities, the worse the situation. Objectively even if impolitely, this must be labeled a coalition of sorts.

[8] United Nations Security Council Resolution 1674, adopted by the UN Security Council on 28 April 2006, endorsing a formulation of the principles of R2P by a World Summit meeting, 12-14 September 2005.

[9] Gene Sharp, "Civilian-Based Defense as a Peace Strategy," *Peace & Change* 7. 4 (Fall 1981): 53-58; *Making Europe Unconquerable: The Potential of Civilian-Based Deterrence and Defence* (Cambridge, MA: Ballinger Pub. Co., 1985); Gene Sharp and Bruce Jenkins, *Civilian-Based Defense: A Post-Military Weapons System* (Princeton: Princeton Univ. Press, 1990).

[10] Or would become possible if only societies invested in them with even a portion of the resources invested in military solutions.

[11] Yoder, *Christian Witness to the State*, 31.

[12] Quotations to follow are from MCC Peace Committee, "Principles for Relating to Peacekeepers," discussion summary from 11-12 April 1997 meeting, *MCC Peace Office Newsletter*, May-October 1997; 14-16, http://mcc.org/system/files/PON_1997–02.pdf. Other articles in this issue of the newsletter are taken from presentations during the meeting and thus lay out various positions in debate. Note that the MCC Peace Committee reaffirmed

this 1997 statement in 2005, with additional commentary and addenda; see MCC Peace Committee, "MCC Peace Committee Meeting," discussion summary from 13-15 October 2005 meeting, *MCC Peace Office Newsletter*, July-September 2006, 2-5; http://mcc.org/system/files/PON_2006–03.pdf.

[13] I must confess that the reception of my work on just policing has itself made me acutely aware of these difficulties. The relevant domain here has been interchurch dialogue rather than direct public engagement, but the task of talking across Christian traditions has all the same dynamics. I have always conceived of the project as a complex exercise in formulating middle axioms first to facilitate conversation across traditions but inevitably to facilitate the public witness of Christian churches as well. But I have also had to plead that it would be tiresome to say at every turn that this or that use of the just war tradition by me, a Christian pacifist, is a middle axiom. Inevitably, some have wondered where I finally stand. All I would add is that both my formation as a believers church theologian and my later commitment to practicing theology by thinking with the wider catholic whole of the church have left me with the conviction that where I stand does not really matter. Accountability concerning one's arguments and presuppositions matters, of course, but is penultimate. What ultimately matters, and what the theologian merely services, is the church's communal discernment and witness.

[14] Schlabach, "Just Policing: How War Could Cease to be a Church-Dividing Issue," 19.

[15] Schlabach, *Just Policing, Not War: An Alternative Response to World Violence*, 72-77, 82-84.

[16] I say this as precisely as I know how to do, because Mennonite Church USA and Mennonite Church Canada are not the largest bloc of Anabaptist-Mennonite groups in North America, even though they like to think of themselves as such. Conservative non-conference Mennonites, Amish, and Hutterites added together would have larger numbers, but do not have denominational prominence simply because they are not organized as denominations in the first place. The balance would not shift if one added the Mennonite Brethren to the first bloc; also, since Mennonite Brethren have identified increasingly with North American evangelicalism, I am frankly unsure how to generalize about them. Meanwhile, I will not contest the objection that all of this is North America-centric. Again, I cannot claim to generalize about global Anabaptist-Mennonite churches, though what I write here would probably hold for European Mennonites, albeit with different features and a more complicated time line. All this is important to recognize because a very legitimate worry about the entire R2P agenda is that it is premised on Western, North Atlantic assumptions of power in the first place – power both to shape policy within our nations and then by intervening around the world. I am not convinced that this is altogether the case, but it certainly requires transparency and self-criticism.

[17] Cf. Keith Graber Miller, *Wise as Serpents, Harmless as Doves: American Mennonites Engage Washington* (Knoxville, TN: Univ. of Tennessee Press, 1996).

[18] Obviously those who are already theologically cautious will be ready to recognize this. But those who sense a strong vocation for activist peace and justice work are not exempt, and if nothing else will be concocting a recipe for burn-out if they think otherwise.

[19] J. R. Burkholder and Ted Koontz, "Keeping Our Calling Clear: When Armed Force is

Used to Make Relief Work Possible," *Gospel Herald* 12 January 1993: 6-7. With variations in the title, the article was also printed in *Mennonite Weekly Review*, *The Mennonite*, and *Mennonite Reporte*r.

[20] Tobias Winright, "Community Policing as a Paradigm for International Relations," in *Just Policing, Not War: An Alternative Response to World Violence*, ed. and lead author Gerald W. Schlabach (Collegeville, MN: Liturgical Press, 2007), 130-52.

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The ICC's Pursuit of the Lord's Resistance Army and the Limits of Criminal Proceedings

John Siebert

Introduction

The International Criminal Court (ICC) was created "to investigate, prosecute and punish those who commit war crimes, genocide and crimes against humanity"– many of whom would otherwise escape punishment in their home countries. Through the process of prosecuting these individuals, the ICC wants to deter others from committing such acts, end impunity for perpetrators on the international stage, and deliver justice to the survivors.[1] It is a tall order. The problems encountered by the ICC in pursuing indictments of five leaders of the Lord's Resistance Army (LRA) in Uganda illustrate the gap between the ICC's aspirations and its ability to deliver justice understood in a broad sense.

Without its own means of arresting those indicted, the ICC announced the indictments in the midst of a continuing insurgency war between the LRA and the Government of Uganda, with hundreds of thousands of civilians in northern Uganda being the primary victims of these two fighting forces. Formal peace negotiations to end the LRA insurgency took place between 2006 and 2008, but the ICC indictments solely of the five LRA leaders clouded, and ultimately may have undermined, those negotiations. As a result, the ICC was harshly criticized by civilian victims of the insurgency and by others for failing to deliver justice and for sabotaging a potential peace deal.

The ICC's evident failure on both counts prompted a public debate on the relationship between pursuing peace and criminal justice, and cast light on the inherent limitations of criminal proceedings to deliver a broader form of justice for affected civilians in Uganda. Taking a cue from options available within domestic criminal law procedures, the ICC's toolbox could be expanded to create greater flexibility in applying international criminal law. This may also present an opportunity for advocates of restorative justice within the historic peace churches to contribute insights for the evolution of

international criminal law from their experience in proposing alternatives in domestic criminal procedures.

ICC Indictments and the Juba Peace Talks

Although the LRA insurgency began in northern Uganda in 1986, the period under consideration here is between 2003 and 2008. The Government of Uganda formally requested the ICC to investigate the LRA in 2003. The ICC prosecutor opened an investigation on the LRA in July 2004. On 8 July and 27 September 2005 arrest warrants were issued for LRA leaders Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Raska Lukwiya on 33 separate counts of war crimes and crimes against humanity, including murder, rape, enlisting of children, and sexual enslavement. The warrants were sealed until redacted versions were publicly released on 13 October 2005.[2] Subsequently, Lukwiya was reportedly killed in a clash with the Ugandan military on 12 August 2006. Otti was reportedly killed in October 2007 by the LRA itself for disloyalty; although he has not been heard from since, his death has not been independently verified.

The Juba Peace Talks between the Government of Uganda and the LRA began on 14 July 2006, hosted by the Vice-President of the Government of Southern Sudan, Riek Machar.[3] The talks continued in fits and starts until 10 April 2008, when the first of three announced ceremonies to sign a Final Peace Agreement (FPA) was frustrated by Kony's non-appearance. The last of these no-shows was on 14 November 2008. Any remaining hope for signing the FPA was effectively quashed with the advent on 14 December 2008 of Operation Lightning Thunder, a large-scale military operation headed by the Uganda People's Defense Force (UPDF) to kill or capture the LRA members who had taken residence in the Democratic Republic of Congo (DRC). The LRA leadership, foot soldiers, and camp followers were dispersed to continue committing atrocities against civilians in the DRC, Southern Sudan, and the Central Africa Republic (CAR).

Justified Pursuit of the LRA

The LRA's guilt for the crimes enumerated by the ICC is universally acknowledged, with the possible exceptions of some LRA members themselves and their supporters in the diaspora. LRA atrocities have

been widely documented by international human rights and development organizations and in the media. The LRA leadership and foot soldiers are *prima facie* guilty of appalling and systematic abuses against civilian non-combatants, often children, in their own country and in several neighboring countries. The scope and gravity of LRA abductions, maiming, rapes, torture, and murders meet the common understanding of war crimes and crimes against humanity. The numbers from Uganda, all estimates, tell only part of the story: 100,000 people killed in LRA-related violence, and between 38,000 and 66,000 children abducted and enrolled as fighters or sexual slaves.[4] There are no readily available estimates for the wounded and maimed, malnourished, raped, forgotten, and disappeared.

At least one leading LRA member essentially conceded that the LRA had committed atrocities, but with the caveat that the LRA was not alone. Not long before his apparent demise at the hand of his comrades, the ICC-indicted second-in-command, Vincent Otti, was quoted on the issue of surrender and immunity from prosecution. "If the UPDF are included on the list of indicted commanders, I will definitely go to The Hague. Short of that, I will never go. It's not only the LRA alone who committed atrocities in northern Uganda. It's both the LRA and the UPDF."[5]

Justified Pursuit of the Government of Uganda and the UPDF
The problem identified in the complaint by Otti is reiterated by Ronald Atkinson: "These conflicts have involved hundreds or even thousands of others who have also committed human rights violations, also often gross and horrendous – from presidents and generals to foot soldiers in myriad militias and government forces."[6] One assumes President Yoweri Museveni and UPDF generals are those whom Atkinson has in mind.

ICC critic Adam Branch asserts that the ICC as a formal, international criminal justice prosecution service was ill-equipped in its fledgling state to navigate the complexity of Uganda's social and political strife, of which the LRA insurgency was only a part.[7] He believes that the ICC failed to do a proper political analysis of the situation in northern Uganda and the potentially negative impact of prosecuting only the LRA while ignoring human rights abuses committed by the UPDF.[8]

That the ICC indicted only LRA leaders might give the impression that

the ICC disagreed that the Government of Uganda, and more particularly its military, the UPDF, also committed ICC-indictable offenses. Branch notes that the ICC has responded to a range of criticisms on its handling of the LRA indictments, but is not impressed by ICC prosecutor Luis Moreno-Campo's response on the issue of indicting leaders only from one side: "Crimes committed by the LRA were much more numerous and of much higher gravity than the alleged crimes committed by the UPDF. We therefore started with an investigation of the LRA."[9] Moreno-Campo's comments seem to imply that the investigative book on the Government of Uganda and the UPDF has not been closed.

In addition to the systematic violation of civil rights by the UPDF, the potential ICC investigation of President Museveni and the UPDF hinges partly on an analysis making two closely-related arguments: (1) that the forced displacement of the Acholi people into IDP camps was politically motivated and not for the protection of civilians, and (2) that the military pursuit of the LRA was (and continues post-2008) purposely ineffectual.

The start of the LRA insurgency is usually dated to 1986, although unrest and civil war in Uganda has been a constant since independence in 1962. Current President Museveni emerged victorious from the bush in 1986, leading his National Resistance Army to power in Kampala. His power base is in the south. Museveni toppled a government primarily led by the Acholi from the north. Various rebel factions remained behind in the economically and politically marginalized north to carry on their struggles. The LRA was only one of these groups, but its unique form of religious motivation articulated by the charismatic Joseph Kony, and its fighting skill, evasiveness, and infamy surpassed all the others.

Commentators point to the political challenge Museveni would face from a stable, prospering north that would predominantly vote against him. Intended or not, and never publicly acknowledged, a dysfunctional north aids Museveni's continuation in power.[10] He has repeatedly manipulated term-limit provisions of the Uganda constitution to continue running in national elections to remain as president. He has also received considerable international support despite serious questions about his government's human rights record, apparently because he represents an improvement over his predecessors such as Idi Amin.

In the early 1990s, the LRA began to attack civilians in Acholi villages for reasons that are not clear. Was there less-than-expected popular local support for the LRA? Were local Acholi self-defense units perceived by the LRA as a sign of disloyalty? In any event, the Ugandan Government responded to LRA attacks on Acholi villages by placing almost the entire northern population of approximately two million, predominantly Acholi, into internally displaced camps (IDP camps) for their protection. The Government then went about systematically *not* protecting the camp residents from ongoing savage attacks by the LRA. Not only was protection missing, but the camp dwellers were almost completely dependent on international food aid and lacked adequate water and other infrastructure. Predictably, mortality rates rose dramatically in the camps, as did domestic violence and other forms of strife.[11]

The UPDF's consistently tardy, ineffective responses to LRA attacks on IDP camps has been attributed to rampant corruption among senior officers, resulting in a lack of adequate equipment and personnel, nonexistent soldiers on payroll lists for the illegal collection of pay by commanders, illegal selling off of army petrol and parts from army trucks, and selling of government rations and uniforms.[12] Branch argues that "the Ugandan government cynically referred the ongoing conflict to the ICC, expecting to restrict the ICC's prosecution to the rebels in order to obtain international support for its militarization and to entrench, not resolve, the war."[13]

In support of Branch's criticism, we should note that negotiations to end the insurgency have over the years been preceded or followed by massive shows of UPDF force with the stated goal of wiping out the LRA. This happened in 1991 with Operation North, in 2002 with Operation Iron Fist, and in December 2008 with the failure of the Juba Peace Talks being followed by Operation Lightning Thunder. In each case the UPDF failed to kill or capture LRA leaders, and in response the LRA stepped up vicious attacks on civilians in unprotected villages. These attacks in turn justified expanded military activities by the UPDF in Uganda and into neighboring countries where the LRA has taken residence.

