

Ends and Means in Conflict*

*Edwin B. Firmage***

Even the finest arms are an instrument of evil, a spread of plague.

—Lao Tzu¹

A great danger of our time is our intense preoccupation with the ends we seek, so much so that we have overlooked the effect, usually and perhaps always the determinative effect, that our choice of means will have made upon the nature of those ends. This problem is made more difficult in that our vision of our end, or purpose, or goal, is thoroughly interlaced with and powerfully defended or even determined by intense, ferocious ideology. The choice of means barely has a chance to be examined on the basis of its congruence with the end selected. Yet the selection of means will almost surely determine the end and without doubt will crucially affect it. For there exists a dialectic relationship between ends and means that cannot be denied and is ignored at the peril of grotesque distortion of our goals or ends.

The problem of congruence between ends and means affects all aspects of our lives. It has obvious consequences for our political institutions, for our society, and for our psychological, emotional, and spiritual lives. The dialectical relationship between ends and means—the Hegelian thesis, antithesis, and synthesis—is nowhere more crucial and apparent than where violence is employed as a means of accomplishing a particular end, for example, to strike our husband, wife, or child; or to go to war to resolve a dispute with another state. The most extreme example of this problem would be to use nuclear weapons against another state and risk retaliation in kind in order to defend our society.²

There follows an examination of our determination to use nuclear weapons as a means of defending our society, then an over-

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1. L. Tzu, *THE WAY OF LIFE* § 31, at 44 (W. Bynner trans. 1962).

2. See J. BONDURANT, *CONQUEST OF VIOLENCE* (1965); Firmage, *MX: National Security and the Destruction of Society's Values*, in *THAT AWESOME SPACE* (E. Hart ed. 1981).

view of the means by which we decide for war or peace. Some concluding observations are offered on the limits of law on the nature and control of violence.

I. NUCLEAR WEAPONRY AND THE DEFENSE OF THE STATE

It has been suggested by American friends that the Atom Bomb will bring 'Ahimsa' (nonviolence) as nothing else can The moral to be legitimately drawn from the supreme tragedy of the Bomb is that it will not be destroyed by counter-bombs, even as violence cannot be by counter-violence. Mankind has to get out of violence only through non-violence. Hatred can only be overcome by love.

—Mohandas K. Gandhi³

The prophets had a vision of peace. A man would be able to sit under his fig tree in utter contentment, sure that he would not plant and another by violence reap the benefits of his work. Secure in his home against rapine of the world, he would live in justice and peace until the age of a tree and come to know the children of his children's children.⁴

Yet today we are unsure that human society, as bequeathed to us from centuries of forebears, can be passed on to the next generation. Whatever else we may be—doctors and lawyers, mechanics and scientists, teachers and students—we are stewards, stewards for all that has been given us by every previous artist, scientist, engineer, and prophet who has ever lived.

Every generation performs this role—at least, every generation until now. In fact, in one degree or another every previous generation could not, try as they might and some tried very hard indeed, totally fail in this second most crucial task we have. For until now we lacked the power utterly to obliterate human society. Even those who governed society during the first three decades of the nuclear era could not complete the task of destroying human society because we did not have enough bombs. We have enough now.⁵

One medium-sized hydrogen bomb possesses more megatonnage—more power—than every weapon fired by every side in every battle of World War II—from two years before the United States entered that carnage that took fifty million lives to the ending of

3. M.K. GANDHI, TOWARDS LASTING PEACE 228-30 (A. Hingorani 2d ed. 1966).

4. *Isaiah* 2:1-5; *Micah* 4:1-4; *Hosea* 2:20-23; *Exodus* 6:1-8.

5. See THE INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES, THE MILITARY BALANCE 1986-1987 (1987).

that war with our dropping the only two nuclear weapons ever used on human beings. Now the nuclear powers add two nuclear weapons to our arsenal each day; two world wars added to our capacity to kill each other yet another time. We and the Soviets have the capacity (not to mention the nuclear arsenals of the English, the French, the Chinese, and the Israelis) to kill each other scores of times over. We have known since the 1960s that 200 or at most 300 nuclear bombs could devastate each other's society almost beyond repair. Yet we now possess over 50,000 such weapons.

The first duty that we owe to each other is to perpetuate the human race: life itself and that pool of genes bequeathed by fathers and mothers from the beginning that helps determine our progression through intellect and beauty and talent into the image of God. Now even the continuation of the species and the genetic heritage is not assured.

Whether by fire as hot as the center of the sun, or by ice in nuclear winter's darkness at noonday in August, or by the famine and pandemic that would follow our rending the interconnected web of life in a thousand places, we would die by the billions and with us most if not all the other forms of life to whom we owe the duty of stewardship.⁶ And yet like zombies with one hand on the shoulder of the one in front we march on, two more bombs, then two more, and two more.

Weapons available, over enough time and through enough crises, have almost always become weapons used. In 1860 Brigham Young said:

. . . [W]hen the nations have for years turned much of their attention to manufacturing instruments of death, they have sooner or

6. See generally THE UNITED STATES STRATEGIC BOMBING SURVEY, THE EFFECTS OF THE ATOMIC BOMBS ON HIROSHIMA AND NAGASAKI (1946) (detailing these and other effects of nuclear weapons). See also THE COMMITTEE FOR COMPILATION OF MATERIALS ON DAMAGE CAUSED BY THE ATOMIC BOMBS IN HIROSHIMA AND NAGASAKI, HIROSHIMA AND NAGASAKI: THE PHYSICAL, MEDICAL AND SOCIAL EFFECTS OF NUCLEAR WAR (1981); OFFICE OF TECHNOLOGY ASSESSMENT, U.S. CONGRESS, THE EFFECTS OF NUCLEAR WAR (1979).

Physicians are becoming increasingly concerned about the devastating effects of nuclear war. The seminal and still key research in this area of the medical consequences of nuclear war is Ervin, Glaxier, Aranow, Nathan, Coleman, Avery, Shohet & Leeman, *The Medical Consequences of Thermonuclear War* (pt. 1), 266 NEW ENG. J. MED. 1127-37 (1962); see also Hiatt, *The Final Epidemic: Prescriptions for Prevention*, 5 J. A.M.A. 252, 635-44 (1984). Long-term consequences of nuclear war, or "nuclear winter," are discussed in Sagan, *Nuclear Winter: Global Consequences of Multiple Nuclear Explosions*, 222 SCI. 128 (1983), and Ehrlich, Harte, Harwell, Raven, Sagan, Woodwell, Berry, Ayensu, Ehrlich, Eisner, Gould, Gover, Herera, May, Mayr, McKay, Mooney, Myers, Pimental & Teal, *Long-Term Biological Consequences of Nuclear War*, 222 SCI. 1293-1300 (1983).

later used those instruments.

. . . From the authority of all history, the deadly weapons now stored up and being manufactured will be used until the people are wasted away⁷

Somewhere along the way the relationship between the end of national security and the means of appropriate armaments to accomplish this goal went awry. There simply is no congruence between such means and the ends to be achieved. If one sentence can capture the tragedy of the Vietnamese War it must be the statement of the American officer who explained that we must destroy a village to save it. That was done almost to that whole sad nation. Now the same grotesque logic is being applied to our entire globe. The end of security and peace can never be assured by producing, endlessly, weapons that can destroy continents and forests, oceans and rivers, fish and birds, and all the people. The means of nuclear weapons can never affect peace and security except to destroy them.

Even if no nuclear weapon is ever fired we have done terrible violence to ourselves. The prophetic vision of peace saw not only the perpetuation of life but a quality of living that reflected equity and justice and compassion. Peace and justice share the same dialectical relationship as ends and means. The terms should be hyphenated. Perhaps the notion is best captured by shalom. When we spend as we have spent this past decade on ever more murderous means of killing each other we do double evil. We not only provide barbaric means of killing and wounding other human beings, and in doing so make the likelihood of the use of such weapons more rather than less likely, but we also use scarce resources that might have been used to help and to heal, to teach and to enjoy.

In the first five years of the Reagan Presidency we doubled our national debt, which had taken 200 years, two world wars, a worldwide depression, and the costs of Vietnam and Korea to accumulate. Had we frozen any further expenditure on nuclear weaponry in 1984, other than maintenance of existing systems (with which we could still annihilate everyone in the Soviet Union fifty times over), we would have saved nearly \$100 billion within five years. This would have allowed us to restore and maintain social spending at 1981 levels, before the enormous increase in military spending. This would have meant, among other things, aid to 350,000

7. 8 B. YOUNG, JOURNAL OF DISCOURSES 324 (1861).

families, feeding one million people, free and subsidized school lunches and breakfasts for three million children, refunding remedial education and education for handicapped children, loans for 700,000 college students, and Pell Grants for 400,000 students. In addition to all these programs, some eleven billion dollars would be left for the costs of readjustment to a freeze economy.⁸

Over one billion people live in the most extreme poverty in our beautiful world; two out of every five are children. If we knew them at all we would understand that they are indistinguishable from our own children. They are our own children. There are over twenty-six million soldiers in a world with fewer than five million doctors and thirty-four million teachers. The World Health Organization was able to spend \$83 million to eradicate smallpox. That amount would not purchase one bomber.

The means we have chosen to protect our society are ferociously attacking the end they are to protect, for "national security" must include the preservation of fundamental human values. Whether or not the missiles fly, an arms race deflects us from nourishing our core. A nation that neglects its poor, its children, its elderly, its industry, and its agriculture, while endlessly arming itself with weapons that, if ever used, would incinerate the globe, has lost any vision of a loving and just society. We can no more win a nuclear arms race than we can win a nuclear war.

This awful social cost of military spending was observed in 1861 by Brigham Young, who spoke with characteristic tact and restraint:

A large share of the ingenuity of the world is taxed to invent weapons of war. What a set of fools! Much of the skill, ingenuity, and ability of the Christian nations are now devoted to manufacturing instruments of death. May we be saved from the effects of death. May we be saved from the effects of them! As I often tell you, if we are faithful, the Lord will fight our battles much better than we can ourselves.⁹

We face three nuclear arms races, not one, each more deadly than the last. First, what is commonly meant by the nuclear arms race is that we are simply building more and more nuclear weapons in a world able to kill itself scores of times over. In a sense, this is the least important arms race. Obviously, after we kill everyone, all

8. See Firmage, *National Security: The Nuclear Arms Race and Our Alternatives*, 1 J. INT'L & AREA STUDIES 27 (1986).

9. 8 B. YOUNG, *supra* note 7, at 324.

else in a narrow view is redundant. Stupid, yes surely; and evil in intent and effect as resources are used and malevolence is present. But we can be killed only once.