The displacement of the Acholi in IDP camps without adequate protection would, *de facto*, amount to a gross and systematic abuse of human rights to an identifiable ethnic group by the Government of Uganda. Elevated

death rates in the camps and destruction of Acholi livelihood and cultural practices clearly constitute grounds for ICC investigation and indictments, which so far have not materialized.

Impact of the ICC on the Juba Peace Talks
It can be speculated, but not proved, that the 2005 ICC indictments of the five LRA leaders played a role in motivating the LRA to participate in the Juba Peace Talks at first, and later in undermining the successful conclusion of these talks with a signature by LRA leader Kony. In her analysis of the LRA, Mareike Schomerus attempts to separate fact from fiction, because "[b]reathtaking brutality, political manoeuvring, and propaganda have marked the conflict on all sides."[14] Moses Okello joins her in taking a hard-edged view about both the LRA and the Government of Uganda. The Government's call on the ICC and the LRA's nudge to the negotiating table by the ICC indictments invite skepticism: "While it *may* be the case that the carrot-and-stick threat of the indictments led the LRA to the negotiating table, this is merely speculation informed by opportunism. This is, after all, not the first time in the history of the conflict that the LRA and the government have attempted to talk peace. There were peace talks in 1994 and again in 2004." Okello lays blame for the unsuccessful completion of the Juba Peace Talks at the feet of Museveni, not the LRA: "These talks were frustrated by the same government which referred the situation in northern Uganda to the ICC."[15]

The Juba talks were mediated by Riek Machar and assisted by UN special envoy to LRA-affected areas, Joachim Chissano, a former president of Mozambique. Various forms of subsistence food and other aid were provided to the LRA by non-government organizations, particularly CARITAS, and the UN Office for the Coordination of Humanitarian Assistance (OCHA). Behind the scenes, countries such as Canada[16] provided financial aid to the negotiation process and provided third-party validation to emerging elements of the peace agreement. Over the course of almost two years the talks frequently stalled, and new incentives or processes were added, with the support of the international community, to restart the talks or build momentum.

As the Juba Peace Talks progressed, they became much wider in

scope and participation. The LRA negotiators, composed of Acholi diaspora LRA members, were joined by representatives of northern Uganda from traditional, faith-based, and civil society organizations. With the expanded participation, the talks achieved unexpectedly positive outcomes, including agreement from the Government of Uganda on political concessions addressing some of the conditions of political and economic marginalization at the root of northern Ugandans' disaffection.

There was an immediate peace dividend as well. During the talks the LRA effectively observed a ceasefire. Attacks on civilians for the most part stopped in Uganda and have remained stopped. There was also a relative hiatus of LRA attacks in Sudan and the DRC, at least until the summer of 2007 when attacks began to be reported in localities in an arc from Garamba National Forest in the DRC and north and east to CAR, including sites in West Equatoria State in Southern Sudan.

Because Kony did not directly participate in the Juba Peace Talks, understanding his position on the ICC indictments must be heavily qualified. He was often quoted second-hand by LRA negotiators or journalists. An IKV Pax Christi report offers an example of the type of reporting that characterizes speculation about Kony's position on the indictments or alternative criminal proceedings: "Kony failed to show up during these [Final Peace Agreement signing ceremonies], citing different logistical and physical problems but also signaling he wanted to understand more of the legal proceedings in light of the ICC warrants issued against him and the top leadership."[17]

In an interview, Obonyo Olweny, described as a former LRA spokesperson, talked by telephone with Kony, who complained that "The part of the Final Peace Agreement (FPA) calling for prosecution of LRA leaders by a special division of the High Court . . . [was] unacceptable; since he was prepared to make peace, the government should not prosecute him and his commanders."[18] Ronald Atkinson draws on unnamed sources to convey Kony's apparent position: "Then, on May 25th [2008] it was reported that Kony had rejected signing any peace agreement with the [Government of Uganda] saying that he would rather die in the bush than turn himself in to [the Government] or ICC and 'be hanged.'"[19]

If it hadn't been the ICC indictments, it could have been under some other pretext that Kony refused to sign the FPA. Further, if we accept the

critique of President Museveni and the UPDF that permanent war on the
LRA was good for politics and for corrupt military business interests,
then Kony's wariness to sign and surrender may be understandable. Not
to be discounted is the studied ambiguity and deliberate deception that are
hallmarks of Kony and the LRA's well-honed survival skills.

Peace Versus Justice

We know the ICC indictments and alternative criminal justice processes
were extensively discussed in the Juba Peace Talks, but we cannot know
if the ICC actions were decisive in either initiating or scuttling these talks.
To the extent that its indictments were a factor, the ICC has been harshly
criticized for its inflexibility. The talks were the stage on which the "peace
versus justice" debate occurred, juxtaposing the necessity of peace and the
demands of justice.[20] This debate largely devolved into affirmations by
advocates on both sides that each is necessary but the sequencing must be
chosen. Moses Okello, Head of Research and Advocacy with the Refugee
Law Project in Kampala, made a presentation in Nuremberg, Germany,
on what he called the false polarization of peace and justice in northern
Uganda.[21] Okello argued that if justice was to come "peace should always
come first, and justice later."

On the other side, the ICC and its defenders insisted that peace cannot
be truly secured unless the leading LRA perpetrators of atrocities are formally
brought to justice in parallel processes. Prosecution of those primarily
responsible for atrocities cannot be sacrificed to secure a peace agreement.
Peace must be achieved with justice or else a dangerous precedent will be
set.

Human Rights Watch has taken the view that any outcome must
include both peace and justice and that justice must involve fair and
credible prosecutions of perpetrators of the most serious crimes, including
prosecution before the ICC of the four surviving LRA leaders against whom
arrest warrants have been issued. Fair and credible prosecutions for the most
serious crimes are crucial to promote not only accountability, but also a
durable peace.[22]

Atkinson differentiates the narrow conception of justice in criminally
prosecuting individuals from the broader sense of justice for victims of the

LRA and presumably of the UPDF. He concedes that in an ideal world "formal prosecution makes sense," but questions the merits of pursuing criminal justice when not pursing the indictments might result in a peace agreement for the people of northern Uganda. "How, on the scales of justice, does insisting on the prosecution of these three, however guilty, weigh against the chance to end a conflict that has denied for more than twenty years the most fundamental justice of peace and security to millions of people?"[23] Here the broader notion of justice encompassing peace and security for a wider community is contrasted to the narrow focus of retributive justice through the courts.

The ICC presented a tough stance on prosecution not being sacrificed in the peace talks. "We're not dealing with shoplifting," said Philippe Kirsch, President and Judge of the ICC from 2002 to 2009. "The court is dealing with genocide, crimes against humanity and war crimes, all of extreme gravity. Once a crime of that nature comes to the court, we can't simply decide we are going to ignore it and it is inconvenient."[24]

In fact, the ICC indictments could be lifted, but only on two narrow grounds provided by the Rome Statute[25]: (1) if complementary domestic or regional procedures would effectively replace the ICC proceedings; and (2) suspension of the indictments for one year (renewable) by resolution of the UN Security Council. Both options were discussed during the Juba Peace Talks and in the public debate on working around the indictments to secure a peace agreement with the LRA.

Ultimately, the peace versus justice debate came to a halt without resolution with Kony's final no-show for signing the Final Peace Agreement and the December 2008 start of Operation Lightning Thunder that dispersed the LRA further into the DRC, CAR, and Southern Sudan.

Procedural and Other Critiques of the ICC

The ICC has been attacked by numerous states and individuals[26] who object to its intrusion into state sovereignty or who may have grounds to fear they may be in the ICC's investigative cross-hairs. But it must be disheartening to face criticisms from civilian victims of the LRA insurgency that cast aspersions on the ICC's operations and motivations. Okello accused the ICC of complicity in shifting attention from the atrocities committed in the

insurgency to the far more limited task of pursuing a handful of individuals on one side of the conflict, "and in the process ensuring the institutional interests of a fledgling global governance mechanism, the ICC."[27] This is a direct attack on the ICC's integrity and legitimacy from those it purports to be defending. This type of fundamental organizational criticism must be addressed at the political level by the international community.

There were also numerous difficulties with the indictments that are procedural and within the ICC's power to address through changes in policy and operations. Adam Branch identifies problems with the indictments particular to circumstances in Uganda that were not anticipated or corrected when identified.[28] The ICC warrants eviscerated the Ugandan Amnesty Act of 2000, which granted a general amnesty to LRA members; this removed the protection of amnesty from the very people who most needed to be enticed out of the bush. As well, the ICC's temporal jurisdiction goes back only to 2002 but the most severe LRA violence took place before that. If the ICC operates under the principle of "complementarity," then it should accept only cases in which national courts are 'unable' or 'unwilling' to undertake investigation and prosecution. Branch believes the Ugandan judiciary was always able to do the job, and thus the ICC should have rejected the referral from the Government of Uganda.

Questions have also arisen about applying criminal culpability to two of the remaining indicted LRA leaders, as outlined in an illuminating 2008 *Globe and Mail* article by Stephanie Nolen and Erin Baines.[29] Abducted by the LRA as a 10-year-old in 1990, Dominic Ongwen was brutalized and trained as a child fighter. He subsequently rose to the third- or fourth-highest rank in the LRA, which explains the ICC's choice to indict him. According to international humanitarian law he was a child soldier until he turned 18, and therefore subject to rehabilitation rather than prosecution[30]; but he was more than 18 when the ICC began to investigate and prosecute people in 2002. "As the law stands, if they carry out the same crimes after their 18th birthdays that they did the day before, they are no longer victims, but criminals." Nolen and Baines speculate that Ongwen ultimately rejected the option of voluntarily leaving the LRA and turning himself in. Except for the ICC indictments, he might have decided differently because the national amnesty law was in place that he could have taken advantage of – if the ICC

had not intervened.

Then there is the case of Kony himself. Speculation about his sanity has cast doubts on his criminal culpability. As Lucy Hovil and Joanna Quinn write, "Worse, still, is the possibility that Kony might be released, for instance, on a plea of insanity, as has been suggested." If Kony were to give himself up or be captured, he might be diagnosed as a paranoid schizophrenic or as having some other condition. How and where would he be held if deemed mentally unfit?[31]

Uganda and other LRA-affected areas would be fortunate if Kony was in custody by capture or voluntary surrender – or dead. The LRA has incredible resilience. As Ronald Atkinson concludes, "The prospect of Kony and the remaining top LRA commanders [. . .] submitting to either the ICC or a Ugandan national judicial prosecution 'satisfying international standards' [. . .] seems almost impossible to imagine."[32] John Prendergast, writing for ENOUGH – the project to end genocide and crimes against humanity – offers a potential solution: "It remains highly doubtful that Kony will trust Museveni enough to submit to a trial in Uganda, and third country asylum in a country that is not a signatory to the Rome Statute [establishing the ICC] may be the most realistic option."[33] Again, we cannot know if presenting an offer of third-party asylum to Kony and other LRA leaders would have resulted in voluntary acceptance and surrender.

Addressing the Limits of ICC Criminal Justice

What the ICC should consider is whether it has the flexibility and tools that are sufficient to address the types of problems encountered with the LRA indictments.

In its role in Uganda, the ICC was caught between its restricted means – criminal prosecution of individuals – and its broad aspiration to deliver justice to victims suffering from a decades-long insurgency. The inadequacy of strictly prosecuting accused criminals is recognized within the narrower confines of domestic legal processes in democratic countries. As a result, mechanisms exist in their criminal legal systems to negotiate plea bargains or alternative sentencing deals that, while often accompanied by anguish, can result in the lesser of evils or advance the broader demands of justice more effectively than simple findings of individual culpability.

Complementing the criminal justice victim compensation programs and rehabilitation strategies for offenders are civil procedures and judicially sanctioned out-of-court settlements that address the damages of criminal activity to individuals and classes of individuals and that provide relief to those harmed, including apologies and memorials.

The ICC has already introduced adaptations to allow for greater flexibility and responsiveness to specific circumstances in order to meet some of its broader goals. The Victims Trust Fund, for instance, implements complex Court-ordered reparation awards and provides assistance to victims.[34] In 2007-08, this Fund received 42 proposals for consideration. Thirty-four proposals, 16 projects in DRC and 18 in northern Uganda, were granted approval in April 2008.[35]

Outreach programs were started to legitimize ICC processes among affected populations in Uganda and elsewhere. Outreach is defined as "a process of establishing sustainable, two-way communication between the Court and communities affected by the situations that are subject to investigations or proceedings, and to promote understanding and support of the judicial process at various stages as well as the different roles of the organs of the ICC. Outreach aims to clarify misperceptions and misunderstandings and to enable affected communities to follow trials."[36] These programs may build legitimacy for the ICC over time in affected communities.

The Way Forward for the ICC
The lawyers' truism that "bad facts make bad law" applies here, although it may be better stated, if less eloquently, that "bad facts make bad emerging international criminal jurisprudence." The ICC bumped up against the limits of its too narrowly defined individual criminal proceedings, and that may have compromised its ability to achieve the broader goals of justice it purports to serve. As noted earlier, the ICC might well consider that domestic criminal justice systems have options for flexible responses not currently available to the ICC, and options extending beyond criminal proceedings to encompass civil proceedings. These options include the right to sue governments and out-of-court settlements supervised by judges that allow for participation by those harmed in creating a wider range of potentially more satisfying

compensatory activities.

Restorative justice advocates within the historic peace churches may have an opportunity to contribute further creative ideas to this international criminal law discussion. Restorative justice, in contrast to retributive justice as embodied in western criminal law systems, does not focus on punishment of the offender as much as on seeking to address the needs of both the victim and the offender, with the goal of restoring relationships and the broader well-being of the individuals and communities involved.

Translating this experience into international criminal law dealing with mass atrocities, as the ICC is constituted to do, will not be simple. While restorative justice is traditionally used in response to lower-impact crimes such as property damage or fraud, it has also been successfully used in response to higher-order offenses such as sexual assault or murder, under certain strict conditions; for example, where the victim or their family and the offender agree to participate and where traditional retributive forms of punishment, such as imprisonment, backstop the process in the event of bad faith on the offender's part.

The potential utility of restorative justice in a situation such as the LRA atrocities has a pre-set opening, since it has been a lively topic of public debate and negotiation in and around the Juba Peace Talks. The July 2007 agreement between the Ugandan Government and the LRA on Accountability and Reconciliation states that "Traditional justice mechanisms . . . as practiced in the communities affected by the conflict shall be promoted, with necessary modifications, as a central part of the framework for accountability and reconciliation."[37] Although the Final Peace Agreement was not signed, various forms of traditional restorative justice in northern Uganda have been used extensively with lower-level LRA members who have returned to their communities.

This development has met with sharp disagreements. Problems with traditional forms of justice go beyond whether they are a substitute for, an addition to, or an evasion of the retributive justice embodied in ICC indictments. Advocates and critics identify many practical questions that are not easily answered:

- How should abducted children who committed atrocities be treated when they are both victims and perpetrators?

• Can traditional justice work both for formerly abducted children who became LRA fighters under duress and for LRA commanders and those who enlisted voluntarily as adults?

• How are former LRA soldiers to be reintegrated into communities when sufficient infrastructure and social supports do not exist, particularly in communities heavily disrupted by displacements to IDP camps?

• How can ceremonies traditionally practiced for individual cases at a relatively small community level be adapted for mass atrocities committed by the LRA and the UPDF?

• How are women and girls to be dealt with, when they are excluded from some traditional ceremonies but are also victims and in some cases perpetrators?

• Traditional ceremonies are private, but the northern Ugandan violence has been widespread and public. How can the need for public processes of acknowledgement and punishment be met?

Tim Allen casts doubt on the legitimacy of traditional or restorative justice approaches: "The current consensus about customary Acholi conceptions of justice has largely emerged from the aid-funded collaboration between Acholi traditional male elders and the Catholic and Anglican churches."[38] Countering Allen's criticism is polling research that puts traditional forms of justice that are locally rooted and adapted for the purpose of reconciliation, truth-telling, and advancing a more just social and political order at the forefront of northern Ugandans' hopes. In a survey of 1,143 internally displaced persons in northern Uganda, 97.5 per cent responded "yes" to the question, "Should the truth about what happened during the conflict be known?"[39] In several studies using different methodologies, the vast majority of people in northern Uganda indicated support for an approach of forgiveness and a truth and reconciliation process to deal with the fallout of the violence.

Lucy Hovil and Joanna Quinn capture the core ambiguities. Simply adopting the ICC or even the Ugandan application of western jurisprudence

will not necessarily result in justice: "While it is vital not to over-romanticise traditional mechanisms, it is also important to bear in mind the fact that the Western retributive model is far from perfect. . . . It is a mistake to assume that simply prosecuting and, hopefully, convicting Kony and a few of his senior commanders will satisfy the needs of justice in this context."[40] A multi-layered, locally nuanced set of approaches to finding justice and peace in northern Uganda is likely needed, but time, goodwill, and various supports will be required both within Uganda and within the international community supporting the ICC.

Conclusion

The ICC pursued its narrow criminal justice mandate under the Rome Statute to investigate and prosecute those primarily responsible in leadership for LRA atrocities, although not those in leadership in the Government of Uganda and the UPDF. Currently there is neither justice nor peace in LRA-affected areas. LRA leader Joseph Kony is believed to be in isolation in the Central Africa Republic. LRA foot soldiers, operating in groups as small as five, continue to abduct, kill, and maim in the unpatrolled remote border communities between the DRC, Southern Sudan, and the Central African Republic. Calls are again being heard for negotiations with the LRA to finally end its bloody insurgency.[41]

Notes

[1] The Rome Statute (1998) that founded the ICC came into force in 2002. The Statute and the ICC were normative and structural responses to the problem of impunity: what to do when strife-torn countries were unable or unwilling to prosecute those responsible for massive human rights violations. The international community created the ICC to stand ready and resourced to prosecute these people in a systematic way which stand-alone or ad hoc courts, starting with the post-WW II Nuremburg Trials and extending through more recent special courts for the former Yugoslavia, Liberia, and Rwanda, were unable to do.

[2] International Crisis Group, *Northern Uganda Peace Process: The Need to Maintain Momentum,* Africa Briefing No. 46, 14 September 2007; www.crisisgroup.org/home/index.cfm?id=5078&l=1.

[3] In September 2006 I visited Juba, Southern Sudan, for a conference. At lunch we ate at the Juba Raha – the name means "pleasure" – the hotel where the Government of Uganda and the LRA were beginning their negotiations to end the insurgency. The next morning,

the Africa Expeditions site where we were sleeping was abuzz with reports of killings. In five separate incidents just outside of Juba, 35 civilians were killed for no apparent reason. Rumors of who perpetrated these killings were circulating. The most plausible explanation was that LRA fighters wanted to make the point that they were a force to be feared in order to bolster the LRA presence at the negotiating table. In a subsequent courtesy call by a small delegation on the President of Southern Sudan, Salva Kiir, we passed through an ante-room filled with Sudan People's Liberation Army Generals waiting to meet the President to decide on a response to these killings.

[4] Survey of War-Affected Youth [SWAY]: "The State of Female Youth in Northern Uganda: Findings from the Survey of War-Affected Youth. Phase II, 2008." https://wikis.uit.tufts.edu/confluence/download/attachments/14553675/SWAY+II+report+highres.pdf?version=1

[5] Institute for War and Peace Reporting (IWPR): "Funding Problems Stall Juba Negotiations / LRA Hires Lawyers for Peace Talks / Otti Mocks Court's Indictment Record / Bozize Probes LRA Incursion Reports," 28 August 2007.

[6] Ronald R. Atkinson, "From Uganda to the Congo and Beyond: Pursuing the Lord's Resistance Army." New York: International Peace Institute, December 2009; www.ipacademy.org/media/pdf/publications/e_pub_uganda_to_congo.pdf

[7] Adam Branch, "Uganda's civil war and the politics of ICC intervention," *Ethics and International Affairs* 21.2 (2007): 179-98.

[8] "Ugandan security and military forces continue to use 'safe houses,' unauthorized secret detention centers, and, increasingly, civilian police facilities to detain and torture suspected rebels and dissidents." Human Rights Watch, "Uganda: Events in 2006." www.hrw.org/englishwr2k7/docs/2007/01/11/uganda14719.htm.

[9] Branch, "Uganda's civil war and the politics of ICC intervention," 188.

[10] Joanna R. Quinn, "Comparing formal and informal mechanisms of acknowledgement in Uganda." Unpublished Working Paper, March 2006. Dr. Quinn is an associate professor of Political Science at the University of Western Ontario. Quoted with permission of the author.

[11] In September 2008 my colleague Ken Epps and I conducted field research on the relationship between peacebuilding and development programs in East Africa. (See our report, "Addressing Armed Violence in East Africa." http://www.ploughshares.ca/libraries/Build/WorldVisionPloughsharesEastAfrica.pdf). During interviews with people in northern and eastern Uganda we documented IDP experience of abuses in the camps.

[12] Zachary Ochieng, "Bigombe: A peacemaker's lonely battle," *The EastAfrican Magazine,* 10-16 September 2007, I-III.

[13] Branch, "Uganda's civil war and the politics of ICC intervention," 179-80.

[14] Mareike Schomerus, "Small Arms Survey. The Lord's Resistance Army in Sudan: A History and Overview" (Geneva: Graduate Institute of International Studies, 2007).

[15] Moses Chrispus Okello, "The false polarisation of peace and justice in Uganda." Expert paper "Workshop 2—Justice in Situations of Ongoing Conflict." Conference organized by International Center for Transitional Justice. Nuremberg, Germany, June 2007. www.peace-justice-conference.info/download/WS-2-Expert%20Paper-Okello.pdf.

[16] The ICC is considered one of the jewels in Canada's human security crown, part of the

activist policy of Foreign Affairs Minister Lloyd Axworthy in the late 1990s. See "Support international court, Axworthy urges," *Toronto Star,* 26 June 2008. A Canadian diplomat, Phillippe Kirsch, chaired the pivotal negotiating session in 1998 leading to the formulation and eventual coming into force of the Rome Statute founding the ICC.

Kirsch went on to become an elected judge of the ICC and its first President (2002 - 2009). Canada also played a prominent role in support of the Juba Peace Talks. For instance: (1) In December 2006 Canada's $1.5 million contribution was the largest international contribution to the Juba Initiative Project to support the Cessation of Hostilities Monitoring Team through the UN; (2) In February 2007 Canada announced $2.5 million for stabilization and peacebuilding projects in northern Uganda. (3) By March 2008 Canada had invested approximately $8 million in northern Uganda, $3.5 million to support the Juba Peace Talks. For more information about Canada's role in Uganda and the Juba peace process, visit the Foreign Affairs and International Trade Canada website at www.dfait-maeci.gc.ca/africa/uganda-canada-en.asp.

[17] Joost van Puijenbroek and Nico Plooijer, "How Enlightening is the Thunder?" Utrecht: IKV PAX Christi, February 2009 Report. IVK Pax Christi is a Dutch NGO specializing in conflict resolution.

[18] International Crisis Group, *Northern Uganda: The road to peace, with or without Kony*. Africa Report No. 146, 10 December 2008.

[19] Atkinson, "From Uganda to the Congo and Beyond: Pursuing the Lord's Resistance Army," 12.

[20] For an in-depth review of the opposing legal views see Tim Allen, *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention. An Independent Report.* February 2007, and Adam Branch, "Uganda's civil war and the politics of ICC intervention," *Ethics and International Affairs* 21.2 (2007): 179-98.

[21] Okello, "The false polarisation of peace and justice in Uganda," 2.

[22] Human Rights Watch, "Courting History: The Landmark International Criminal Court's First Year," 2006.

[23] Atkinson, "From Uganda to the Congo and Beyond: Pursuing the Lord's Resistance Army," 19.

[24] See Kathryn May, "War-crimes court won't bend to political pressure: Canadian head," *Canwest News Service*, 11 August 2008.

[25] Rome Statute, Preamble: "[E]mphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions." Rome Statute, Article 16: "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the UN, has requested the Court to that effect; that request may be renewed by the Council under the same conditions."

[26] See Mary Kimani, "ICC and Africa: Pursuit of justice or Western plot? International indictments stir angry debate in Africa," *Africa Renewal* 23.3, October 2009, and Max du Plessis, *The International Criminal Court and its work in Africa: Confronting Myths*. ISS Paper 173, November 2008.

[27] Okello,"The false polarisation of peace and justice in Uganda."

[28] Branch, "Uganda's civil war and the politics of ICC intervention," 183-87.

[29] Stephanie Nolen and Erin Baines, "The making of a monster," *The Globe and Mail*, 25 October 2008, F4-5.

[30] From the "Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict." Entry into force 12 February 2002. Preamble: "Noting the adoption of the Rome Statute of the ICC, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflict." Article 6, Section 3 "… States parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration."

[31] Lucy Hovil and Joanna Quinn, "Peace First, Justice Later: Traditional Justice in Northern Uganda." Refugee Law Project Working Paper No. 17. (Kampala: Refugee Law Project, 2005), 37; www.refugeelawproject.org/working_papers.php.

[32] Atkinson, "From Uganda to the Congo and Beyond: Pursuing the Lord's Resistance Army," 19.

[33] John Prendergast, "Let's Make a Deal: Leverage needed in Northern Uganda Peace Talks." ENOUGH Strategy Paper #6, August 2007. http://www.americanprogress.org/issues/2007/08/enough6.html.

[34] Frederic Megret, "Justifying Compensation by the International Criminal Court's Victims Trust Fund: Lessons from Domestic Compensation Schemes," McGill University – Faculty of Law, 5 November 2009, Working Paper Series; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1501295

[35] ICC Trust Fund for Victims; www.trustfundforvictims.org/projects

[36] ICC Outreach; www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Outreach/

[37] Traditional justice methods practiced in northern Uganda include: "Ailuc" performed by the Iteso, "Culo Kwor" performed by the Acholi and Lango,"Kayo Cuk" by the Langi, "Mato Oput" by the Acholi, and "Tonu ci Koka" by the Madi. The most frequently cited method is Mato Oput. This ceremony of clan and family-centered reconciliation incorporates the acknowledgement of wrongdoing and the offering of compensation by the offender, and culminates in the sharing of symbolic drink.

[38] Tim Allen, *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention. An Independent Report.* February 2005; www.crisisstates.com/download/others/AllenICCReport.pdf.

[39] Justice and Reconciliation Project, *The Cooling of Hearts: Community Truth-Telling in Acholi-land*. Gulu District NGO Forum, Liu Institute for Global Issues, Special Report July 2007. www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/5FF145A361DE791CC1257313003386B2/$file/The+Cooling+of+Hearts+-JRP-July+07.pdf.

[40] Hovil and Quinn, "Peace First, Justice Later: Traditional Justice in Northern Uganda," 37.