Yet other problems exist here. These redundant weapons are largely deployed, not stored in a building somewhere. People handle them and train with them and would surely use them in a major war. The chances of war by mistake, miscalculation, or insanity are increased as the numbers of those handling such weapons increase. And the threshold of nuclear winter, or end of life on earth, is approached as the total effect of weaponry used affects the entire globe and not only our part of the planet. Even so, this quantitative arms race is least threatening and most easily dealt with, if we have the will and the leadership, although neither is evident.

The second nuclear arms race, and immediately the most threatening, is the qualitative arms race. Here we attempt to build better weapons, not simply more. We try technologically to leap over our opponent's system of defense by a scientific breakthrough that will render his weapons unable to counter our own. For example, we put multiple warheads on one rocket, thereby enabling us to penetrate any antimissile defense simply by drenching it with destruction. Or we use the same system, if the warheads can be targeted with sufficient accuracy (another technological breakthrough), to attack the opponent's weapons systems in a ferocious first strike that would, theoretically, at once disarm and destroy him. This would have the theoretical effect—when coupled with an antiballistic weapons system, should we decide to use this seemingly defensive system offensively—of allowing us to strike enemies with relative impunity, since by striking first we could destroy a large part of their missiles and then destroy the remaining missiles with our antimissile defense.

The qualitative or technological arms race is by far the most immediately threatening in that it undermines the credibility of the deterrent capacity of each side. Neither side is assured that the other will not strike first. Consequently, each must seriously consider a preemptive first strike in a time of grave crisis, while communications systems and missiles are intact. This pressure to preempt, to be first to use nuclear weapons in time of crisis or even conventional war, is immediately the most serious problem we now face. Only if each side could respond with assurance whatever the other did, would the spectre of a first strike attack be exorcised.

As long as each nuclear state insists on developing and deploying whatever system its scientists can conceive, we will be

threatened by the most unstable, volatile condition possible. If for one moment we could, by some magic psychology of the senses, experience the horror of nuclear war, our willingness to tolerate this continued madness would end instantly. We would sweep from office those people of little vision or compassion and move together into a better place.

The third nuclear arms race is, over the long term, the most threatening of all. This is the horizontal arms race, or the process by which other nonnuclear states decide to acquire, by purchase or development, nuclear weapons. Several nations will most surely become possessors of nuclear weapons in this coming decade. And we will be most fortunate if terrorist groups, religious zealots, or simple gangsters do not come to possess nuclear weapons, whatever the sophistication of the delivery systems. It is here, in the spread of nuclear weapons, where we could reach the point that no conceivable system of law and government could prevent the use of nuclear weapons, sooner or later, after their possession became so widespread that no system of inspection, accounting, and control could work. Then, over time, use would indeed be inevitable. Talk of agency or choice would become rhetorical drivel in a deterministic world.

The way out of the quagmire, at least the beginning steps, is obvious. And we should not fail to take those steps, which seem clearly right simply because we cannot work out every later step at the present time. To demand that kind of assurance is at once bad politics, the corruption of spirituality and faith, and simply impossible.

To end the quantitative arms race we should simply stop. Call it moratorium if freezing has been co-opted by opponents better led than dead. But stop by whatever word. Such quantitative limitations are largely verifiable by national technical means and the Soviets, recently, have shown surprising acceptance of provisions for on-site inspection in any event. Then cut existing arsenals by fifty percent and reduce remaining weaponry by ten percent a year, until every nuclear weapon is gone.¹⁰

The second arms race of technology can be blunted, if not stopped in its tracks, by a complete test ban. We simply do not deploy what we cannot test. It is a national disgrace and an indication of the utter bankruptcy of national leadership to its world-

10. See Firmage, *supra* note 8, at 27; Firmage & Henry, *Vladivostock and Beyond: SALT I and the Prospects for SALT II*, 14 COLUM. J. TRANSNAT'L L. 221 (1975).

wide responsibility that we have not accepted repeated Soviet offers to end all nuclear testing, offers punctuated by their unilateral moratorium on nuclear testing for over one year. Only when there has been significant movement to curtail these two parts of the nuclear arms race will we and the Soviet Union possess sufficient moral power to enable us, with the huge majority of people and nations of the world in agreement, to demand as part of enforceable international law the final end, world-wide, to any further testing, development, or transfer of nuclear weapons or the material and technology to construct such weaponry.¹¹ But there is still time to do this if we act now. If we do not, we face a bleak world of deterministic catastrophe, a tragedy of classic form and cosmic consequence.

A vital part of the evolution of human society has been the implementation of peaceful means of resolving disputes in place of brute force and violence.¹² These are the means—not nuclear weapons—by which we preserve the peace. International law, diplomacy, and political leadership, which inspire us with vision rather than degrading us by constant appeals to our basest fears of other people, are the means congruent with the end of world peace. Arms racing and war are acts of savagery that debase and destroy people. Militarization of this Republic is a threat to the nature of our society whether war ever occurs.

II. THE WAY WE GO TO WAR

The death of a multitude is a cause for mourning: Conduct your triumph as a funeral.

—Lao Tzu¹³

There is nothing that war has ever achieved we could not achieve without it.

—Havelock Ellis¹⁴

Possessing nuclear weapons does not necessarily mean that they will be used. Over a long enough time, perhaps, this may not

11. See Firmage, *The Treaty on the Non-proliferation of Nuclear Weapons*, 63 AM. J. INT'L L. 711 (1969).

12. See Firmage, *Fact-Finding in the Resolution of International Disputes: From the Hague Peace Conference to the United Nations*, 1971 UTAH L. REV. 421; Firmage & Blake-sley, *J. Reuben Clark, Jr. and International Law*, in J. REUBEN CLARK: DIPLOMAT & STATES-MAN (R. Hillam ed. 1973).

13. L. TZU, *supra* note 1, at 44.

14. H. ELLIS, *SELECTED ESSAYS* 221 n.* (1936).

be true. And enormous problems—ethical, spiritual, political—exist simply because we possess such weapons. But such weapons exist. We have no power to reconsider the decision to develop nuclear weapons. The control of such weaponry while we work toward its abolition, therefore, is critically important. Most issues of command, control, and security of weapons are ignored here so that we might examine broader ethical, political, and constitutional questions. These questions of the way we go to war are not caused by, nor are they unique to, nuclear weaponry. But the existence of nuclear weapons and missile delivery systems should precipitate renewed analysis of the adequacy of eighteenth century ideas on the ways we decide for war or peace.

Most people who have studied the subject believe that nuclear war, if it comes, will result from conventional war going strongly against one or the other side, both possessing nuclear weapons. First use would occur as the losing side attempted to save itself. Hence, the way we go to war is vital to the nuclear question.

One facet of the brilliance of the Constitution was its focus on procedural means rather than substantive ends. This does not mean that the Constitution is value-free, for it certainly is not. But the Framers realized, consciously or intuitively, that any time of spiritual or political uniformity of values was at an end. If, indeed, any such time really existed, we no longer possessed one way, or one dominant way, of seeing the world and the cosmos and our place in the scheme of things. A series of revolutions—and in these cases the word though often misused was appropriate—had ended whatever really existed of monolithic metaphysics and ethics. The Copernican revolution, the modern age of secular and territorial nation-states, the Renaissance, and the Reformation had obliterated a radically different world of village culture, feudalism, and a universal order of religion and politics. While some substantive ends are memorialized in the Constitution, for example, within the first amendment, the bulk of that great charter deals with procedural means rather than with substantive ends.

Consequently, we are not told under what conditions a virtuous state might resort to force and war in order to preserve or extend itself. No doctrine of just war appears, though one might argue that the Constitution's references to the law of nations incorporated some such notions. Rather, the Framers realized that the reasons we decide to go to war must be left for every generation to work through within the political branches of government. Whether we should go to war and under what conditions are politi-

cal questions.¹⁵ But the *way* we go to war was not seen as a political question. The procedural means were carefully stipulated. If these procedural means were wisely chosen in the first place, and I believe they were, and if modern technology does not render them anachronistic, and I believe it does not, then we ignore this procedure, under the ideologically fueled heat of the moment, at our peril. Our self-righteous assurance of our own virtue and our own infallibility has led us to ignore these procedures in favor of a total commitment to our perceived ends, however self-destructive. Legal restraints have been swept aside by zealots contemptuous of law and democratic society.

A. *Peace and War*¹⁶

We are not playing a game. We are in a situation which poses the greatest threat to our survival. Unless we are firmly resolved to settle problems in a peaceful way, we shall never arrive at a peaceful solution.

—Albert Einstein¹⁷

The more I reflected on the experiences of history, the more I have come to see the instability of solutions achieved by force and to suspect even those instances where force has had the appearance of resolving difficulties.

—Sir Basil Liddell-Hart¹⁸

The Framers of our Constitution separated the power to choose war from the power to conduct it. The power to initiate war, except for sudden attack on our country, was lodged exclusively in the Congress. The President was confined to conducting war once Congress had decided on such a course.

The assumptions behind this separation of war power are as vital to us 200 years later as they were when these ideas were penned in Philadelphia. The executive or monarchical inclination to make war impulsively, without deliberate debate among a sizea-

15. See Firmage, *The War Powers and the Political Questions Doctrine*, 49 U. COLO. L. REV. 65 (1977).

16. Parts of this section of the lecture were presented before the annual convention of the American Society of International Law (Boston, Mass., Apr. 8-11, 1987), and will appear in its Proceedings, published by the *American Journal of International Law*. Portions were also published by the journal *The World and I*, and are used with permission. See F. WORMUTH & E. FIRMAGE, *TO CHAIN THE DOG OF WAR: THE WAR POWER OF CONGRESS IN HISTORY AND LAW* (1986), for a full exposition of this topic.

17. EINSTEIN ON PEACE 529 (O. Nathan & H. Norden eds. 1960).

18. SIR B.H. LIDDELL-HART, *WHY DON'T WE LEARN FROM HISTORY?* 72 (1971).

ble and varied body of people, was thought by many to have contributed to decades of war that ravaged Europe. War came almost to be the natural condition, interrupted rarely by periods of peace.

The Framers thought that by denying the President the monarchical power of raising armies and deciding for war, and placing such powers in the Congress, the sensitivities of the people who had to fight such wars and pay for them would be reflected through their representatives. In other words, the condition of peace, not war, was considered to be normal. The biases and presumptions of law and government, the inertia factor, were placed on the side of peace. Those who were for war had a burden of persuasion not easily borne. Only after open debate in a deliberative body, a process intentionally meant to prevent precipitous, cavalier action, would the state move from peace to war.