[41] See "Religious Leaders Recommend Peaceful Settlement to LRA Insurgence," *Sudan Tribune*, 14 September 2010.

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Following Ways of Life: The Responsibility to Protect

Mark Vander Vennen

The "Responsibility to Protect" notion has emerged with unprecedented speed as a concept, a principle, and even a norm in international discourse.[1] In 2000, the International Commission on Intervention and State Sovereignty (ICISS) was struck with the mandate to answer this question posed by Kofi Annan, then Secretary General of the United Nations:

> If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Sbrebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?[2]

The Commission's report, "The Responsibility to Protect," was produced in 2001. Its singular achievement was to shift the language from "right to intervention" to "responsibility to protect." Its Basic Principles state that:

> A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
>
> B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of nonintervention yields to the international responsibility to protect.[3]

By 2005, at the United Nations World Summit, many aspects of the ICISS report would be adopted by the international community. The Summit's "Outcome" document amounted to an embrace of the Responsibility to Protect concept:

> Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity…. We accept that responsibility and

will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility.

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means … to help protect populations from war crimes, ethnic cleansing and crimes against humanity.… We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.[4]

In the short span of four years, a significant new reality emerged on the international scene.

R2P (as the Responsibility to Protect doctrine is known) focuses exclusively on "atrocity crimes": genocide, crimes against humanity, and war crimes.[5] Unlike "humanitarian intervention" (coercive military intervention for humanitarian purposes), states under R2P commit to assuming their responsibility to protect their own citizens from atrocity crimes, and the international community commits to supporting states to assume that responsibility using a wide range of peaceful diplomatic, economic, technical, and other means. Initiatives are geared specifically to prevention, reaction, and rebuilding. The possibility of international military intervention, under strict guidelines, is present but is not the primary focus of R2P.[6] And unlike "human security," which extends to a wide variety of types of conflicts, R2P's scope is limited by its exclusive attention to atrocity crimes, which by definition are systemic or structural injustices.[7]

Finally, R2P is linked to the International Criminal Court (ICC), which is designed to be a legal forum for holding leaders accountable who do not assume their responsibility to protect their citizens from mass atrocity crimes.[8]

Since 2005, a great deal of literature has been generated about R2P.[9] Advocates for R2P indicate that the international community's embrace of the doctrine in practice has been disappointing.[10] Clearly, R2P has not been

invoked in Darfur, the Congo, Sri Lanka, Somalia, and other places that would seem to have met R2P criteria. Further, some actors in the South object to R2P as merely a new rationale for Western imperialism.[11]

What, then, are we to make of R2P? Does it represent a genuine new direction that can actually be effective in helping leaders assume their responsibility to protect their citizens from atrocity crimes? How should we interpret the speed of the development and acceptance of R2P by the international community but its apparent lack of use in practice? And how should the peace churches and the peace movement engage R2P? My purpose in this essay is to present some theses in response to these questions, in the hope of contributing to the broader discussion.

The Peace of Westphalia
Commentators are unanimous that R2P represents a response to the definition of state sovereignty arrived at in the so-called Peace of Westphalia.[12] In 1648 the Peace of Westphalia (consisting of two treaties) spelled out the definition of the modern-day nation state and drew the borders of modern states. If R2P is linked to Westphalia, then we would be wise to explore the milieu that gave rise to the Westphalian agreement.

The time of that agreement was one of profound uncertainty. People no longer knew what to believe: with the Reformation came a multiplication of conflictual, seemingly incompatible beliefs. To make matters worse, with new world travel, people heard fantastic stories about strange cultures that were relatively stable though not founded on Christian principles. Similarly, with Galileo and Copernicus, one's senses were no longer trustworthy: surely the sun goes around the earth, not the other way around? Surely the earth is flat? Finally, with the decline of papal power and the rise of the state as a form of public power independent of both the ruler and the ruled, people were uncertain as to who their rulers were and to which country they belonged.[13] John Donne lamented in 1610:

> 'Tis all in pieces, all coherence gone
> All just supply, and all Relation
> Prince, Subject, Father, Sonne are things forgot
> For every man alone thinks he hath got
> To be a Phoenix, and that then can bee

None of the kinde, of which he is, but hee.[14]

In that crisis of incoherence, the quest for certainty became paramount. If one's senses could not be trusted, then certainty could be found in the notion of "I think, therefore I am" (Descartes and the mathematical method). If uncertainty plagued society, then, using the insights of the new natural sciences, one could reduce everything to its smallest atoms – individuals – and rationally reconstruct society on that basis (Hobbes and social constructivism). This led naturally to the supremacy of individual rights, especially property rights (Locke and autonomous freedom and equality).[15] And the institution that would safeguard individual rights and freedoms was the modern nation-state formally created in the Treaty of Westphalia.

The constellation of answers to these crises of uncertainty gave rise to *modernity,*[16] and the Westphalian frame by which the state safeguards individual rights is *liberalism*.[17] Together they represent a comprehensive, specific view of life, humanity and the world.

In liberalism, the state protects individual rights and is limited by their primacy. But to guarantee those rights, the state requires the complete allegiance of its citizens. As William Cavanaugh has shown, this was accomplished by turning religious belief into a private, individual matter – by "domesticating" religion.[18] Privatization of belief meant that one's religious conviction did not conflict with one's public loyalty to the state. The so-called Wars of Religion in the 16th and 17th centuries were less about resolving religious conflict than about establishing the absolute sovereignty of the state over its citizens. Meanwhile, the state itself is sovereign in relation to other states (a form of individual rights at a higher level).

Western society since has displayed a vacillating tension between state power and individual rights. Not surprisingly, and entirely consistent with the drive of liberalism to protect individual rights, crime became redefined not as a violation of one person against another but as a violation against the state.[19] As renowned criminologist Herman Bianchi has shown, the modern (Westphalian) concept of crime and a retributive justice system derive from the Inquisition.[20] Crime becomes redefined as a "heresy" against the state and must be answered by punishment, just as – in Cavanaugh's terms – the "body of Christ" is replaced by the "body politic."[21] The self-definition of the modern state rests upon this evolving process. We shall see below that

this redefinition of crime has a bearing on the ICC in relation to R2P.

    With its focus on genocide, crimes against humanity, and war crimes, R2P speaks to issues of war and peace. How did the understanding of war and peace shift as a result of the Westphalian consensus? On the one hand, sovereignty meant "immunity." As one commentator notes, "to put it bluntly, sovereignty is a license to kill: what happens within state borders, however grotesque and morally indefensible, is nobody else's business."[22] Thus sanctioned, war-making was undertaken using, for example, Machievelli's *The Art of War.*[23] Cavanaugh observes that:

> … [the] transfer of ultimate loyalty to the nation-state … only increased the scope of modern warfare. … the new sixteenth-century doctrine of the state's absolute sovereignty within a defined territory carried with it an increase in the use of war to expand and consolidate its borders."[24]

    On the other hand, more ancient notions of "just war" were applied and redefined under the banner of Westphalian definitions of state sovereignty. The just war theory rapidly became the handmaiden of the new state sovereignty. The narrow just war "permission question" (are we morally permitted to take up arms to defend our sovereignty against another sovereign state?) consumed and reduced almost all deliberations about building peace and resolving conflict in human communities. This aspect of Westphalia becomes extraordinarily relevant in the R2P context.

Signs of Weakening

There are now at least three signs that the Westphalian consensus is weakening, and that the rigid walls of state sovereignty are cracking. R2P is one of those signs. But there are at least two others that must be explored as essential context for assessing R2P: the concept of military pre-emptive strike, and the changing nature of contemporary conflict.

Pre-Emptive Strike

The notion of pre-emptive strike, articulated in "The National Security Strategy of the United States" (September 2002) and exemplified by the "Coalition of the Willing's" 2003 invasion of Iraq, clearly oversteps the bounds of Westphalian state sovereignty.[25] Pre-emptive strike is the most

recent expression of the concept of "total war." Total war – in which all sectors of society are engaged in war and no restraints are present – first emerged fully in the French Revolution, when in 1793 the National Convention issued a mass conscription proclamation:

> Article 1. From this moment until the time when the enemy is driven from the territory of the Republic, all Frenchmen are drafted into the service of the army…. Let the young men go into combat; the married men forge weapons and transport provisions; the women make army tents and uniforms and serve in the hospitals; the children tear up linen; and the elderly be put in public places in order to stir up the courage of the soldiers and preach the hatred of the kings and the unity of the Republic.[26]

War became a goal that conscripted every means available in the service of the end. This concept of total war was later theoretically articulated by Carl von Clausewitz, who argued that war-making must be seen as one of several policy options available to governments. For Clausewitz, the practice of war itself, while limited by political policy, could be nothing less than absolute or total – for life and death itself was at stake.[27]

Any number of instruments and practices, such as the Geneva Conventions, the Charter of the UN, international human rights instruments, the ICC, and "rules of engagement" developed by various militaries, have been designed to limit total war. Despite these developments, the "shock and awe" attack of Iraq drew explicitly from the concept of total war and graphically violated the Westphalian concept of state sovereignty.[28]

I highlight these points in part because some commentators have incorrectly argued that the war against Iraq was an example of the use of the R2P doctrine.[29] On the contrary, it grew out of a specific tradition of modernity fundamentally opposed to R2P: the tradition of total war.[30]

Changing Nature of Contemporary Conflict
A second sign of weakening is that the Westphalian just war paradigm is not capable of grasping the nature of contemporary conflict and is therefore woefully outmoded. An outcome of the Westphalian agreement was that the just war theory assumed a privileged position as the interpretive framework, the hermeneutic, by which most political commentators, government leaders,

decision-makers, theologians, and the public at large attempt to understand the dynamics of peace and conflict. But in view of the changing nature of contemporary conflict, the Westphalian paradigm has lost its explanatory power and cannot supply the framework for dealing with contemporary developments.

The just war theory was developed primarily to address situations where one government formally declared war on another government, and where trained government soldiers fought opposing trained government soldiers on a battlefield. It was not meant to address today's intra-state conflicts. Nor was it designed to grasp civilian suicide bombers and the social chaos or criminal activity that gives birth to much war today. It cannot comprehend high-tech, supposedly antiseptic, virtual military strikes.[31] It has no frame of reference for the fact that around 1900, 5 per cent of those killed in war were civilians but by 1990 the figure was 90 per cent.[32] Tragically, it puts forward military approaches that are badly out of sync with the realities of contemporary conflict.

Further, the just war position was not designed to address the reality that peace and conflict are structurally rooted in social, economic, spiritual, political, and cultural realities. It is thus silent on the conditions that can prevent war and make for a just peace, and it therefore systematically overestimates a possible military reaction in distinction from the myriad possibilities of conflict prevention, resolution, and transformation.[33] Moreover, the just war position does not grasp the developmental stages of conflict, the fact that each conflict has a beginning, middle, and end. Because the prospect of the possible use of military force usually surfaces relatively late in the life of a conflict, the just war approach altogether bypasses the possibility of specific interventions geared to a conflict's specific developmental stages. It misses the invitations present in every conflict, no matter how dire, to implement developmentally, historically, and culturally appropriate approaches.

However, we cannot blame the just war theory for not addressing issues of peace and conflict that it was not designed to handle. But it becomes extraordinarily problematic, and even unconscionable, when we privilege this theory as our hermeneutic for understanding conflict. It offers an illusion of comprehensiveness, and has the effect of dissociating and compartmentalizing peace and conflict from the rest of life.[34]

If the Westphalian consensus is weakening, is the just war interpretive framework also weakening, given that its principles scarcely apply to contemporary conflict? Or, to borrow language from Albert Einstein's reflection on the invention of the atomic bomb, has everything changed except our (Westphalian) way of thinking? These questions bring us directly to R2P, the final indication that the Westphalian consensus is weakening.

R2P: A Genuine Way Forward?

Language is important. With its deliberate rejection of "intervention" (the quintessential term of liberalism) and its replacement with "responsibility," R2P represents, in my view, a beginning attempt to search for an alternative to liberalism and the Westphalian consensus.[35] The liberalism-defined question is *whether* the international community should "intervene" to stop atrocity crimes; the R2P-inspired question is *how* that community can support states and state actors to assume their responsibility to protect citizens from atrocity crimes. The first question is ahistorical and therefore dangerous: in a world of globalization, which the authors of *Hope in Troubled Times* call "the highest expression of modernism," it falsely assumes that the international community is not already involved in the state at issue.[36] The second question brings with it the question of justice: how can the ongoing involvement of the international community, already active in myriad ways in the country at issue, become more oriented towards justice, dignity, and the enhancement of assuming responsibility in the context of the duty to protect?

One wonders, however, if this R2P potential is being mined by the international community. R2P advocates complain that by and large the debate has narrowed down significantly only to the "permission" question of the just war framework, namely under what conditions the international community can and should resort to arms in order to prevent atrocity crimes.[37] This narrow focus threatens to sideline and marginalize R2P. Will the global community seize upon the opportunity presented by R2P to develop more just, life-affirming alternatives to liberalism in relation to statecraft, governance, and state and international responsibilities? Or, to use a musical metaphor, will the community simply use R2P to transpose the same liberal, Westphalian, just war interpretive framework into a more global key?

Joe Volk and Scott Stedjan maintain that what is missing from the R2P debate is a parallel emphasis on the development of a peace agenda, a prerequisite for R2P to be effective.[38] The liberal assumptions of the Westphalian agreement, including both the narrow just war approach to defending state sovereignty and the contrary development of total war, have prevented the development of a peace agenda. Volk and Stedjan argue that current priorities must be reversed, so that, contrary to the outcome of total war thinking (by which, for example, over 40 percent of US government expenditures is spent on military matters, while 1 percent is spent on the peaceful prevention of deadly conflict), investments are made in the multitude of peace options available.[39] They offer a "Toolbox" of responses to conflict at its various developmental stages. They further outline "Ten Steps for the United States to Become an R2P Leader," including reversing the militarization of foreign assistance, rejuvenating support for international law and diplomacy, regulating small arms trade, and supporting the UN Peacebuilding Commission.[40] Without filling the current vacuum of single-solution, military practice with peace-supporting initiatives such as these, the danger is that R2P will simply become a Westphalian instrument on an international scale.

While I cannot develop it here, a similar argument applies in relation to the ICC. If the ICC simply embraces retributive justice as its approach to atrocity crimes, then it will be characterized by failings reminiscent of Western criminal justice systems. Says one commentator:

> International criminal justice is thus seen as advancing the goals of prevention on the assumption that the prosecution and punishment of decision-makers and senior perpetrators of *jus cogens* crimes will produce deterrence. If this result is obtained, even in part, then prevention of crimes such as genocide, crimes against humanity, and war crimes will be achieved and the goals of R2P will be achieved.[41]

In the world of criminal justice, this statement is contra-indicated: the evidence that "punishment" produces "deterrence" is extremely thin, while evidence to the contrary is dramatic.[42] Here too, if the Criminal Court is to help achieve the goals of R2P, a new paradigm is required.

Needed: A Multi-Sector, Systemic Response in Support of R2P
The plea by Volk and Stedjan lies within a crucial spectrum of peacebuilding and conflict transformation practice. In my view, more is needed. I propose to enlarge their plea by arguing that a peace agenda must open up onto a multi-sector, systemic commitment to peace. For much too long, Western societies have oriented themselves towards the pursuit of a goal that US President Eisenhower called "absolute security," a security guaranteed by the development and deployment of every available military means. Eisenhower warned:

> [T]here is no way in which a country can satisfy the craving for absolute security – but it can easily bankrupt itself, morally and economically, in attempting to reach that illusory goal through arms alone.[43]

If security cannot be guaranteed – and overwhelming evidence suggests it cannot – then this implies that peace is impossible without accepting levels of strategic vulnerability, carefully chosen and coordinated with a deliberate effort to meet real human and environmental needs. Undergirding this is the reality that embracing genuine mutuality, justice, mercy, compassion, truth, equity, and an economy of care and environmental integrity is impossible without also embracing certain levels of vulnerability as an intrinsic, inescapable component of peace, even in the midst of threat.

Further, new weapons research and development, military capacity expenditures, and the global arms trade are now an indispensable, structural component of the economic and industrial growth of the West.[44] This means that developing greater human security is inconceivable without a corresponding drop, however small, large, or temporary, in the West's material prosperity. Reducing dependence on lethal weapons of indiscriminate destruction will slow down economic growth. There can be no sustainable peace without a conscious or deliberate relaxation of the obsession with a constantly increasing Gross Domestic Product. By the same token, making our economies sustainable is inconceivable without a simultaneous commitment to peacebuilding.

Nations and communities must walk the walk in making the multi-sector structural changes and commitments needed to build for peace, not war. This is the vacuum that must be filled for R2P to reach its potential

instead of becoming a conscript of the Westphalian agreement. In the words of Desmond Tutu, nations and communities must demonstrate in their actions that "peace is not a goal to be achieved but a way of life to be lived."[45]

Role of Peace Churches

What role can peace churches and the peace movement play in helping R2P become an instrument in support of the protection of life, in the context of a systematic reorientation towards peace and security?

I have described the Westphalian agreement as participating in a narrow, specific view of life called modernity and liberalism. I have argued that if R2P falls into or remains controlled by that view of life, it will fail in its intention to support states and state actors to assume their rightful responsibility to protect their citizens from atrocity crimes. I have asserted that R2P represents a beginning impulse towards a different way of thinking and acting. And I believe that a genuine embrace of R2P is not possible without a debate at that level – the level of discussion about views of life, humanity, and world. The gift of R2P is that it begins to raise these fundamental questions: What is the meaning of peace? What is the meaning of life? Do liberalism and modernity affirm life in all its comprehensive richness? Do they support justice, solidarity, reconciliation, healing, peace? Are more life-affirming approaches possible?

Surely no sector is better suited to raise these questions in the public square than the peace churches. How might they do so? Modern societies tend to pursue goals instead of ways. We choose a goal, such as security or ever-increasing material prosperity, make it absolute, and then let it define our values and prescribe the means to achieve the goal. These goal orientations become structures of legitimation and societal energies that eventually transgress human rights, solidarity, care for the earth, care for the poor, dignity, and justice.[46] But taking steps down "ways of life," or "way orientations," are different. With them we seek to walk down paths of justice, solidarity, peace, and care for others and for the environment. These then serve to relativize our goals.

Notably, all the world's major religions accent "ways" rather than "goals." The Jewish faith is focused on the Torah – ways of shalom, living obediently. Islam means literally "obedience," submission to the

commandments or ways of life. Buddhism teaches an eight-fold path to enlightenment; Taoism means going on a way (the word "Tao" means "way"). The first name given to Jesus' followers was "people of the way."[47]

R2P presents an invitation to peace churches and the peace movement to stimulate an inter-religious public dialogue on following ways of life that affirm the other and the earth, which belongs not to us but to its Creator. The peace churches, through various means – writing, speaking, advocating, lobbying, activism – can advocate for society to adopt ways of justice, integrity, affirmation of life, shalom, in the context of demanding a multi-sector, systemic peace agenda to support R2P.[48] By means of this dialogue, peace churches can also engage their partners in the South and work with them to develop and promote alternative approaches to the responsibility to protect that are rooted in perspectives offering more hope than Western modernity and liberalism. A good place to start would be to affirm and engage the 2008 Papal Encyclical "Caritas in Veritate," where Pope Benedict writes of "the urgent need to find innovative ways of implementing the principle of the responsibility to protect."[49]

In the context of "goal" orientations, R2P, despite its advocates' best intentions, will become an instrument of absolute goals alien to itself. But in the context of "way" orientations, myriad economic, political, and peacebuilding possibilities open up that are keyed to each specific situation, whether in the Congo, northern Uganda, Somalia, or elsewhere.[50] Within those possibilities R2P will indeed function to support states and state actors in assuming their responsibility to protect vulnerable citizens from atrocity crimes. Let our advocacy begin!

Notes

[1] For a discussion of the use of "concept," "principle," and "norm" in relation to the R2P, see Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity Press, 2009), 4-7.

[2] Quoted in Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington: Brookings Institution, 2008), 31.

[3] Ibid., 40.

[4] Bellamy, *Responsibility to Protect*, 66.

[5] For legal definitions of these specific crimes, see David Scheffer, "Atrocity Crimes: Framing

the Responsibility to Protect," in *Responsibility to Protect: The Global Moral Compact for the 21st Century*, ed. Richard H. Cooper and Juliette Voinov Kohler (New York: St. Martin's Press, 2009), 77-98.

[6] Kenneth Roth of Human Rights Watch outlines the conditions for military intervention that were formulated by the Commission: "If this high threshold standard is met [only the imperative of stopping ongoing or imminent mass slaughter], one should then look to five other factors to determine whether the use of military force can be characterized as humanitarian. First, military action must be the last reasonable option. Second, the intervention must be guided primarily by a humanitarian purpose. Third, it should be conducted by forces that are committed to maximizing respect for international human rights and humanitarian law. Finally, it should ideally…be endorsed by the United Nations (UN) Security Council or another body with significant multilateral authority." ("Was the Iraq War a Humanitarian Intervention?" in Cooper and Kohler*,* 103). The full text of the ICISS report's "Principles for Military Intervention" is reprinted in Bellamy, *Responsibility to Protect*, 56-58. For an elucidation of its five guidelines, see Gareth Evans, "The Responsibility to Protect," in Cooper and Kohler, 22-24.

[7] For a detailed description of how R2P differs from both humanitarian intervention and human security, see Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, 56-59, 64-69. Ramesh Thakur, an ICISS Commissioner from the South, "has repeatedly argued that R2P is not an 'intervenor's charter', but an attempt to restrain unilateral intervention while guiding genuine collective measures" (Bellamy, *Responsibility to Protect*, 18).

[8] In "Advancing the Responsibility to Protect" in Cooper and Kohler, 33, Cherif Bassiouni writes: "International criminal justice is thus seen as advancing the goals of prevention on the assumption that the prosecution and punishment of decision-makers and senior perpetrators of *jus cogens* crimes will produce deterrence. If this result is obtained, even in part, then prevention of crimes such as genocide, crimes against humanity, and war crimes will be achieved and the goals of R2P will be achieved. In this respect, international criminal justice can be seen as a corollary of R2P—a modest step that needs to be perfected."

[9] The three book titles referenced above provide a representative sampling of the flood of R2P literature.

[10] See, for example, Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, 51-53.

[11] See, for example, Walden Bello, "Humanitarian Intervention: Evolution of a Dangerous Doctrine," retrieved at http://focusweb.org/content/view/818/26. Bello is executive director of the Bangkok-based research and analysis institute Focus on the Global South. He writes: "[F]or some people in the North, who belong to states that dominate the rest of the world, national sovereignty may seem quaint. For those of us in the South, however, the defense of this principle is a matter of life and death, a necessary condition for the realization of our collective destiny as a nation-state in a world where being a member of an independent nation-state is the primordial condition for stable access to human rights, political rights, and economic rights.… So long as nation-states remain the prime political collectivities of human beings, so long as we live in a Westphalian world … our defense of national sovereignty must

be aggressive. And absolute, for imperialism is such that if you yield in one case, it uses that as a precedent for other, future cases" (1).

It should be noted that significant advocacy for R2P has come from the global South. Gareth Evans claims that, for the adoption of R2P at the World Summit in 2005, "the support that mattered was persistent advocacy by sub-Saharan African countries led by South Africa, as well as a clear—and historically quite significant—embrace of limited-sovereignty principles by the key Latin American countries" ("The Responsibility to Protect: From an Idea to an International Norm" in Cooper and Kohler, 20-21).

[12] See, for example, Evans, *The Responsibility to Protect*, 15-19.

[13] The reference to the state is found in William T. Cavanaugh, *Theopolitical Imagination: Discovering the Liturgy as a Political Act in an Age of Global Consumption* (London: T & T Clark, 2002), 22.

[14] Quoted in Bob Goudzwaard and Julio de Santa Anna, "The Modern Roots of Economic Globalization," in *Beyond Idealism: A Way Ahead for Ecumenical Social Ethics*, ed. by Robin Gurney, Heidi Hadsell, and Lewis Mudge (Grand Rapids: Eerdmans, 2006), 93.

[15] See Goudzwaard and de Santa Anna (Note 14), and Bob Goudzwaard, Mark Vander Vennen, and David Van Heemst, *Hope in Troubled Times: A New Vision for Confronting Global Crises* (Grand Rapids: Baker Publishing Group, 2007), 101-103, 143ff.

[16] Goudzwaard and de Santa Anna write: "In recent years a shared conviction has grown among historians and philosophers that modernity can be seen as the answer society found for this 17th century crisis. They see the period from about 1600 to 1720 as the age in which a new, modern awareness of security and certainty appeared in Western Europe; though they differ about the precise turning point and about the identity of those who caused it" ("The Modern Roots of Economic Globalization," 94). See Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (Chicago: Univ. of Chicago Press, 1990) and Paul Hazard, *The European Mind: The Critical Years 1680-1715* (New York: Penguin, 1964).

[17] For an overview of liberalism, see David T. Koyzis, *Political Visions and Illusions* (Downers Grove, IL: Intervarsity Press, 2003). Koyzis writes (47-48): "[T]he first and most basic principle of liberalism runs as follows: Everyone possesses property in their own person and must therefore be free to govern themselves in accordance with their own choices, provided that these choices do not infringe on the equal right of others to do the same. If my proposed actions effectively violate the property another enjoys in her own person, then I have transgressed the primary liberal precept and must thereby be held accountable for what I have done. However, without political authority there is no effective way to enforce this accountability. This is the central dilemma of individual autonomy that the liberal project is called upon to resolve."

[18] The reference to "domestication," as well as the argument, is found in Cavanaugh, *Theopolitical Imagination*, 42.

[19] Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice*, 3rd ed., (Scottsdale, PA: Herald Press, 2005), 181.

[20] Herman Bianchi, *Justice as Sanctuary: Toward a New System of Crime Control* (Bloomington: Indiana University Press, 1994), Chapter 1.

[21] Cavanaugh writes: "Rather than 'cohere' directly to one another, we relate to each

other through the state by the formal mechanism of contract. Paul's image of the Body … is supplanted by a formal interchangeability of each individual with any other…. In the absence of shared ends, individuals relate to each other by means of contract, which assumes a guarantee by force. Hobbes was of course clear on this, but Locke too assumed … that the state body moves in whichever way the greater force compels it. Max Weber rightly perceived that the modern state cannot be defined by ends, but only by its peculiar means, which is a monopoly on the legitimate use of force. Internally, such force is necessary to keep the mass of individuals from interfering with each other's rights. Externally, the violence of war is necessary to provide some unity—albeit a false one—to a society lacking any truly social process…. In a word, violence becomes the state's *religio*, its habitual discipline for binding us one to another" (45-46). Cavanaugh is suspicious of the "soteriology" of the modern state to rescue us from violence (2). He adds: "what is at issue … is the creation of 'religion' as a set of beliefs which is defined by personal conviction and which can exist separately from one's public loyalty to the state. The creation of religion, and thus the privatization of the Church, is correlative to the rise of the state" (31).