A number of factors have eroded these constitutional checks against war. Two world wars and a depression in this century have moved much power in government from the deliberative body—Congress—to the executive. Certain advantages of administration and dispatch are obvious. But the costs of executive abuse—Watergate, Iran and Nicaragua, and executive wars in Korea and Vietnam—have been devastating. Perhaps government based on an assumption of perpetual crisis fulfills its own presumption.

More than half of our people now living in a very real sense have not known peace. We have been subject to a Cold War since World War II ended. Previous generations have enjoyed peace at least between wars. Now almost every problem, domestic and foreign, is considered within a matrix of Cold War. Hatreds that in times past were intentionally set loose in time of war were mercifully confined within the period of war—1914 to 1918, 1941 to 1945. Now endemic fear is maintained through generations.

Administrations preach hatred and suspicion of foreign foes for domestic political advantage as much as for actual preparedness to be able to meet an enemy. A military-industrial complex has become a permanent part of an economic structure that has become addicted to massive military spending. With governmental officers who all too often join the companies with whom they dealt while in government, these industries perpetuate themselves without regard for the national interest. In decades past a peacetime economy for a discrete time would change temporarily to build instruments of war and then quickly revert to the productivity of peace. Now our scientists and engineers are increasingly drawn

into producing the technology of war while the infrastructure of our economy from our factories to our transportation systems erode and our spending for social needs is squeezed below the minimal requirements of social justice.

It is time in this bicentennial year of our Constitution to reevaluate our commitment to a condition of peace and to our institutional structures that preserve it.

B. Constitutional Conclusions

The war power of Congress is an institutional means of controlling the inclination to make war precipitously, presumptuously. For us today, this provision is a structural, horizontal check on war—while arms control measures and the laws of war hit at vertical, singular issues. In 1789 Thomas Jefferson made this statement of insight:

We have already given . . . one effectual check to the dog of war by transferring the power of letting him loose, from the executive to the legislative body, from those who are to spend to those who are to pay.¹⁹

Congress exclusively possesses the constitutional power to initiate war, whether declared or undeclared, public or private, perfect or imperfect, de jure or de facto. The only exception is the power in the President to respond self-defensively to sudden attack on the United States.

Three points also follow from constitutional text, our history, and pragmatic necessity. First, power over foreign relations was meant by the Framers to be jointly held by the Congress and the President. But much congressional direction and control have been allowed to wither by congressional default and presidential usurpation. Second, the existence of nuclear weapons and missile delivery systems cuts in the direction of this original understanding, not the reverse. That is, the argument by Presidents and presidential counselors that the President must have the power instantaneously to wage nuclear war because of nuclear missile delivery time of a few minutes simply does not hold. Rather, the cosmic implications of nuclear war mitigate in favor of more institutional restraint, collegial decision rather than the potential frailty and impetuosity of one human being who decides for or against the continuation of human society and, possibly, the human species. Third, Congress

19. 15 PAPERS OF THOMAS JEFFERSON 397 (J.P. Boyd ed. 1954).

possesses the power through control over expenditure, appointment, the direction of foreign policy, the government of the armed forces, censure of the President, and if necessary, his impeachment, to reassert its primary power in foreign relations and its singular power to decide for peace or war.

C. *The War Power*

This position—that Congress possesses the sole power to decide for war or peace—is supported with absolute clarity of the Founding Fathers' intent.²⁰ And our history, while checkered with congressional ratification of presidential acts, presidential abuse, and congressional malfeasance on occasion, clearly reveals the norm of congressional control and presidential dependence in the decision for war and peace. This is so through the Indian wars, the Whiskey Rebellion, the Barbary pirates to the Civil War, our endemic preoccupation with intervention in the Caribbean, and our border crossings into Mexico and Canada. Our pattern continued through two world wars until Korea and Vietnam.

James Madison noted that “the executive is the department of power most distinguished by its propensity to war; hence it is the practice of all States, in proportion as they are free, to disarm this propensity of its influence.”²¹ Alexander Hamilton, the advocate of presidential power in the Philadelphia Convention, nevertheless recognized that the President's power “would amount to nothing more than the supreme command and direction of the military . . . forces,” since the President lacked the British Crown's authority to declare war and raise armies.²²

20. In the Constitutional Convention, debates centered around an original printed draft of the war power clause providing that “[t]he Legislature of the United States shall have the power . . . [t]o make war” 2 RECORDS OF THE FEDERAL CONVENTION OF 1787, at 181, 182 (M. Farrand rev. ed. 1937). One member of the Committee, Charles Pinckney, opposed giving this power to Congress, claiming that its proceeding would be too slow. See *id.* at 318. Pierce Butler said that “[h]e was for vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.” *Id.* Butler's motion received no second.

James Madison and Elbridge Gerry, however, were not satisfied with the proposal of the Committee on Detail that the legislature be given the power to make war. Instead, they moved to substitute “declare” for “make,” “leaving to the Executive the power to repel sudden attacks.” *Id.* The meaning of this motion, which eventually was carried by a vote of seven states to two, was clear. The power to initiate war was left to Congress, with the reservation from Congress to the President to repel sudden attacks. See F. WORMUTH & E. FIRMAGE, *supra* note 16, at 17-18.

21. 1 LETTERS AND OTHER WRITINGS OF JAMES MADISON 643 (R. Worthington ed. 1884).

22. THE FEDERALIST No. 69, at 465 (A. Hamilton) (J. Cooke ed. 1961).

The power given Congress rests on the constitutional text that Congress be empowered to "declare War" and "Grant Letters of Marque and Reprisal."²³ This entails the power to decide for war declared or undeclared, whether fought with regular public forces or by privateers under governmental mandate. While letters of marque and reprisal originally covered specific acts, by the eighteenth century letters of marque and reprisal referred to sovereign use of private and sometimes public forces to injure another state. It was within this context that the constitutional Framers vested Congress with the power to issue letters of marque and reprisal.²⁴ Clearly, only Congress has the constitutional power to wage war by private parties as well as by the armed forces of our country.

While Lincoln in our Civil War would use that crisis to push to the limit of original constitutional intent, he did so with theories of constitutional empowerment and congressional acts, prospective and retrospective. As Harold Hyman noted, clearly Lincoln rejected European notions of *état de siege*.²⁵ Franklin Roosevelt would do the same in moving us from isolation and neutrality into alliance and war. The theme before Korea and Vietnam could be summarized by Illinois Whig Representative Abraham Lincoln's opposition to President Polk's adventures into Mexico. Polk asserted a presidential right to invade another nation as an act of self-defense as Commander in Chief. "Allow a President to invade a neighboring nation, whenever he shall deem it necessary to repel an invasion . . . and you allow him to make war at his pleasure."²⁶ The Framers gave this singular power to Congress, not one person, Lincoln said, so that "no man should hold the power of bringing this oppression upon us."²⁷

It was in Korea and Vietnam that Presidents, their counselors, and some academics would assert a presidential power apart from congressional act to wage war under whatever name. The State Department in 1950 attempted to justify President Truman's entry into the Korean War by referring to the President's executive power, his power as Commander in Chief, his power to conduct foreign relations of the United States, and the United Nations Charter. Perhaps the closest we came to proposing that foreign cri-

23. U.S. CONST. art. I, § 8, cl. 11.

24. See Lobel, *Covert War and Congressional Authority: Hidden War and Forgotten Power*, 134 U. PA. L. REV. 1035 (1986).

25. See H.M. HYMAN, *QUIET PAST & STORMY PRESENT?* (1986).

26. 2 THE WRITINGS OF ABRAHAM LINCOLN 51-52 (A. Lapsley ed. 1953).

27. *Id.*

sis or war produced extra-constitutional executive power was the government's position during the Korean War in the Steel Seizure Case, a position rejected most purely by Justice Black, most pragmatically and practically by Justice Jackson, and most narrowly by Justice Frankfurter.²⁸

The abuses of congressional prerogatives in foreign affairs during the Korean and Vietnam wars proved these constitutional provisions alone to be insufficient. Congress responded to this realization by passing the War Powers Resolution of 1978 and the Intelligence Authorization Act of 1981, in order to provide a means of congressional control and oversight over the power to initiate hostilities and over the intelligence gathering process.²⁹

D. Power Over Foreign Relations

The power of Congress over the conduct of foreign relations rests on many constitutional statements of sweeping empowerment. Congress may lay and collect taxes for the common defense, regulate commerce among the nations, define and punish offenses against the law of nations, declare war and grant letters of marque and reprisal, raise and support armies, provide and maintain a navy, make rules for the government of land and naval forces, and provide for organizing and calling out the Militia.³⁰ The Senate as well has a collegial responsibility with the President in making

28. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); see also *F. WORMUTH & E. FIRMGAGE*, *supra* note 16, at 171.

29. The Intelligence Authorization Act for Fiscal Year 1981, Pub. L. No. 96-450, 94 Stat. 1975 (codified as amended in scattered sections of 10, 22, and 50 U.S.C.), imposes duties on executive branch officials, in particular the Central Intelligence Agency: (1) to keep the congressional intelligence committees "fully and currently informed" of intelligence activities; (2) to provide prior notification of "significant anticipated intelligence activities," chiefly covert operations; (3) to furnish any information or materials requested by the intelligence committees concerning intelligence activities; and (4) to "report in a timely fashion" on any illegal intelligence activities or significant intelligence failures. 50 U.S.C. § 413(a) (1982).

The Neutrality Act, 18 U.S.C. § 960 (1982), an additional restriction on executive military discretion, has existed since 1794. Congress passed the Neutrality Act to prevent foreign interference in United States affairs and to strengthen the authority of the central government in respect to its citizens. The Act was also designed to further the war powers of Congress. The Act accomplishes this by denying the executive the power unilaterally to authorize hostile expeditions and foreign recruiting, and the discretion not to enforce the statute's prohibitions. By doing this, the Neutrality Act reaffirms the original constitutional intent of collegiality, ensuring that no individual is allowed to threaten the peace by unilateral acts of warfare. See Lobel, *The Rise and Decline of the Neutrality Act: Sovereignty and Congressional War Powers in United States Foreign Policy*, 24 HARV. INT'L L.J. 1 (1983).

30. See U.S. CONST. art. I, § 8.

treaties. Additionally, Congress has the power to make all laws necessary and proper to accomplish these enumerated objectives.

Presidential text is limited to three statements: he (or she) is Commander in Chief,³¹ possesses executive power,³² and is to "take care" that the laws of Congress are faithfully executed.³³ As Commander in Chief the President was intended simply to be Congress' general. No power not given by any other text was conveyed by the statement on executive power. The "take care" clause simply obligated the President to execute congressional laws. The latter has been asserted to be an executive "necessary and proper" clause by ironic, if not cynical, bootstrapping.

Under these provisions Congress not only possesses sole power to decide for war, establish and govern our military forces, determine rules for their governance and use, and establish commercial relations with other states; but also Congress, with the President, should establish and direct the strategy of our foreign relations. As Professor Louis Henkin observed, the treaty power invested in the President and the Senate gives the tip-off to the Framers' intent.³⁴ Because foreign relations were conducted primarily by treaty in the eighteenth century, the bestowal on the Senate and the Presidency of the treaty power reveals the determination that our foreign relations should be governed collegially.

E. The Current Crisis

Most of the facts in the Iran-Nicaragua crisis are now known. Substantial modern armaments were secretly sold to Iran by order of the President in barter for hostages. By presidential order this information was kept from Congress and the American people.³⁵ Part of the money gained by this sale of weaponry was diverted to the Nicaraguan Contras.³⁶ This activity was carried out by the CIA

31. *See id.* art. II, § 2.

32. *See id.* art. II, § 1.

33. *See id.* art. II, § 3.

34. *See* L. HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 80 (1972).

35. On January 17, 1986, President Reagan signed a secret intelligence "finding" waiving previous regulations prohibiting arms shipments to Iran and authorizing direct United States arms transactions with Iran. This January 17 finding also states that "due to its extreme sensitivity and security risks" prior notice should be limited and directs the "Director of Central Intelligence to refrain from reporting this Finding to the Congress as provided in Section 501 of the National Security Act of 1947, as amended, until [the President] otherwise directs."

36. *N.Y. Times*, Nov. 26, 1986, at A1, col. 3; Report of the President's Special Review Board, III, at 19-20 (Feb. 26, 1987).

under the direction of certain members of the National Security Council, an advisory body turned operational by this administration in order to avoid statutory restrictions³⁷ of Congress on other agencies of government.

Statutes of Congress forbid the export of arms to countries, including Iran, that support acts of international terrorism³⁸ and prohibit covert operations by the CIA without a finding by the President that each operation is important to the United States.³⁹ Other statutes demand notification of Congress of covert and other operations of the CIA, and forbid any military assistance to the Nicaraguan Contras from October 1984 to October 1986.⁴⁰

Clearly, statutes of Congress were intentionally circumvented and violated, and congressional objectives thwarted by members of this administration possessing no respect for law and showing contempt for Congress and the democratic process. The term "process" as used in several settings appears to have no meaning to these people. Due process of law and the democratic process were swept aside by those completely captured by their objective.

In early 1984 the Reagan administration established a private, covert, paramilitary network to ensure continued monetary and military aid to the Contra movement.⁴¹ The Tower Commission Report has found that President Reagan was informed of this private aid network orchestrated by the National Security Council. The diversion to the Nicaraguan Contras of public funds received from the sale of weapons to Iran directly violates the Boland Amendment.

The active role played by both the President and the Vice President, George Bush, in raising private funds to support the Contras subverts an express policy of the branch that has the sole power over the decision for war or peace for our country, the Congress of the United States. The President and the Vice President are our country's highest officers in the executive branch of government. They are not simply private citizens. Mr. Reagan's reference to the Abraham Lincoln Brigade, private American citizens who

37. See The Intelligence Authorization Act for Fiscal Year 1981, Pub. L. No. 96-450, 94 Stat. 1975 (1980) (codified at 50 U.S.C. § 413 (1982)).

38. See Arms Export Control Act, Pub. L. No. 99-399, § 509(a), 100 Stat. 874 (1983) (codified at 22 U.S.C.A. § 2780 (Supp. 1987)).

39. See National Security Act of 1947, ch. 343, 61 Stat. 496 (1947) (codified at 50 U.S.C.A. §§ 401-405 (Supp. 1987)).

40. See Act of Dec. 21, 1982, Pub. L. No. 97-377, § 793, 96 Stat. 1865 (1982) (Boland Amendment).

41. Parry & Barger, *Reagan's Shadow CIA*, THE NEW REPUBLIC, Nov. 24, 1986, at 24.

fought in the Spanish Civil War, is inappropriate. He is not Ernest Hemingway. He is the President for now. If he wishes the freedom of action of a private citizen, there are ways that his wish may be accomplished.

In Nicaragua we are waging continuing subversion and war against a sovereign state we formally recognize. There, we violate the Neutrality Act as well as the Constitution and the law of nations. We do this by raising funds and by encouraging a generation of buccaneers and soldiers of fortune to wage private war against another state with whom we are legally at peace. The President has no power to authorize private war. Only Congress, under the "grant letters of marque and reprisal" clause of the war power provisions of the Constitution, possesses such power.

Against Libya and most personally against its head of state, Mr. Khadafy, the Reagan administration instituted a plan of disinformation by which we lie to our own press and mislead our Congress, which is as dependent on the press as are the rest of us in acquiring information on which to act. The supposed plot to assassinate Mr. Reagan was concocted by our own government, not the Libyans. (Whether this was also a murderously revealing psychological projection is another and far more serious matter.) How far short is this from lying to a subcommittee of Congress, or the American people?

If indeed an attempt was made to assassinate a head of state as an act of reprisal in the American bombing raid on Libya, then again exclusive congressional control over reprisal by this country—as stipulated in the war clause—was violated. Serious questions of proportionality, as required by international law, also exist. Factual questions have also been raised as to whether Mr. Khadafy was indeed responsible for the terrorist attacks to which our bombing was in response.⁴²

International and domestic law protect innocent civilians against intentionally inflicted violence in time of war or peace. Such law may very well not protect Mr. Khadafy, although the intentional killing of a head of state raises other legal, moral, and practical issues of a most serious nature. But the family of Mr. Khadafy is protected by our prohibitions against violence aimed at innocent civilians. An adopted child of Mr. Khadafy was killed and other family members were wounded in our bombing raid. If an attempt was made, with partial success, to kill Mr. Khadafy's wife

42. See Hersh, *Target Qaddafi*, N.Y. Times, Feb. 22, 1987, § 6 (Magazine), at 16.

and children by intentionally bombing his private quarters, then murder and attempted murder have been committed and those who approved and commissioned such acts should be removed from office and be tried by the courts of this land for acts of homicide.⁴³

The President's approval of covert CIA activities directed at overthrowing the Nicaraguan government, without a full disclosure to Congress and without congressional empowerment, and covert activities conducted by administration officials, with or without express presidential approval, raise serious constitutional, statutory, and political issues about the President's capacity to administer his office properly, as does the apparent "disinformation" campaign aimed at Mr. Khadafy of Libya. Consider, for example, the earlier covert mining of Nicaraguan harbors and now the Iranian-Nicaraguan scandal in light of the following statement by James Iredell, a member of the Constitutional Convention in Philadelphia and later a Justice of the Supreme Court:

The President must certainly be punishable for giving false information to the Senate. He is to regulate all intercourse with foreign powers, and it is his duty to impart to the Senate every material intelligence he receives. If it should appear he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induced them to enter into measures injurious to their country, and which they would not have consented to had the true state of things been disclosed to them—in this case, I ask whether, upon an impeachment for . . . such an account, the Senate would probably favor him.⁴⁴

F. Modern Technology and Eighteenth Century Ideas

The argument to this point has been scrupulously conservative. The vital point of analysis has been our adherence to the original intent of the Founders of the Constitution. But what has been the impact on an eighteenth century understanding of modern technology of war? How do nuclear weapons and intercontinental missiles affect our constitutional provisions for war? It has been suggested that nuclear weapons capable of continental destruction

43. *See id.* at 20.

44. 4 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 277 (J. Elliot 2d ed. 1907); *see also* Firmage, *The Law of Presidential Impeachment*, 1973 UTAH L. REV. 681; Firmage & Mangrum, *Removal of the President: Resignation and the Procedural Law and Impeachment*, 1974 DUKE L.J. 1023.

borne by missiles minutes from our shores make it essential that we be able to decide for war instantaneously, by one person, without debate or restraint.

It is a misstatement to equate collegiality with lack of effective, immediate response. Congress in the past has proved that it can quickly deliberate when required. One day after President Eisenhower asked Congress for authority to use American armed forces to protect Taiwan from attack by mainland China, the Chairman of the House Rules Committee called up the resolution under a closed rule permitting only two hours of debate and no amendment. The House passed the resolution that same day.⁴⁵

But what is the hurry? If we are obliterated by a massive salvo, we presumably can still respond by whatever remains of land-based missiles of our own, plus submarine and air-launched missiles. Unless we plan to strike first, under what situation beyond self-defense, which exists in any event in the President if we are under sudden attack, must we respond with such alacrity?

Contrarily, with the evidence we now have of genocidal pandemic following nuclear war, with human society destroyed and human life in the balance, modern technology demands all the more our adherence to every institution we possess that ensures debate and reflection, negotiation, conciliation, and peaceful resolution of disputes. The Founders' prescription that Congress possess the sole war power to chain the dog of war remains essential still.

G. Preserving the Constitutional Balance: A Resurgent Congress

Congress possesses the power under the Constitution, as evidenced by constitutional text and statutes passed thereunder, to remedy an abuse of its prerogatives under the war power and the constitutional provisions empowering Congress regarding the conduct of foreign relations. The courts can and should do more to define the jurisdictional lines between the political branches. Whether we should go to war is not a justiciable issue. But the way we go to war may be. The courts therefore need not, but nevertheless are likely to, consider this issue to be a political question and thereby avoid resolution.⁴⁶ In any event, the only realistic counter-

45. See Friedman, *Waging War Against Checks and Balances—The Claim of an Unlimited Presidential War Power*, 57 ST. JOHNS L. REV. 213, 269 (1983); see also F. WORMUTH & E. FIRMAGE, *supra* note 16, at 204-05.

46. See Firmage, *supra* note 15.

weight to an overreaching President is a Congress bold enough to assert its own constitutional power. In this area there is no question that the judiciary is the least dangerous and the least helpful branch.

Congress, balanced against the President, is the only other big guy on the block. And Congress assuredly possesses great power. It is no accident but rather careful construction that placed congressional power in article I, presidential power next, and judicial power third. Congress exclusively possesses the two most potent powers of government: the power to tax and spend, and the power to decide for war and peace. Congress has come to possess a general power, if not indeed a general welfare power over commerce most broadly defined. With additional power to define and punish violation of international law, to raise, support, and govern the armed forces, to censure, and, if necessary, to impeach the President, the Congress of the United States has the power necessary to regain its constitutional role as definer of foreign policy, governor of the military, and our representative in the decision for peace or war.