What I miss in this account is an emphasis on liberalism's limitation of the power of the state by the primacy of individual rights, and the fundamental – I believe irreconcilable – dialectical tension between individual and state rights. Might one imagine a non-liberal state that is nevertheless "independent of both the ruler and the ruled" and capable of affirming others, just ways of life, and the public power of religious convictions? John Gray, in *Black Mass: Apocalyptic Religion and the Death of Utopia* (Toronto: Doubleday Canada, 2007), writes of liberalism: "Like repressed sexual desire, faith returns, often in grotesque forms, to govern the lives of those who deny it" (190).

[22] Gareth Evans, "The Responsibility to Protect: From an Idea to an International Norm," in Cooper and Kohler, 16.

[23] Niccolo Machiavelli, *The Art of War* (Chicago: Univ. of Chicago Press, 2005).

[24] Cavanaugh, *Theopolitical Imagination*, 39.

[25] The Security Strategy is available at www.globalsecurity.org/military/library/policy/national/nss-020920.htm.

[26] F.A. Aulard, ed. *Recueil de Actes du Comite de Salut Public [Record of the Acts of the Committee of Public Safety]*, 28 vols. (Paris: Imprimerie Nationale, 1899), 6:72.

[27] For more on Total War, see Goudzwaard, Vander Vennen, and Van Heemst, *Hope in Troubled Times*, 99-126.

[28] In *Shock and Awe: Achieving Rapid Dominance*, Harlan Ullman, whom Colin Powell, former US Secretary of State and Chairman of the Joint Chiefs of Staff, credited with "enlarging my vision several levels," wrote: "One recalls from old photographs and movie or television screens, the comatose and glazed expressions of survivors of the great bombardments of World War I and the attendant horrors and death of trench warfare. These images and expressions of shock transcend race, culture and history. Indeed, TV coverage of *Desert Storm* vividly portrayed Iraqi soldiers registering these effects of battlefield Shock and Awe…. In our excursion, we seek to determine whether and how Shock and Awe can become sufficiently intimidating and compelling factors to force or otherwise convince an adversary to accept our will in the Clausewitzian sense, such that the strategic aims and

military objectives of the campaign will achieve a political end." The book was published by the Pentagon's National Defense University in 1996.

[29] See Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, 69-71.

[30] I suspect Cavanaugh would argue that total war is a natural extension of violence having become the *religio* of the state (see Note 21).

[31] The term "virtual war" comes from Michael Ignatieff, *Virtual War* (Toronto: Penguin Canada, 2000), a new style of conflict that he argues began with the Kosovo conflict and was made possible by technological advances. Ignatieff was a key member of the ICISS Commission.

[32] UNICEF, "Impact of Armed Conflict on Children" (1996), 1, retrieved at www.unicef.org/graca/patterns.htm.

[33] For more on the inadequacies of the just war paradigm, see Goudzwaard, Vander Vennen, and Van Heemst, *Hope in Troubled Times,* 192-99. See also Mark Vander Vennen, "Biblical Faith and Paths of Peace," *Toronto Journal of Theology* 26, Supplement 2, 2010: 75-90.

[34] For more on the patterns of "dissociation," "compartmentalization," and "compulsion" at the heart of Western society's contemporary engagement with the realities of peace and conflict, see Vander Vennen, "Biblical Faith and Paths of Peace," 75-90.

[35] Evans argues that the most politically useful contribution to the international policy debate made by ICISS was the effort "to turn the whole weary debate about the 'right to intervene' on its head and to recharacterize it not as an argument about the 'right' of states to anything, but rather about their 'responsibility'—one to protect people at grave risk…." Gareth Evans, "The Responsibility to Protect," in Cooper and Kohler, 19.

[36] Goudzwaard, Vander Vennen, and Van Heemst, *Hope in Troubled Times*, 145.

[37] In *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All*, Evans states: "It is not immediately obvious why the claim that R2P is only about military action maintains such a tenacious hold" (58). Further, "'In extreme cases R2P always means the use of coercive military force'. This is not so, although it is a misunderstanding very often shared by even the most enthusiastic supporters of the responsibility to protect norm" (59). Similarly, Joe Volk and Scott Stedjan observe that "if the primary focus of R2P is prevention, the key question … concerns the structure of responses to incipient crises. Focusing on the military portion of R2P limits the vital work of advocating for structures that could peacefully prevent deadly conflict and atrocities." See "Building Structures for Peace: A Quaker Lobby Offers Strategies for Peacemakers," in Cooper and Kohler, 206-07.

[38] Joe Volk and Scott Stedjan, "Building Structures for Peace," 201.

[39] Ibid, 217.

[40] Ibid, 208-16.

[41] Cherif Bassiouni, "Advancing the Responsibility to Protect Through International Criminal Justice," in Cooper and Kohler, 33.

[42] In 2002 the government of Canada released a meta-study of 111 studies involving over 442,000 offenders. It found that imprisonment increased recidivism (rates of reoffending) by 3 percent for short custody periods and 7 percent for long jail terms among all offenders. "The overall findings showed that harsher criminal justice sanctions had no deterrent effect

on recidivism…. Criminal justice policies that are based on the belief that "getting tough" on crime will reduce recidivism are without empirical support." Quoted from Public Safety Canada, "The effects of punishment on recidivism," Research Summary, Vol. 7, No. 3, May 2002, retrieved at www.publicsafety.gc.ca/res/cor/sum/cprs200205_1-eng.aspx.

[43] Quoted in Goudzwaard, Vander Vennen, and Van Heemst, *Hope in Troubled Times*, 109.

[44] This is a further expression of the concept of total war.

[45] From the Foreword to Goudzwaard, Vander Vennen, and Van Heemst, *Hope in Troubled Times*, 10.

[46] See Goudzwaard, Vander Vennen, and Van Heemst, *Hope in Troubled Times*, Chapter 2, "Myth, Ideology and Idolatry", and further.

[47] For more on this theme, see Goudzwaard, Vander Vennen, and Van Heemst, *Hope in Troubled Times*, Chapter 9, "Widening Ways of Economy, Justice and Peace."

[48] For one exemplary activist's journey in this regard, see Vincent Eirene, *The Day the Empire Fell: Vietnam, the circus, globalization, and Grandma Molly, from Baghdad to New Orleans* (Pittsburgh: Barbary Shore Press, 2008), Foreword by Mark Vander Vennen.

[49] Pope Benedict XVI, "Caritas in Veritate" (2009). Paragraph 67, retrieved at www.vatican.va/holy_father/benedict_xvi/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate_en.html.

[50] Consider South Africa and Sierra Leone as illustrations of engagements prior to R2P that have R2P features. I see the fall of apartheid as something of an R2P process. Foreign pressure (1) often took its cue from the oppressed – Desmond Tutu, for example, urged the international community to proceed with economic sanctions (the argument against them in the North was sanctions would punish the oppressed; (2) linked with local capacities for peace (such as Beyers Naudé, Stephen Biko, and NGOs); (3) involved economic sanctions that had an impact; and (4) strove to have the South African state assume its responsibilities (it did not enter the country and overthrow the government). In Sierra Leone, the warring parties were brought together in a peace process with help from the international community and NGOs. At a critical moment a show of force by the British military played a key role. Equally and perhaps more significant was the simultaneous movement towards "clean diamonds" – international pressure from within the economic sector to eliminate, as much as possible, the black market trade in diamonds that was helping fuel the civil war. Here, too, the international community did not step in to remove the government.

These examples involve different countries, histories, cultures, conflicts, conflict drivers, responses, and resolutions. But both involved responses coordinated across different sectors, including economic, towards peace—an example of multi-sector, differentiated responsibility. Today in the Congo, a genuinely inspired R2P response must deal with coltan, the rare mineral used in manufacturing cell phones and a significant factor fueling atrocity crimes. As with Sierra Leone, here R2P also calls for self-criticism, action, and responsibility-taking in the North. The Westphalian just war interpretive framework works against opening up this differentiated responsibility, and narrows the options to a sole question: Can the international community "intervene" by taking up arms in the Congo, or not?

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Dawn Ruth Nelson. *A Mennonite Woman: Exploring Spiritual Life and Identity*. Telford, PA: Cascadia Publishing House, 2010.

"Mennonites have a problem" writes Dawn Ruth Nelson as she sifts through the past and present of her own Mennonite heritage, all the while asking the question, What is Mennonite spirituality? Through an interview with her ninety-plus-year-old grandmother, Nelson appreciatively tells the story of Mennonite spirituality in America at a time when Mennonites were rural, agrarian, and essentially communal. Against this earlier spirituality, the author examines her own cosmopolitan life, formed on the fringes of the Mennonite community and through researching the development of a spiritual formation curriculum in the 1980s at Associated Mennonite Biblical Seminary.

A pivotal event in the author's life was a spiritual-emotional burnout in Ireland, while on a peace mission, that led her to realize the inadequacy of an overemphasis on ethics at the expense of inner piety – and to approach the brink of the Mennonite "problem." The problem is that "many are not recognizing that we have a new spiritual situation: The communities many of our forebears, and often we ourselves grew up in, no longer exist in the same way" (86). In this book the author allows us to join her search for what is central to the Christian life and what will sustain that life.

The first two chapters tell Grandmother Ruth's story and identify the significant themes that informed and sustained her spirituality. Fifteen areas are identified, including the ordinary, daily functions of eating, family interaction, farm work, gender roles, rhythms of nature, and the German language. Other things such as music, *Gelassenheit* (interpreted here as "letting go"), church discipline, baptism, Bible reading, plain clothes, daily discipleship, self-sacrifice, community, and mutual aid are also recognized. This was an earthy spirituality of place mediated in large part by community life.

Chapters three and four briefly name the influences on the author's spiritual life, including her introduction to monastic spirituality, and conclude that Mennonite formation today no longer happens in close-knit communities through everyday activities. This is where the need for

intentional contemplative and communal practices are identified.

The next two chapters introduce some important terms and outline the development of spiritual formation at the Mennonite seminary in the 1980s. The last chapter is the most constructive, identifying six key elements of an intentional spirituality for Mennonite community today, including "an everyday, embodied sacramentality; nonconformity; community; service; Gelassenheit or meekness; and the person of Jesus and the Bible" (126).

This book has helped me identify spiritual strengths of an earlier Mennonite community that was similar to the conservative Mennonite church in which I grew up and that today continues to reject the theological and sociological modernization of the progressive Mennonite church. At times, however, the narrative may be overly optimistic in its assessment of the theology and spirituality of this earlier American Mennonite way that was distinctively influenced and shaped by Protestant-evangelical theology while retaining its unique Mennonite ethos.

There is no discussion of earlier Mennonite transitions in North America, and this brings into question what the authentically Mennonite spiritual traits really are. Although this story is geographically restricted to a few specific communities, I suspect its relevance will be understood by many other North American and even European Mennonite communities.

The book's focus is pastoral; however, a more theological and historical analysis would help give depth and breadth to the proposed spirituality. Readers interested in more reflection on some critical issues, such as Mennonites and Pietism, will want to consult the author's dissertation: "How Do We Become Like Christ? American Mennonite Spiritual Formation Through One Woman's Life and One Seminary, 1909-2003" (Lancaster Theological Seminary, 2004).

I recommend *A Mennonite Woman* for anyone interested in recent developments in Mennonite spirituality or anyone desiring Christian formation. This book will assist pastors and congregations in facilitating conversations and group discussions. Dawn Ruth Nelson brings us back to the heart of Anabaptist spirituality and Christian ethics, a relationship with God mediated through Christ. "Mennonite spirituality is something we do (ethics), together (community) . . . . It is a way of life in a group, an everyday sacramentality, based on Jesus' life, death, and resurrection" (148). I trust

that themes identified in this book will lead to much reflection, discussion, and deepening of spiritual life.

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John Howard Yoder. *Christian Attitudes to War, Peace, and Revolution*. Edited by Theodore J. Koontz and Andy Alexis-Baker. Grand Rapids: Brazos Press, 2009.

From 1966 to 1997, John Howard Yoder taught a course surveying the history of Christian ethical stances toward war, peace, and revolutionary insurrection at the Associated Mennonite Biblical Seminary (AMBS) and at the University of Notre Dame. In the early 1970s his lectures were recorded and made available to students in written form; by 1983 a refined version of these extensive course notes became available for purchase at the AMBS bookstore. Now, thanks to the efforts of Theodore J. Koontz and Andy Alexis-Baker, these writings are available to a much broader audience in edited, highly readable form with a title reflecting the name of Yoder's course: "Christian Attitudes to War, Peace, and Revolution."

In its original format Yoder referred to his compilation of lecture notes as an "unbook book," to signal that the volume was not intended to be as tight, seamless, and systematically documented as a traditional book. Nonetheless, the contents are richly descriptive, thought provoking and well developed.

Although the volume does not seek to provide a unified narrative advancing a formally stated thesis, it manifests coherence through thematic consistency and chronological progression as well as through the probing, intellectually nimble manner in which the author approaches the subject matter. The book's 417 pages of text and 40 pages of supplemental study guides provide a fascinating window into the breadth and depth of Yoder's scholarship, while also enabling the reader to more vividly imagine a classroom experience with one of the defining Mennonite thinkers of the 20th century.