H. Conclusion

Law—constitutional, international, and statutory law of Congress—is the primary means by which we protect our community in peace. We have seen in the Iran-Contra crisis, and previously in Watergate and the Vietnam War, a disregard for democratic process by people zealously convinced of their goals. A few conclusions of relationship between ends and means might be made from these disasters.

First, we must renew our fidelity to the democratic process itself. Few goals of domestic or foreign policy are worth doing serious harm to our constitutional fabric to achieve. A listing of recent disasters in foreign policy alone should be sufficiently chastening to help us avoid a belief in our own omniscience or omnipotence. Hundreds of Marines died in Lebanon under circumstances of vulnerability that were foreseeable. Selling significant quantities of sophisticated arms to a terrorist government in Iran while we were preaching against such practice to our allies destroyed our effectiveness in isolating Iran from sources of such weaponry. We have become increasingly unable to perform a natural role as neutral peacemaker in Middle Eastern crises by our own warlike acts there.

Fidelity to our own process is a compromise that humans who

lead make with each other and with those they lead as an institutional reflection of our common fallibility. Government itself is a recognition of such fallibility. Those who break this bond demonstrate an arrogance that makes them unsuitable for governmental responsibility.

Powers of government separated and in balance are part of this check on individual zealotry or wrongheadedness. A recognition by the President that Congress alone possesses the power to decide for war or peace, absent a sudden attack on the United States, is part of this. So also is presidential recognition of the collegial relationship between Congress and the President in shaping our foreign policy. Scrupulous adherence to the law is part of the presidential oath. This includes the law of the Constitution, statutory laws of Congress, and international law.

We are obliged by international law to respect the sovereignty of other states, to protect life, especially the lives of innocent non-combatants, and to resolve our disputes by peaceful means of negotiation, conciliation, mediation, arbitration, and judicial resolution; for example, through our diplomatic organs of government in the Department of State and within the United Nations system and the International Court of Justice.⁴⁷

No power exists in the office of the President to wage private war against states with whom we are at peace by hiring modern mercenaries, pirates, or privateers without express authorization of the Congress of the United States. Nor does the President or the National Security Council have the authority to privatize the conduct of American foreign policy in the sale of arms or the transfer of money. This is a form of coup against our constitutional government.

The disastrous record of our intelligence operations from Watergate through the Iran-Contra crisis calls into question whether clandestine and illegal operations are not completely antithetical to democratic government. Perhaps such means of conducting government are simply impossible without the corruption

47. On April 9, 1984, Nicaragua brought an action against the United States in the International Court of Justice, alleging that the United States had violated established principles of international law in using military force against it and intervening in its internal affairs. See *Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, 1984 I.C.J. 215. Although the United States denied recognition of the authority of a 1947 declaration accepting the court's compulsory jurisdiction, the court ruled that it did have compulsory jurisdiction of both the United States and Nicaragua. On June 27, 1986, the court ruled on the merits of Nicaragua's action, holding against the United States on fourteen counts.

of an open and democratic form of government. We get very little data for our governance by illegal and clandestine means. The huge majority of intelligence obtained by the CIA or DIA⁴⁸ are obtained by means relatively open and within the law. Foreign literature is read, electronic media are monitored, private and formal diplomatic intercourse occurs between people of different countries, and professional groups correspond across increasingly porous national boundaries. More exotic, but not unambiguously illegal, spy satellites report constantly on troop movements, weapons deployment, treaty adherence, crop conditions, and even industrial production.

A most serious question exists whether the tiny percentage of our data that we obtain by clandestine or illegal means is worth the cost to the integrity of our system of government, open and lawful. Often this information is in error, the product of people too long in a business where paranoia becomes a way of life. The data we need to conduct good government, I believe, can be acquired almost always by means that are open and within both law and morality. The belief that the world is a jungle and therefore we must behave like animals is self-fulfilling.

Furthermore, illegal and immoral clandestine attempts at assassination, coups, terrorism, and acts of war come back on us to corrupt our own society. People trained in such activities performed central roles in the Vietnam War, in Watergate, and in the Iran-Contra crisis. Nothing in human nature distinguishes our terrorists from those employed by Iran or Lebanon. Only our much stronger and older traditions of democratic, constitutional government stop such people from running away with the state. This happened in Germany in the 1930s and in Iran in our own time. Only our fidelity to the means (not so much the ends) of our government prevents it here.

We must not allow the deliberate deception of Congress even when more than a few members would be quite happy to be deceived or ignorant of what we do. Congressional control over the war power is absolutely essential. Congress must govern the armed forces. The President, as Commander in Chief in time of peace, should be on a very short leash.

There is purpose in open debate in Congress, before us all, as we develop and implement foreign policy. To expect bipartisan support in foreign policy conducted by conspirators in clandestine

48. Defense Intelligence Agency.

coups abroad or within our own government is not realistic. Collegial dialogue between the Presidency and Congress is the means by which we can conduct foreign policy with amity and success. If a mandate for a particular act cannot be achieved by such means, we should not proceed. Lack of a mandate in democratic process may just mean the goal is incorrect.

In their Manichaeic world of black and white, good and evil, constitutional law and democratic government were viewed with disdain as a procedural nuisance to be subverted without a qualm. Commitment was to a leader who shared the end vision, not to a democratic system of law under the Constitution. Means of violence and illegality were employed and enormous damage was done. This damage occurred not only to laws violated and agencies of government abused but, in perfect dialectic, to the very goals of the actors as well. Policies that attempted to isolate terrorist groups from weapons and money were left in shambles. Our ability to influence and lead our allies has been destroyed, in effect, at least through the life of this administration.

III. THE LIMITS OF LAW UPON THE NATURE AND CONTROL OF VIOLENCE

If love or non-violence be not the Law of our Being, the whole of my argument falls to pieces and there is no escape from a periodical recrudescence of war, each succeeding one outdoing the preceding one in ferocity [L]ove is the source and end of life All the teachers that ever lived have preached that law with more or less vigor. If love was not the law of life, life would not have persisted in the midst of death.

—Mohandas K. Gandhi⁴⁹

[T]ogether we live or together we die.

—St. Paul⁵⁰

To this point the suggestion has been made that law and government offer far superior means to control violence and preserve peace than do weaponry and war. Arms limitation agreements are absolutely essential. Nuclear disarmament can be achieved. Disputes can be resolved by legal techniques of fact-finding, conciliation, good offices, mediation, arbitration, and court decision. Political processes and diplomacy will always be vital. The laws of war

49. M.K. GANDHI, *supra* note 3, at 13-14.

50. 2 *Corinthians* 7:3 (Jerusalem).

and war crimes will help ameliorate the effects of violence when peaceful means fail. Municipal systems have seen greater peace as legal systems came to monopolize violence even if it was not eliminated. Society moved from self-help and the hue and cry or posse to dispute resolution within judicial systems. Peaceful resolution of disputes can be done by these techniques, which we have developed as we have moved, or at least attempted to move, to higher forms of civilization. Constitutional restrictions on the decision for war should be followed. But there are limits to law as a restraint on violence. Other institutions of society have a more fundamental, profound role to play than the law.

If by some magnificent act of statesmanship equalling the brilliance of the creation of our American Constitution, all nuclear weapons were to be removed from the earth; and if we followed with fidelity the original insight of our Constitution, that many people would be less inclined precipitously, thoughtlessly to make war and thereby end the peace than would one; then still each generation could yet decide to begin again the nuclear arms race. And in so doing, we could quickly rearm and once again threaten the world with obliteration. For the knowledge of the atom has forever ended our state of innocence that existed prior to the development of the first atom bomb. No arms control agreement or international law will lobotomize generations of physicists. There is no return to a prenuclear Eden.

And with the power of thermonuclear weapons, one mistake, one failure of the system peacefully to resolve disputes, could incinerate the world. Congressional checks on war at best improve our chances that peace rather than war will result. At best means not always. In the past, Congress has on occasion been more inclined toward war than the President. Usually, but not always, many will make a better decision than one. But many can be caught up in national frenzy as well.

With this awesome source of power, how can we assure survival? In time past, war could mean the end of a nation. Carthage simply ceased to exist. Sumer, inventor of the wheel and a form of writing, disappeared in wars. Or an age may end forever even though individual states may survive war. The Golden Age of Greece ended as Athens and Sparta became convinced that the other was an evil empire bent on their destruction, when in fact the acts of each insured the end of an age. The lights indeed went out over Europe when World War I began, but they never did come back on upon the same society. That war, more than any

other war of our time, changed the nature of world governance and society. World War II would take fifty million lives, but World War I laid its groundwork and changed our world more fundamentally.

Even so, we survived. Human society survived the horror of the Holocaust, the brutality of aggressor nations, the war crimes memorialized at Nuremburg, the bombardment of civilian centers, and even the first use of nuclear weapons. We have no assurance that that can be done again. We have every reason to believe that it cannot.

What is necessary at first may seem more impossible to accomplish than the great advances in international law and domestic governance described above. For we must change our mind before we can change our law. And only after we have changed our mind will any change in law and government hold. Here, and far closer to the center, the worlds of psychology and spirituality appear.

To a much greater extent than the older generations perceive, especially political leadership whose most powerful mental images were forged in World War II and the Cold War, the changes within our minds are already occurring. A greening is happening. Young people in England, Italy, Spain, the Netherlands, France, or Russia simply do not think with a Cold War mentality. It is time carefully and responsibly to plan for the dissolution of Cold War alliance systems that have served their purpose. Their continuation into better times will not serve the peace as much as they will create tensions among allies and fears between rivals who should be friends. Old Cold War warriors whose only base of power is a continuation of the politics of fear should be retired from office gracefully but quickly.

It would seem, at first, that change here would be even more utopian to expect, more hopelessly idealistic to call for, than the Golden Age of international and constitutional law described above. But such may not necessarily be the case. Here, in any event, each one of us has enormous power over the nature of things. Only one person determines, finally, what I think. Me. Others may attempt to influence me, but I have absolute, sovereign control in the final instant. My influence over others may be profound, within the limits of their own autonomy, by my example based on my own decision as to what I think. Our greatest spiritual teachers have perceived this. Jesus began his ministry with a call that we simply change our minds. We need not be Secretary of

State, or Senator, or President to do this. Finally, all power is here.

A. *Motes and Beams*

Today the first and perhaps the only duty of the philosopher is to defend man against himself: to defend man against that extraordinary temptation toward inhumanity to which—almost without being aware of it—so many human beings today have yielded.

—Gabriel Marcel⁵¹

We used to wonder where war lived, what it was that made it so vile. And now we realize that we know where it lives. It is inside ourselves.

—Albert Camus⁵²

What I think must begin with my own enormous capacity to project my own fears outward. I believe that objective evil exists. All evil is not simply the result of my projection outward. Evil can, with understandable overstatement, be embodied. Adolph Hitler and the other psychopaths who controlled Germany in the 1930s and 1940s are evidence of this. Perhaps, consequently, World War II was the last just war. Just in Allied entry, perhaps, but surely not just in its conduct. Witness our own bombing of civilian targets in numbers that dwarfed German or Japanese bombing, the fire bombing of Dresden, Hamburg, and Tokyo, for example. And Hiroshima and Nagasaki.

But World War II stands alone in modern time at least. History may not repeat itself, but sometimes a paraphrase occurs. It is World War I that I fear, not the personification of objective evil in another Hitler. In World War I, our own subjective capacity to do evil and act stupidly existed within every government.

We possess within ourselves great fear and guilt. We project that fear, based on guilt, outward. This externalization of evil is what I fear. I fear our fear. When national leaders see evil empires outside their own souls the bully pulpits of their office are used to create national paranoia and hatred rather than understanding and love. This, more than objectively evil leaders and nations, more than economic causes of war, is what fuels arms racing and leads to war.

The English, a decade before World War I, had a fear of German invasion out of all perspective of reality. A committee of in-

51. *Quoted in* THOMAS MERTON, *RAIDS ON THE UNSPEAKABLE* (1960).

52. A. CAMUS, *CARNETS 1935-1942*, at 79 (P. Thody trans. 1962).

quiry was appointed in 1908 to study the likelihood of German invasion.⁵³ English playwrights wrote of fictional invasions. In 1909 Guy du Maurier's play, *An Englishman's Home*, recounted an invasion by "the Emperor of the North" and "played to packed houses for . . . months."⁵⁴ This fear precipitated a naval buildup.

This same phenomenon existed in Germany. The Germans were fed on the notion that England planned invasion. Fears of German vulnerability and inferiority were fed by national leaders as startlingly mediocre as were found in the other states of the time and as may be found today.

The kind of patriotism that is actually marked by profound self-doubt fed a *macho* pride in national strength. This led to arms racing, the corporate equivalent to our idolization of Clint Eastwood and Sylvester Stallone rather than Jesus, Gandhi, or Francis of Assisi as our role models. The English, understandably and predictably, did not see the German rearmament as reflecting their own fear, but rather as confirmation of the worst English suspicions as to the intent, indeed, the very nature of the Germans. The English responded to German arms increases with their own naval buildup, characterized most completely by the building of HMS Dreadnought. This monster ship, the forerunner of modern battleships, was not unlike one brought out of mothballs recently with beautifully accurate symbolic revelation of self by this administration. This in turn frightened the devil into the Germans, who found their worst suspicions about the English confirmed and they therefore redoubled their own efforts. And so on.⁵⁵

B. *The Enemy*

Love your enemies.

—Jesus Christ⁵⁶

It is easy enough to be friendly to one's friends. But to befriend the one who regards himself as your enemy is the quintessence of true religion. The other is mere business.

—Mohandas K. Gandhi⁵⁷

53. See B. TUCHMAN, *THE PROUD TOWER* 380 (1966).

54. *Id.* at 446.

55. See B. TUCHMAN, *THE GUNS OF AUGUST* (1962); R. WHITE, *FEARFUL WARRIORS* (1984).

56. *Matthew* 5:44.

57. M.K. GANDHI, *NON-VIOLENCE IN PEACE & WAR* 249 (1949).

Do not let evil conquer you, but use good to defeat evil.

—St. Paul⁵⁸

[W]e ought not to retaliate or render evil for evil to anyone, whatever evil we may have suffered from him.

—Socrates⁵⁹

And what must we do when we find the enemy? Within or without? Who ever told us we were to kill the enemy? First off, we cannot, not really. He just reappears in another disguise. After World War II we shifted our shadow from Germans and Japanese to Russians and Chinese. The only balance in this mental musical chairs was a nice though accidental parity of both oriental and occidental enemies. We still knew no peace, only Cold War interspersed with hot flashes rather than world war.

The key, within and without, is reconciliation. We must acknowledge and embrace the shadow. Then we are both disarmed. Unconditional surrender of any part of our psyche, other than our egocentric capacity, is as wrong as that demand on a foreign foe. The temporarily defeated part of the whole will simply resurrect in fearful form.

The parable of the Wheat and the Tares gives great insight into our soul and also into our world.⁶⁰ We largely ignore these parables or stories because our powerfully analytical world cannot understand them. All great spiritual leaders, however, have been storytellers. So remember the ending. After tares were planted amongst the wheat, one would expect the farmer carefully and quickly to find and obliterate the tares. Not so. He was directed to let them grow together. Like moral judgment in any other form, it was to be left to a later time and better perspective. With the Franciscan Richard Rohr, the tares of my earlier years I now see as my wheat. And surely the wheat of my youth I now see as the tares of my life. Truly, what stands between us and the Russians and the Chinese but fear? Love dissolves fear.

The idea that we not resist evil, or the wicked, is among the most enigmatic and surely the most difficult teachings that spiritual teachers have ever given. Coupled with the related teaching of enemy love, these are the ultimate expressions of loving response to violence ever given. They are based, I believe, on a profound

58. *Romans* 12:21.

59. 1 THE DIALOGUES OF PLATO § 49c, at 378 (B. Jowett trans. 4th ed. 1953).

60. See R. Rohr, *Wild Beasts & Angels* (cassette tapes published by the Nat'l Catholic Reporter Pub. Co. 1986).

psychological and spiritual insight into the effect on us all if violence is met with violence.

First and most obviously, such a response has no end short of obliteration of one or the other parties, or both. Violence precipitates violence until one party elects to absorb violence without similar response. Only then can the cycle end and peace be restored.

Second and less obvious, even if the party responding to initial violence on the part of the other is able to respond with such power as to immobilize or destroy their original aggressor, the originally innocent "prevailing" party will suffer the effect of the dialectical relationship that exists between the end that was sought, the restoration of peace, and the means selected, the violent response. For if we respond to violence with violence of our own, obviously we are repatterning our behavior on the party doing violence to us. To that extent, the perpetrator of evil has already won. The violent means we selected to protect the end we desired, a condition of peace, have fundamentally affected that end. We have become violent and we are no longer at peace.

Muscular nonviolence at once preserves our integrity against cooperation with evil and at the same time allows us to avoid the trap of emulating the enemy as we oppose him. For if we adopt the enemy's means we have been defeated by absorption into his system. Then we have become the enemy in every sense.

C. *Authoritarianism, Reason of State, Superior Orders*

If men can be found who revolt against the spirit of thoughtlessness, and who are personalities sound enough and profound enough to let the ideals of ethical progress radiate from them as a force, there will start an activity of the spirit which will be strong enough to evoke a new mental and spiritual disposition in mankind.

—Albert Schweitzer⁶¹

Many people—many nations—can find themselves holding, more or less willingly, that "every stranger is an enemy." For the most part this conviction lies deep down like some latent infection; it betrays itself only in random, disconnected acts, and does not lie at the base of a system of reason. But when this does come about, when the unspoken dogma becomes the major premiss in a syllogism, then, at the end of the chain, there is the Lager. Here is the product of a conception of the world carried rigorously to its logical

61. A. SCHWEITZER, *OUT OF MY LIFE AND THOUGHT* 281 (C.T. Campion trans. 1933).

conclusion; so long as the conception subsists, the conclusion remains to threaten us. The story of the death camps should be understood by everyone as a sinister alarm-signal.

—Primo Levi⁶²

By whatever name, obedience, without doubt a virtue in proper place and perspective, can never be allowed to be the first principle of our moral order. A philosophy of means must always reject authoritarianism as the highest value. The Holocaust must teach us that much if nothing else. I do not believe that the German people were more antisemitic than the people of any other European state prior to World War II. That is not the reason that the Holocaust occurred in Germany. I should quickly add that neither do I believe that the greatest sin of modern time took place in Germany solely because of Prussian authoritarianism. Many events interacted, including ferocious antisemitism, the after-effect of World War I, and the shocking failure of leadership among the victorious states leading to reparations and war guilt placed on Germany, depression and inflation, and so on. Nevertheless, all this would have produced a war but not a Holocaust without an authoritarianism that made spiritual infants of people who could ever think that moral decisions could be made corporately rather than individually. Doing what my file leader commands may be in the individual instance right or wrong, but the moral responsibility is always my own. Any system that teaches otherwise helps create a generation of moral and spiritual infants with all the dependency that the term describes. Sane people do insane things to others when they allow any other person or organization, in the name of God or the state, to make these moral decisions on their behalf.

If we allow leaders of nations to avoid the moral order by reason of state, then indeed we are doomed. Every tyrant who ever tried to abuse and subjugate another sought justification by a supposed higher purpose of state. Our whole struggle is about means. We all agree on the ends of happiness and the good society. The competition that matters is about what restraint of means we are willing to impose on ourselves along the way. Holocausts have happened when people have excused their murderous acts by reason of state necessity and the orders of superiors to whom fidelity was owed.

Those who take and kill innocent hostages in the name of Palestinian rights or Islamic fundamentalism commit murder. Those

62. P. LEVI, *IF THIS IS A MAN* 15 (S. Woolf trans. 1987).

who bomb villages and kill innocent women and children in response commit murder. Those who bomb restaurants where American servicemen congregate commit murder. Those who car bomb and those who approve the bombing of populated portions of Lebanese cities, knowing that civilian casualties out of all proportion to combatants will result, are assassins, not patriots. Those who authorize and those who knowingly carry out the bombing of the tent of Muommar Khadafy in an attempt to kill his wife and children are assassins and should be removed from office and prosecuted as such. The state is a creation of law. People are not. People die. No legal entity or doctrine of reason of state, no doctrine of superior orders, can justify taking innocent life.

Thomas Merton noted the chilling rationality, the sanity, the law-abiding behavior that characterized Adolph Eichmann and others who performed their duty in obedience to superior orders and caused the Holocaust.⁶³ With Merton, I believe the final holo-

63. Thomas Merton wrote:

. . . One of the most disturbing facts that came out in the Eichmann trial was that a psychiatrist examined him and pronounced him *perfectly sane*. I do not doubt it at all, and that is precisely why I find it disturbing.

If all the Nazis had been psychotics, as some of their leaders probably were, their appalling cruelty would have been in some sense easier to understand. It is much worse to consider this calm, "well-balanced," unperturbed official conscientiously going about his desk work, his administrative job which happened to be the supervision of mass murder. He was thoughtful, orderly, unimaginative. He had a profound respect for system, for law and order. He was obedient, loyal, a faithful officer of a great state. He served his government very well.