Yoder's survey of eras, leading thinkers, and ethical positions is sweeping but far from superficial. His disquisition on the just war tradition offers a sophisticated treatment of a wide range of developments, including the Constantinian shift, medieval just war principles, the secularization of just war thinking in modern international law, and recent debates over nuclear pacifism, selective conscientious objection, and liberation theology. Even when making a case for pacifism vis-à-vis just war doctrine, Yoder is consistently disciplined and at times generous toward other readings of the Christian ethic, from Ambrose to Reinhold Niebuhr. Appreciating potential applications of justifiable war thinking to restrain and not merely enable leaders, he observes that strict just war reasoning often has a "radicalizing" effect on those who pursue it, by drawing to their attention to the consistency with which war degrades rather than improves the human condition.

With respect to pacifism, Yoder identifies powerful resonances across epochs, linking early church traditions to practices of the Middle Ages, reformation currents, and more recent revival experiences. Tying together diverse threads from Franciscans, Mennonites, and Quakers to the Czech reformation's Unity of Brethren, 19th-century American revival movements, and the Berrigan brothers, he crafts a case for the claim that whenever Christians return to scripture and particularly to Jesus' teachings, potential for affirming nonviolence emerges. In Yoder's words, "pacifism tends to arise wherever there is church renewal" (269).

Though some readers may be inclined to argue for a more nuanced position, particularly in light of contemporary North American renewal movements that embrace a millennialist vision and make little attempt to differentiate between religious and national attachments, Yoder ably demonstrates the vitality of pacifism as an expression of Christian faith commitment, and illuminates a wide range of resources upon which Christians can draw – not only in scripture, but in historical experience and its many localized expressions and movements. In his treatment of nonviolence, he calls for close study of modern nonviolent movements, engagement with leading practitioners and strategists (including Gene Sharp and other protagonists of strategic nonviolent action), and active exploration of how Christians can be both faithful and relevant.

There are many ways in which a new generation of theologians and

ethicists can build upon Yoder's legacy and extend its boundaries. The post-9/11 era bears many comparisons to the Vietnam experience that powerfully shaped the context within which Yoder wrote and taught, yet there is arguably a new urgency to engage more substantially not only with "neo-Constantinian" currents in contemporary Christianity but with the spectre of hostile inter-religious encounter as a theme in current international conflict dynamics.

On the whole, *Christian Attitudes to War, Peace, and Revolution* is an enlightening, timely, and invigorating read. Accessible to the layperson, it is also sure to prove valuable to the specialist for its unique presentation of material and for its combination of substantive historical exposition with perceptive commentary informed by Anabaptist-Mennonite faith commitment.

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Charles K. Bellinger. *The Trinitarian Self: The Key to the Puzzle of Violence*. Eugene, OR: Pickwick Publications, 2008.

To understand violence is to understand our complicity in it. To overcome it, or to find alternatives, it is important to understand the roots of violence. This is Charles K. Bellinger's task in *The Trinitarian Self: The Key to the Puzzle of Violence*. In his attempt to develop a paradigm that helps us understand the roots of violence, Bellinger enlists the help of Søren Kierkegaard, Eric Voegelin, and René Girard. Although it may be a stretch to depict this paradigm as a New Copernican Revolution, which Bellinger does, the paradigm does demonstrate the delicate balance needed in order for peace to reign.

The paradigm mirrors the triune God and consists of three dimensions of existence: the vertical axis, which depicts the hierarchy of being (nature below, God above); (2) the horizontal plane, which encompasses the social; and (3) the temporal trajectory of the self, which represents the life lived in a given time encompassing the past the self comes from to the future the

self moves towards. Violence, argues the author, occurs when one of these dimensions outweighs or is given priority over the others. Such is the case in three examples offered: fundamentalism, with its focus on the vertical axis; political utopianism, which is horizontally centred; and individualism, with its focus on the self.

In developing this paradigm, Bellinger uses Kierkegaard to demonstrate the temporal trajectory of the self. Kierkegaard reasons that the self has the ability to turn away from rebellion against God, which exists within human sociality in its corrupted form ("the crowd"), by becoming an individual who through faith in God moves into a positive sociality characterized by love of God, self, and neighbor (20). It is through practice and training (*askesis*) that one can become an individual and embody true selfhood before God as one models him/herself after the prototype of true selfhood, Christ.

Bellinger uses Voegelin as the representative of the vertical axis. Voegelin suggests there are two forms of theophany through which to learn about God: revelation and philosophy. These two forms provide the means through which humans can learn about the accumulative truth of God; through these forms we become aware of and can learn from the wisdom of the past, interact constructively and ethically with fellow humans, and respond to the "pull of the divine" (34) in order to enter the genuine life of the spirit. *Anamnesis* (recollection, remembrance, recovery of what was lost) allows us to learn more about the vertical nature of God while we are led towards a renewed experience of God.

Bellinger turns to Girard as the representative of the horizontal plane. Humans have a tendency toward *mimetic desire*, the propensity to imitate and mimic others, believing they are models, in the pursuit of success and greater fullness of being. Mimetic desire, however, is at the root of our social systems falling away from God as we fail to look at God revealed in Christ as the one whom we should mimic. As we fall away from God, we seek someone or something that will act as society's scapegoat and draw attention away from the actual problem. The Holy Spirit – the paraclete (*parakletos*) – is the power that helps overcome mimetic violence and the need for a scapegoat. Through the Holy Spirit's defense (the principal meaning of *parakletos*), we are able to live with one another in peace and harmony, knowing that Christ,

the one scapegoat that makes all other scapegoats superfluous, has already been sacrificed. Through the continual presence of the Holy Spirit, we are reminded that Christ is the model we should be mimicking.

After creating and explaining the threefold paradigm, Bellinger projects it onto different scenarios to show how it helps us understand violence in different realities. However, the reader is left wanting to know how to engage and respond to the different scenarios in specific ways.

Although the direction and argument are not always clear, and more in-depth analysis into some of the very broad topics would be helpful, Bellinger's overall argument does help us realize and understand the complexity within violence and how, in order to achieve lasting peace, we must seek balance among the three dimensions of reality.

Andrew Suderman, Director of the Anabaptist Network in South Africa

J. Gerald Janzen. *At the Scent of Water: The Ground of Hope in the Book of Job*. Grand Rapids: Eerdmans, 2009.

There once was a man in the land of Uz whose name was Job . . . . To read these first words of the Book of Job, especially to read them aloud and taste their cadence on the tongue, is to evoke memories of other great stories that begin in like manner: "Once upon a time . . . " or "In the beginning . . . " or even "A long time ago, in a galaxy far, far away . . . ." Such words are invitations to open a door, cross a threshold, and embark on a journey beyond familiar times and places, though, as often happens with great stories, the journey sometimes wends its way very close to home. So it is, J. Gerald Janzen reminds us, with the great and terrible journey of Job.

Janzen has proven himself to be a trustworthy guide for this journey. For several decades he has engaged this text in rigorous study, publishing in 1985 a detailed commentary on Job for the Westminster John Knox Press *Interpretation* series. In his more recent book, Janzen enters the story world of Job with a different orientation. While retaining the critical methods of a biblical scholar, he adds rich insights from such diverse sources as the poetry of Robert Frost, theories of developmental psychology, the philosophical

musings of Alfred North Whitehead, and Janzen's own experiences and encounters with Joban suffering.

Rather than a chapter-by-chapter treatment of the text, Janzen takes a thematic approach, with the title revealing the book's ultimate trajectory: toward hope. He suggests that the story of Job reflects the theological struggle experienced by the Israelites during the Babylonian exile. This was partly a struggle between different understandings of God as reflected in the two great covenants – the covenant with Abraham and Sara, and the covenant with Moses and the people at Sinai. Janzen describes the two covenants as reflecting different theological "default positions," with the Abrahamic covenant representing a "personal clan God" and the Mosaic covenant representing a "cosmic high God."

While the Mosaic covenant would have been the more functional mindset for the people prior to the exile, Janzen suggests that the experience of suffering during the exilic period undermined the reward-punishment foundations of that covenant. To find meaning in the midst of their struggle, the people turned to the theological heart of the much older Abrahamic covenant because it offered a God who remained steadfastly present in the face of suffering. According to Janzen, the story of Job reflects this very pattern and search for hope. "It is as though God is inviting Job to take his place in a world whose dynamism, in all its potential for vibrant life and, yes, danger, bursts through human concerns for 'security first,' concerns that help to fuel the human preoccupation with order and laws and reward-punishment logics," writes Janzen. "It is as though God is inviting Job to give up the logic of reward-punishment for a life-affirming strategy of risk-reward, in which affirmation of life in the face of all its vulnerabilities is the path to true participation in the mystery of existence" (109).

The book would be incomplete without the personal reflections offered in the epilogue. Here, the author's tone becomes more pastoral than scholarly, and the reader is reminded that Job's struggle to affirm life is not only a mirror held up to the journey of the ancient Israelites, it is a very human journey that we all must travel. The tale of Job wends very close to home indeed, as each of us longs for even the scent of water in the arid moments of our lives.

In this relatively slim volume Janzen covers much ground, and at

times one might wonder if he is traveling too many directions. However, the patient reader will be rewarded by the forays into seemingly disparate disciplines, because with each one Janzen manages to masterfully guide us along a side trail to a unique overlook on the expanse of the Joban narrative. Thus, this book will likely appeal to a wide range of readers, and it would lend itself as much to a seminary classroom as to an adult book study in a congregational setting.

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Paul G. Doerksen. *Beyond Suspicion: Post-Christendom Protestant Political Theology in John Howard Yoder and Oliver O'Donovan*. Eugene, OR: Wipf and Stock Publishers, 2009.

In a time when John Howard Yoder's work is receiving unprecedented interest in a wide range of scholarly and ecclesial circles, it should not be surprising to find a study of his thought in conversation with the British Anglican theologian Oliver O'Donovan. What might be surprising is the common ground that Paul Doerksen finds between Yoder and this so-called state-church defender of Christendom.

  Although the book ostensibly intends to demonstrate the otherwise elementary claim that Yoder and O'Donovan represent two different articulations of protestant political theology in a liberal, post-Christendom context, the structure of Doerksen`s comparative analysis suggests his more interesting argumentative direction. The author proceeds by treating Yoder and O'Donovan together on various theological themes and sub-themes. The result is an account of differences that derive not from disparate commitments to good theology but from a common rooting in the Christ event and its decisive importance for Christian political life. This is significant, because caricatured critiques of O'Donovan's work often paint his interest in reclaiming the resources of Christendom as a Constantinian capitulation to worldly realism that finally fails to take Jesus seriously. This

is an area in which Doerksen tries to move 'beyond suspicion' to open up a more charitable space for conversation in political theology.

The phrase the author takes for his title is borrowed from an early chapter of *The Desire of the Nations,* O'Donovan's landmark study in political theology. It indicates for O'Donovan an interest in overcoming the purely critical suspicion of modern thought with regard to theology and politics that insists on separating each so as to avoid the corruptions of the other. According to Doerksen, this is a project in which Yoder is also engaged, particularly in his insistence on reading the church as a fully public and political community. For O'Donovan, however, thinkers like Yoder remain trapped in just this kind of modern suspicion to the extent that their work fails to move beyond critique or pastoral insularity into fully constructive engagements with contemporary political realities.

Doerksen traces the contours of these two attempts at navigating beyond the pitfalls of modern dualisms still at work in liberal, post-Christendom social orders. But he is also engaged in negotiating the mutual suspicion with which each side views the other's theological tendencies. Quite often, this means blunting sharp critiques by demonstrating that their objects are at some remove from the position actually espoused by the other. For instance, Doerksen argues convincingly that the Constantinian shift which Yoder never tires of criticizing is not fairly equated with the Christendom tradition from which O'Donovan wishes to draw. O'Donovan's positive assessment of Christendom, he claims, is built on a rigorous exegesis of God's rule in scripture and a commitment to follow through the meaning of Christ's victory in cross and resurrection. But Doerksen also frequently takes to task O'Donovan`s facile complaints about Yoder's supposedly modern impulses, particularly his ascription to Yoder of a liberal voluntareity and a purely critical (and so apolitical) stance. Doerksen offers a much more nuanced reading of Yoder that highlights both the latter`s fully Christological ecclesiology and his efforts at constructive engagement.

One of the great virtues of *Beyond Suspicion* is its wealth of references to the texts of Yoder and O'Donovan, helpfully synthesized and topically organized. Anyone interested in Yoder's reading of political authority and the state, for instance, will be quickly directed to a multitude of passages, including many from early or lesser-known publications. Of more ambiguous

virtue are Doerksen's suggestive hints at a dialogical openness cultivated in reading Yoder and O'Donovan together. The book's title begs the question of what is to be found on the far side of suspicion, though if Doerksen intends a reply it is only by way of gestures. It is worth noting that *Beyond Suspicion* concludes with a nod to Yoder as more clearly embodying a stance of vulnerability in his engagement with the world. Yet for an Anabaptist readership particularly, Doerksen's book becomes a space in which the unreceptive edges of Yoder's thought are opened to contestation. At its best, O'Donovan's Augustinian recognition of the hiddenness of God's work in the world pushes Yoder's tendency to an ecclesial triumphalism that collapses divine agency into the visible church. And at its best, *Beyond Suspicion* makes room for this to happen.

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John Nugent, ed. *Radical Ecumenicity: Pursuing Unity and Discontinuity after John Howard Yoder*. Abilene, TX: Abilene Christian University Press, 2010.

Radical Ecumenicity brings together several essays from those in the Stone-Campbell movement (Churches of Christ, Independent Christian Churches, and Disciples of Christ – hereafter called SCM), essays from three non-SCM Yoder scholars (Mark Thiessen Nation, Gayle Gerber Koontz, and Craig Carter), and two previously published essays from Yoder on ecumenical dialogue.