He was not bothered much by guilt. I have not heard that he developed any psychosomatic illnesses. Apparently he slept well. He had a good appetite, or so it seems It all comes under the heading of duty, self-sacrifice, and obedience. Eichmann was devoted to duty, and proud of his job.

The sanity of Eichmann is disturbing. We equate sanity with a sense of justice, with humaneness, with prudence, with the capacity to love and understand other people. We rely on the sane people of the world to preserve it from barbarism, madness, destruction. And now it begins to dawn on us that it is precisely the *sane* ones who are the most dangerous.

It is the sane ones, the well-adapted ones, who can without qualms and without nausea aim the missiles and press the buttons that will initiate the great festival of destruction that they, *the sane ones*, have prepared. What makes us so sure, after all, that the danger comes from a psychotic getting into a position to fire the first shot in a nuclear war? Psychotics will be suspect. The sane ones will keep them far from the button. No one suspects the sane, and the sane ones will have *perfectly good reasons*, logical, well-adjusted reasons, for firing the shot. They will be obeying sane orders that have come sanely down the chain of command. And because of their sanity they will have no qualms at all. When the missiles take off, then, *it will be no mistake*.

. . . .

No, Eichmann was sane. The generals and fighters on both sides, in World War II, the ones who carried out the total destruction of entire cities, these were the sane

caust will come, if it comes, by young men—probably very young men—pushing buttons when older men give the orders to launch nuclear weapons and incinerate human society. No reason of state can justify and no value can survive such an act. The state must not be allowed to supplant God and our own humanity, which place on us, within us, fidelity to our brothers and sisters throughout the world. Our allegiance to God and our stewardship toward each other transcend and trivialize our duties toward any other entity.

Questions come up in every generation about our loyalty to the state being somehow threatened or suspect by our loyalties to other groups. In so far as our loyalty to our country embodies and conditions our fidelity to spiritual principles on which the state was created, such fidelity is good. If our attachment to our country propels us beyond our inclination toward family as the outer boundary of our lives, or tribal parochialism, into a broader identification with our human family, that is good. But when in the name of our own particular nation we demand the hatred of another, we simply substitute another base for the chauvinism, the fundamentalist jingoistic nationalism that debases our humanity and propels us toward war.

D. *The Religious Tradition*

The kingdom of God is within you.

—Jesus Christ⁶⁴

We are no longer content . . . to believe in the kingdom that comes

ones. Those who have invented and developed atomic bombs, thermonuclear bombs, missiles; who have planned the strategy of the next war; who have evaluated the various possibilities of using bacterial and chemical agents; these are not the crazy people, they are the *sane* people. The ones who coolly estimate how many millions of victims can be considered expendable in a nuclear war, I presume they do all right with the Rorschach ink blots too. On the other hand, you will probably find that the pacifists and the ban-the-bomb people are, quite seriously, just as we read in *Time*, a little crazy.

I am beginning to realize that "sanity" is no longer a value or an end in itself. The "sanity" of modern man is about as useful to him as the huge bulk and muscles of the dinosaur. If we were a little less sane, a little more doubtful, a little more aware of his absurdities and contradictions, perhaps there might be a possibility of his survival. But if he is sane, too sane perhaps, . . . we must say that in a society like ours the worst insanity is to be totally without any anxiety, totally "sane."

T. MERTON, *supra* note 48, at 45-49 (emphasis in original); see also D. SOELLE & F. STEFFENSKY, NOT JUST YES AND AMEN (1983), quoted in Firmage, *Discipleship in the Nuclear Era*, SUNSTONE, Jan. 1987, at 57.

64. *St. Luke* 17:21.

of itself at the end of time. Mankind today must either realize the kingdom of God or perish. The question before us is whether we will use for beneficial purposes or for purposes of destruction the power that modern science has placed in our hands. So long as its capacity for destruction was limited, it was possible to hope that reason would set a limit to disaster. Such an illusion is impossible today, when power is illimitable. Our only hope is that the spirit of God will strive with the spirit of the world and will prevail

The miracle must happen in us before it can happen in the world Nothing can be achieved without inwardness. The spirit of God will only strive against the spirit of the world when it has won its victory over that spirit in our hearts.

—Albert Schweitzer⁶⁵

Religion may help us change our mind because religion has always been in that business. Religion has been a major source of our law and government from history's beginning. Secular government has not done so well in its attempt to curb the arms race, or limit violence. We need to look further than our political leadership for ideas and for the power to change our mind.

To do this religious leadership, and the rest of us, must remember that religion has not only been a source of our best moral and spiritual ideas, and our most noble acts and aspirations, but some of the worst as well. A few suggestions follow as to how religion might contribute to our quest for peace.

Appropriate to a discussion about means congruent with ends, we should begin with an observation on means that should be self-evident. Violence must never be used to help us change our minds. Persuasion, never force, is the only artillery of religion. Consistent with the goal of helping us toward a nonviolent world, the church must be nonviolent. The dialectic relationship between ends and means makes this point essential. A perversion of a parable of Jesus, the Wedding Feast, became the legitimizing principle for centuries of inquisition and crusades against those who had a different vision. We can never force them to come in. To excommunicate or pronounce anathema, let alone to kill one who sees another way, seems a curious demonstration that in fact we have discovered the true essence of godliness. Our attempts to define or confine God within something as tiny as our mind are funny enough. Acting on that vision with anything but persuasion and long suffer-

65. *Epilogue: The Conception of the Kingdom of God in the Transformation of Eschatology* (J. Coates & C. Black trans.), in E. MOZLEY, *THE THEOLOGY OF ALBERT SCHWEITZER* 106 (1950).

ing destroys the end vision.

Religion might be most helpful in our world drenched with violence by presenting most powerfully that vision which every great tradition has possessed from the beginning. Now more than ever, boundaries that divide us from each other seem to have limited usefulness. Often irrelevant—as disease and pollution cross national boundaries without so much as an acknowledgement, whether borne by air or sea or human bodies crossing porous borders—such lines become positively evil as they convince us that people living on one side or the other are different in ways that allow us to treat them without the same moral considerations we would employ with our own.

With its vision of universal brotherhood and sisterhood, religion could highlight the meaninglessness of those dividing lines for any purpose but to appreciate and honor and respect human diversity. Never can those lines of demarcation justify a different moral standard of behavior toward those on one side or the other.

What are those boundaries by which we divide ourselves from each other? First, nationalism has become a natural source of warfare in our modern society in which we have divided ourselves into territorial nation-states. Too often the churches have simply served as chaplains for the state, or as spokesmen for national chambers of commerce, blessing the efforts of whatever nation they found themselves within on whatever courses the state may be on. In this tradition, Christian Frenchmen fought Christian Germans, each blessed by nationalist churches, convinced that God was on their side. The church must overcome Constantine's gift. Religious leadership that cannot distinguish between chauvinistic nationalism and discipleship has nothing to offer us today but visions of its own bankruptcy.

Contrarily, pulpits in every age have been used to call us to repentance, even national repentance. Bonhoeffer in Hitler's Nazi Germany is perhaps our most heroic example. Martin Luther King performed the same role here. Our American Catholic Bishops are now filling this prophetic calling with their pastorals on war and peace⁶⁶ and on social and economic justice.⁶⁷ Our United Methodist Bishops have given us their document,⁶⁸ which is in the same

66. NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *THE CHALLENGE OF PEACE: GOD'S PROMISE AND OUR RESPONSE* (1983).

67. NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY* (1986).

68. THE UNITED METHODIST COUNCIL OF BISHOPS, *IN DEFENSE OF CREATION: THE NU-*

tradition of prophetic call. Within our own land at least, the first amendment protects such discipleship within the political arena just as the first commandment demands it.⁶⁹ With the heroism evident only when one offers one's life for another, Roman Catholic clergy and sisters, valiant Franciscans, and other religious have borne their witness in Guatemala and Poland, El Salvador and Nicaragua, the Philippines and Haiti. To the Franciscans particularly, whom I have come to know all over the world, I pay my respect and offer my gratitude. Their Father Francis of Assisi must be filled with joy and with love. (I daren't say pride.) Francis formed three orders while he lived: male, female, and lay. Perhaps it is time for a fourth: lay, ecumenical, and both married and single. For the spirit of Francis has broken free from one tradition and now speaks to us all. In South Africa, Bishop Desmond Tutu carries on a similar mission, which extends beyond his Episcopal calling, to be representative of us all. The Methodist and Catholic traditions have linked arms with him there. This is the tradition we must receive from the churches if they are not to lapse again into the role of nationalistic boosters for whatever terror political leadership may ordain, pronouncing religious benediction on the state as if it were an icon rather than a golden calf.

Nationalism is not the only line with which we divide ourselves from each other. Our parochialism may confine our lives and our morality within a community smaller yet. Our inclination to offer love and respect and moral behavior toward only our own tribe or family or religious tradition may not even rise to the level of parochial nationalism in its sweep. Nationalism, after all, in so far as it teaches us to extend ourselves beyond family and tribe, presents a morality and a vision infinitely better than the parochialism limited to blood love and blood feud.

Religion must not simply reinvent the family. Jesus, after all, taught almost nothing about the family except that we must transcend it. He came, He said, to pit one member of a family against another. When a would-be disciple asked that he first be allowed to bury his father, Jesus suggested that the dead bury the dead. When informed that his mother and brothers were seeking him outside the room in which he was speaking, Jesus asked who were his mother and brethren except those who did God's will. When

CLEAR CRISIS AND A JUST PEACE (1986).

69. Cf. E. Firmage, *The First Amendment and the Third Commandment* (Mar. 26, 1986) (paper delivered at Bryant College Conference on Church and State).

his mother chastised him for listening to the teaching of the law in the temple rather than accompanying his family from Jerusalem, Jesus asked if she did not understand that he had to be about his father's business. He was not without honor, he taught, except in his own country and amongst his own family. Not much here for Mother's Day quotations.

The point, of course, is not that the family is not vital, nor that we should not try to support the family in every way. But the family is where we learn about love. It is not a unit that marks love's outer boundaries. If the churches spend the bulk of teaching time speaking only about the family, once again ends and means are reversed and perverted. If our love extends no further, then ironically our family, instead of being that basic relationship where love is first taught, becomes a means to teach far more hate or indifference than love. For few people are our objects of love within the family. If we love as God loves then love makes no biological, racial, national, or religious distinction. Starving children are my children. Ignorant children are my children. Burning children are my children. The family no less than the state can become an idol, a form of extension of self and hence self-worship.