Church of Christ scholar Lee Camp argues that Yoder provides resources for SCM churches to redefine restoration not as a "patternistic emulation of the New Testament, but as a return to the gospel of reconciliation" (27). He thus reframes traditional SCM thinking on restoration to center on reconciliation and "participating in the peaceable kingdom of God." In this way, reconciliation is a concept that demands the Churches of Christ

recognize Christians in other traditions while at the same time embodying NT Christianity. This would be in line with what Yoder himself outlines in the two essays at the end of the book. One of the more important points he makes is that such unity in conversation will not come from human works or institutions, but from the Holy Spirit. Yoder's lifelong commitment to dialogue and reflection on church unity, Gayle Gerber Koontz observes, not only affirms with SCM churches that the local congregation is the primary locus of discipleship and unity but also allows room for change based in the NT itself.

Mark Thiessen Nation provides a helpful overview and introduction to Yoder's theology that counters a trend to reduce Yoder to a "Rauschenbusch-type social gospeler." Yoder could hold together both traditional Christian faith and peacemaking, Nation persuasively argues. Craig Carter writes on the same theme but unpersuasively. In order to "save" Yoder from liberal misappropriation, Carter advocates that Yoder's readers "accept Karl Barth's 'practical pacifism' in place of 'absolute pacifism' so as to leave the door open a crack for the possibility of God commanding Christians to exercise lethal force in extreme situations" (99), that they "incorporate a vocational pacifism into a church that also allows for participation in just war for those not called to vocational pacifism," and that they admit that "Reinhold Niebuhr was basically right in affirming vocational but not absolute pacifism" (100, 103). So, in order to save Yoder from liberalism, we have to accept Niebuhrian liberalism.

John Nugent and Branson Parler indirectly address some of Carter's concerns. Nugent's essay addresses the issue of vocation. For Yoder, despite the diversity of occupations Christians may hold, they have "received a single, all-encompassing vocation, which is to announce and bear witness to Christ's reign in the context of Christian community to all creation" (165). This would rule out Carter's reading strategy that boxes Christians into Niebuhrian vocational pacifism.

Parler's essay responds to Paul Martens's claim elsewhere that by the end of his life Yoder was "merely presenting a form of Christianity that is but a stepping stone to assimilation into secularism." Against this misreading, Parler convincingly argues that Yoder did not reduce theology to sociology. In fact, for Yoder theology, liturgy, and ethics are not separate but different

aspects of the same thing.

Joe Jones's persuasive essay uses Yoder as a medium through which to challenge SCM churches to take trinitarian thought seriously. Although Yoder used trinitarian language and was thus not anti-trinitarian, Jones argues, Yoder's concern was not to elaborate or apply the doctrine in any deep way. If he had done so, we would clearly see that Christology necessarily entails trinitarian doctrine to keep from falling into polytheism. Moreover, Jones argues, if Yoder had reflected more deeply on the Trinity, he might have challenged SCM churches to reform themselves based on their identity as radical disciples of the triune God. Absent truthful language about God, the church will inevitably creep into chaplaincy for the reigning politics and economics of the world.

Paul Kissling uses Yoder's "macrolevel" reading of the Old Testament to correct SCM readings that dismiss the OT and also to help SCM churches "see that the narrative trajectory of the Old Testament leads us to reject violence and trust in the Lord to secure our future" (133). In the process Kissling offers insightful, up-to-date corrections to some of Yoder's readings, particularly regarding Ezra-Nehemiah.

What unites these essays into a single book, Nugent remarks, is that they "address two prominent themes in the Stone-Campbell tradition, unity and continuity, albeit in a Yoderian key" (12). This volume represents a growing interest in Yoder from those outside the Mennonite faith who have in the last few years produced an expanding library of secondary literature. Not only do these essays challenge the SCM tradition, they will also challenge Mennonites.

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Leonard Engel, ed. *A Violent Conscience: Essays on the Fiction of James Lee Burke*. Jefferson, NC: McFarland, 2010.

The mystery novel genre slowly gains theological credibility. One anecdote reveals our frequent ambivalence. A seminary instructor once told me about his world-famous theology professor. After studying with the man for some time, he was permitted into the fellow's attic, where the illustrious scholar discretely and inaccessibly stored treasured tomes. The student was stunned to see shelves upon shelves of mysteries.

Yet, from time to time, we glimpse connections. Numinous experience is called *mysterium tremendum*, and *c*hallenging doctrines are named "mysteries." In medieval days, scripture stories were popularly portrayed in mystery plays. Christian thinkers write mysteries – consider Dorothy Sayers and G. K. Chesterton. P. D. James's volumes are literary works; their author is informed by Anglicanism.

I am particularly taken by James Lee Burke, a southern US novelist who produces a blockbuster almost every year. While not every single one is equally great, all are inevitably rewarding. I eagerly await each new volume from this best-selling author. English professor Leonard Engel shares my fascination, and pulls together in *A Violent Conscience* a diverse range of academic pieces by various scholars. His book helps plumb what is admirable in Burke's writing, but also introduces the subject of why mystery novels are no longer necessarily "pulp fiction."

Engel tellingly names Burke's way of "casting a hard, critical eye on both past and present, the myth and reality of each" (13). Burke loves actual places where he's lived and their history – Montana and Louisiana especially – and is forthright about what has been lost along the way and past injustices: "The combination of Southern pride, the guilt and shame of slavery, the resentment of Northern intervention, and the ongoing specter of racist practices inform Burke's characters as they attempt to come to terms with the South's troubled past" (19).

Several authors examine Burke's transforming of the genre. Linda Holland-Toll notes that each of Burke's hard-boiled investigators is "on the fringes of urban society" and "hunts down and captures criminals, often in opposition to … institutions of power" (74-5). Yet the protagonists wrestle

with the DTs (or demons?) and sometimes even ghosts (or a troubled conscience?). Sam Coale marvels that "Burke's vision threatens to capsize and deconstruct the typical narrative mystery trajectory":

Burke raises eternal questions that the mystery formula evades and avoids. Exactly what is the nature of good and evil in such a realm? Is resolution ultimately possible? Can historical solutions encompass mythic visions? (129)

Burke's central character is often a troubled police officer or lawyer who struggles with a violent past (usually Viet Nam), alcoholism, and anger. The protagonist confronts unspeakable evil – environmental destruction, child abuse, government corruption – and untangles a sordid network of deceptions.

Two elements invariably unsettle me: Burke's matter-of-fact acceptance and lavishly detailed description of the necessity of violence, and his portrayal of irredeemably corrupt villains. Ironically, Burke is informed by a left-leaning Roman Catholicism of such diehard pacifists as Dorothy Day, Ammon Hennacy, and Daniel Berrigan.

Burke's nuanced Catholicism is refreshing when so few authors today write well about Christians, either caricaturing or lampooning them. Burke mentions Catholic Workers, Maryknoll missionaries, and even Mennonites. One character even cites Augustine. Josiane Peltier insightfully analyzes the complexities of Burke's "Christian value framework including the recognition of the incomprehensibility of destiny and evil" (126).

Burke writes vividly and viscerally about poverty, government corruption and ineptitude, environmental catastrophe, race and class issues, and misguided militarism. He denounces the oppressive School of the Americas and admires the International Workers of the World (the "Wobblies" of the early decades of the 20th century). I learned more from him about Hurricane Katrina than from most news accounts. He'll have a lot to say about the Gulf of Mexico BP oil spill.

This reflects yet another gift of Burke: his love for the environment, shown in lushly detailed descriptions of places and habitats. His portrayal of hot weather, sunsets and storms, bayou swamps, fishing, deserts, and mountain hiking could easily be collected in the finest nature writing anthologies. Yet even these are tragic. Thomas Easterling observes how

"the apparent serenity" of one beautiful location masks "the blights of its history" (142).

One does not read Burke for ideological clarity. He often portrays violent fury as the only resolution and complains that the criminal justice system is too weak. Yet I appreciate his reading reality as tragedy – where good-hearted efforts often go awry and often no one comes out with clean hands or pure hearts. Brad Klypchak notes that while strong-minded pursuit of Christian justice is often framed as well-meaning, nevertheless "there rarely is a singular or simplistic choice" (35).

Burke's work can be summed up as a search for redemption. I do not hide his books in the attic.

Arthur Boers, Associate Professor, RJ Bernardo Family Chair of Leadership, Tyndale Seminary, Toronto, Ontario

CALL FOR PAPERS

LIFE, LAND, AND COMMUNITY
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Once thought of as "the quiet in the land," Mennonites are increasingly considering what it means to live responsibly on the land, sometimes even within the coancrete confines of the city. "The land," broadly conceived, signifies a movement toward sustainability and inter-relatedness that encompasses both urban and rural realities. Also, land is not simply about farming, but about location, community, quality of existence, and justice.

The conference will provide Mennonite and like-minded graduate students an opportunity to present their academic research in a collegial interdisciplinary context. Participation of students from a wide variety of disciplines is encouraged (e.g., Human and Natural Sciences, Peace Studies, Religious Studies, Theology, Philosophy, English, Biblical Studies, Ethics, and History).

Topics may include but are not limited to the following: good food, work, or community; connection to and enjoyment of place; frugality, greed, gift, gluttony, patience; practices and witness of the church in diverse communities; the miracle and interconnectedness of life; violence against persons and against the natural world; sustainable agriculture and appropriate technologies.

Please send proposals (300 words max.) by **January 16, 2011** to
mennonite.centre@utoronto.ca.
Presenters will receive substantial travel and accommodation bursaries.

Hosted by Toronto Mennonite Theological Centre

ANNOUNCEMENT

CENTRE FOR THE STUDY OF RELIGION AND PEACE
CONRAD GREBEL UNIVERSITY COLLEGE
WATERLOO, ONTARIO

Conrad Grebel University College announces the establishment of the Centre for the Study of Religion and Peace (CSRP). The Centre, which will focus on research, dialogue, and public education activities, aspires to advance knowledge and awareness of religious contributions to peace, and to enhance the capacity of religious communities to engage contemporary conflict issues and practice the peaceful values they profess.

Through a range of initiatives and activities, the CSRP will serve as a resource centre for religious peacemaking efforts, while also creating a forum for communication and relationship-building among people of diverse faiths, cultures, and nationalities. Although the work of the Centre is rooted in the Anabaptist-Mennonite and Christian heritage of the College, the CSRP will provide a context for exploring the peace potential inherent in a wide range of religious traditions, and will examine ways to more fully actualize this potential and apply it to build trust, foster understanding, and revitalize public policy discussions.

Nathan Funk, Associate Professor of Peace and Conflict Studies at Conrad Grebel University College, will be the Centre's Lead Researcher. Funk has authored or co-authored a number of writings on international conflict resolution, with a special focus on unofficial dialogue processes, Islamic-Western relations, identity conflict, and the role of cultural and religious factors in peace-building capacity development.

"While religion can be a factor that gets manipulated to sharpen differences between people who are in conflict," Funk says, "religion can also manifest a positive side in conflict situations. Religions offer resources for peacemaking and value systems that call for changes in human relationships. This will be the focus of the Centre."

For further details, see www.grebel.uwaterloo.ca/academic/religion

ANNOUNCEMENT

Interdisciplinary Joint Master's Program in Peace and Conflict Studies
University of Manitoba / University of Winnipeg

A new Interdisciplinary Joint MA Program (JMP) in Peace and Conflict Studies (PACS) is now available at the University of Manitoba and the University of Winnipeg. The program encompasses the analysis and resolution of social conflicts; peace research that examines the structural roots of social conflicts, divisions, and social inequalities; and strategies for building community and promoting social justice.

The Program is intended to be rigorous, as the significance of research and intervention for conflict resolution, peace-building, and creating a culture of human rights demands a high standard of commitment, scholarship, and professionalism.

Students will have the opportunity to apply their undergraduate degrees and work to pursue advanced research and scholarship. JMP provides a holistic and interdisciplinary approach to prepare them for pursuing independent research aimed at analyzing and resolving complex issues by using a variety of conflict resolution, social justice, and peace studies tools, processes, and methods.

For more information, go to

http://umanitoba.ca/colleges/st_pauls/mauro_centre/peace_conflict/maprogram/index.html

or

http://www.uwinnipeg.ca/index/gc-academic#PACS

Dr. Sean Byrne
Director, JMP PACS
St. Paul's College
University of Manitoba

Dr. Marilou McPhedran
Associate Chair
Global College
University of Winnipeg

The Conrad Grebel Review is an interdisciplinary journal of Christian inquiry devoted to thoughtful, sustained discussion of spirituality, ethics, theology and culture from a broadly-based Mennonite perspective. Published three times a year, each issue usually contains refereed scholarly articles, responses to articles, informal reflections and essays, and book reviews. The Review occasionally publishes conference proceedings as well. Submissions are sought which, in subject and approach, will be accessible and of interest to specialists and general readers.

Articles
Articles are original works of scholarship engaged in conversation with the relevant disciplinary literature, and written in a lively style appealing to the educated, non-specialist reader. Articles must be properly referenced, using endnotes, and should not exceed 7,500 words. The Review follows the Chicago Manual of Style.

Manuscripts are sent in blind copy to two peer reviewers. Some exceptions to this may apply, as in the case of conference papers. Evaluation is based on subject matter, relevance, observance of standards of evidence and argumentation, and readability.

Reflections
Reflections are thoughtful and/or provocative pieces that draw on an author's expertise and experience. These submissions may be homilies, speeches, or topical essays, for instance. Manuscripts should be about 3,000 words.
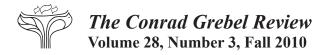
Responses and Literary Refractions
Responses and literary refractions are solicited by the managing editor and literary editor respectively.

Send submissions to:

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