So too any economic order. It is curious that any religion could ever consider one who thought that camels traversed the eye of a needle with more ease than rich men entered Heaven to be the founder of marketplace economics. By what strange logic do we think that the avaricious pursuit of worldly riches somehow comes out in macro-spirituality to accomplish the greater good? We have a powerful and abundant economic system. But it is not always fair. It is never automatically compassionate. It is not above appropriate criticism from our churches.

Every great spiritual leader of whom I am aware has spoken of the spiritual path as being movement toward less and less rather than more and more. Meister Eckhart, the great Dominican mystic, said, "The process of soul-making has much more to do with subtraction than it does with addition." Being spiritually poor must have something to do with lack of attachment to things. In a real sense, in national security as well as in economics and social justice, our safety may lie in our defenselessness, our growth in our self-abnegation. If in our fearfulness we arm ourselves to the teeth, like Goliath, our fears surely will be projected on another. He in turn will fulfill our worst fears and an arms race is underway. Any state fearfully prepossessed with its own security, seeing foreign enemies with aggressive intent, when in reality there is simply an-

other fearful state, is a state whose vulnerability is in its own core.

Religion must do more than anoint the economic order and bless the missiles.⁷⁰ Following the lead of the American Catholic Bishops and the United Methodist Bishops, religious leaders must protect their integrity and perform their prophetic role of teaching God's word to a world disinclined to listen.

If our churches successfully decouple from the particular political and economic establishments where they happen to reside, they will more easily see, and having seen, denounce, corporate evil as well as individual sin. For much of that which is truly evil in our time transcends individual sin, which as always is still present and thriving. But corporate evil also exists: systemic poverty and corporate greed interlocked with military and political interests that place profits above national well-being. This phenomenon of our time must be addressed by the churches or they will be relegated to a marginally relevant piety of little use in solving the great problems of our time.

Finally and most important of all, religion can point us inward as well as outward. We come to perceive our connectedness with others as we travel not only outward but inward. The love of neighbor and enemy is built on self-discovery and self-love. Our relationship to all beings, all life, is discovered at our own center. Only this discovery converts a belief in such a relationship into a way of life. The rational mind alone needs this empowerment of emotion and spirit. Herman Hesse put it this way:

What then can give rise to a true spirit of peace on earth? Not commandments and not practical experience. Like all human progress, the love of peace must come from knowledge It is the knowledge of the living substance in us, in each of us, in you and me, of the secret magic, the secret godliness that each of us bears within him. It is the knowledge that, starting from this innermost point, we can at all times transcend all pairs of opposites, transforming white into black, evil into good, night into day. The Indians call it "Atman," the Chinese "Tao"; Christians call it "grace." Where the supreme knowledge is present (as in Jesus, Buddha, Plato, or Lao-

70. See E. FIRMAGE, NATIONAL SECURITY: THE NUCLEAR ARMS RACE AND OUR ALTERNATIVES (David M. Kennedy Center for International Studies, Occasional Papers Series No. 7, 1986); Firmage, *Allegiance and Stewardship: Holy War, Just War, and the Mormon Tradition in the Nuclear Age*, 16 DIALOGUE: J. MORMON THOUGHT 47 (1983); Firmage, *Allegiance and Stewardship*, 42 CHRISTIANITY & CRISIS 49 (1982); Firmage, *Discipleship in the Nuclear Era*, SUNSTONE, Jan. 1987, at 8; Firmage, *Violence and the Gospel: The Teachings of the Old Testament, the New Testament, and the Book of Mormon*, 25 BRIGHAM YOUNG U. STUD. 31 (1985).

tzu), a threshold is crossed beyond which miracles begin. There war and enmity cease. We can read of it in the New Testament and in the discourses of Gautama. Anyone who is so inclined can laugh at it and call it "introverted rubbish," but to one who has experienced it his enemy becomes a brother, death becomes birth, disgrace honor, calamity good fortune. Each thing on earth discloses itself twofold, as "of this world" and "not of this world." But "this world" means what is "outside us." Everything that is outside us can become enemy, danger, fear and death. The light dawns with the experience that this entire "outward" world is not only an object of our perception but at the same time the creation of our soul, with the transformation of all outward into inward things, of the world into the self.⁷¹

E. The Schools

*Why stand we here trembling around
 Calling on God for help and not ourselves,
 in whom God dwells
 Stretching a hand to save the falling Man?*

—William Blake⁷²

The inward journey of religious mysticism should no longer be considered by psychology as one or another form of neurosis, but rather an explanation in religious language of psychological and spiritual phenomena at the core of human experience. Central to psychology is an evolving view of human nature responsive to contemporary need. In dialectic relationship as well with earlier psychoanalytic and behavioristic schools, humanistic psychology, typified by the writing of Abraham Maslow,⁷³ helped us better understand our enormous human potential for growth and for change. Toward the end of his life, Maslow concluded: "I consider the Humanistic, Third Force Psychology to be transitional, a preparation for a still 'higher' Fourth psychology, transpersonal, transhuman, centered in the cosmos rather than in human needs and interest, going beyond humanness, identity, self-actualization and the like."⁷⁴ Here, our identification with each other and with all life occurs.

It is a shocking thing that we teach Driver's Education before entrusting young people with a car and yet send them into mar-

71. H. HESSE, *IF THE WAR GOES ON* 59-60 (R. Manheim trans. 1971).

72. *THE COMPLETE WRITINGS OF WILLIAM BLAKE* 672 (G. Keynes ed. 1974).

73. A. MASLOW, *TOWARD A PSYCHOLOGY OF BEING* (2d ed. 1968).

74. *Quoted in BEYOND EGO* 19-20 (R. Walsh & F. Vaughan eds. 1980).

riage and life without teaching them basic principles of the relatively new science of psychology. We call people to roles demanding pastoral counseling without equipping them in any way with the most rudimentary information. So much truth is here for one seeking peace: between spouses, between friends, between enemies, between nations, within the cosmos of our own soul. We have a grave responsibility here in primary and secondary education and in the universities as well. Surely fundamental education should be accomplished in psychology by anyone leaving each of these levels of learning.

I propose that we create at the University of Utah a Center for Peace Studies. Here again, the peace I am speaking of is not simply the absence of war, but rather the sense of wholeness of "shalom."

The psychology of violence and the psychology of peace would be central to such a center. The sociology of peace is also fundamental. How do we live in a community without aggressing each other's individuality? How do we foster a community without stifling individuality, or promote cooperation without dulling creativity and initiative?

Such a center might study the causes of violence and war and the alternatives of peaceful resolution of disputes: fact-finding and negotiation, mediation and arbitration, diplomacy and judicial resolution would be examined. But such a center should not be limited to the international world. Dialogue within our own community, between leaders and members of different religious traditions would be fostered, as would dialogue between racial groups and between men and women as well.

F. The Individual

For as he thinketh in his heart, so is he.

—Proverbs⁷⁵

We are what we think. All that we are arises with our thoughts. With our thoughts we make the world.

—Buddha⁷⁶

The future [of mankind] will be dependent on a saving group, embodied in one nation or crossing through all nations. There is saving power in mankind, but there is also the hidden will to self-

75. Proverbs 23:7.

76. T. BYRON, THE DHAMMAPADA: THE SAYINGS OF BUDDHA (1976).

destruction. It depends on every one of us which side will prevail. There is no divine promise that humanity will survive this or next year. But it may depend on the saving power effective in you and me whether it will survive. (It may depend on the amount of healing and liberating grace which works through any of us with respect to social justice, racial equality, and political wisdom.) Unless many of us say to ourselves: through the saving power working in me, mankind may be saved or lost, it will be lost.

—Paul Tillich⁷⁷

Finally—after all has been done that can be done by institutions of state and religion and learning—responsibility for peaceful ends and peaceful means remains with the individual. We govern and teach each other with treaties and with texts from the Koran and the Bhagavad-Gita to the Bible and the Magna Carta to the Constitution. We try to teach how one should behave through law and by prophetic instruction but finally someone must do it. Simply do it. That, I believe, is the message of the incarnation. God finally went beyond prophetic teaching through others and embodied the word to show us how. The word is enfleshed and the law transcended. Francis of Assisi wrote little, but inspired us for almost a thousand years. Gandhi wrote much, but it is the example of his life that makes him the greatest figure of this century. Mother Teresa's life, not her writings, empowers us all. Jesus wrote only one phrase, and that was in sand. Each became love embodied, as God is defined.

We sense—however vague, intermittent, or partial—a unity more profound and complete than we can hold or express. The cutting edge of physics and psychology both perceive this: a unity that dissolves the boundaries of time and space, the organic and the inorganic. Our consciousness may grow to higher levels of perception and sensitivity. We are part of the whole.

Francis of Assisi understood. His appeal through time reflects our apprehension, however incomplete, that he was right. Our interconnectedness as human beings, as living creatures, as parts of the cosmos, is reflected in his life. Francis's love extended finally to all creation. In his youth he had a fear to loathing of the leper. One of his conversions—he proceeded deeper into his humanity from one depth to another—is memorialized by his kissing a leper on the way. He moved a worm from the path lest it be killed. A Franciscan brother who denied hospitality to robbers was directed to

77. P. TILlich, *THE ETERNAL NOW* 101 (1963).

find the robbers' den and invite them all to supper with the brothers. A number of the robbers, it is reported, changed vocations in emulation of Francis and joined the brotherhood. Francis tamed the wolf of Gubbio by recognizing their brotherhood. "Brother Wolf" was severely lectured for his depredations and put under pledge to change his ways, which he did. Francis preached to the birds who responded with obedience and love. Late in his short life, Francis recognized our relation to Brother Sun and Sister Moon in the luminous *Canticle to Brother Sun*.⁷⁸ At the end, he welcomed "Sister, the death of the body."⁷⁹

By living what he sensed, Francis foresook a military career for the way of peace. Through his example others followed. He helped to shatter a feudal structure based on military obligation and characterized by a constant state of war.

Somehow our ego must contract as our self expands. We become empty. We peel ourselves like an onion, layer by layer. National and personal pride go, as does attachment to possessions, guilt and fear, projections onto the "other," whether our mate or our international enemy. Our common core humanity remains, the self that is like and unlike all others. Thus stripped, we would have no difficulty in seeing our universal sisterhood and brotherhood immediately.

Thomas Merton said it best:

Then it was as if I suddenly saw the secret beauty of their hearts, the depths of their hearts where neither sin nor desire nor self-knowledge can reach, the core of their reality, the person that each one of us is in God's eyes. If only they could see themselves as they really are. If only we could see each other that way all the time. There would be no more war, no more hatred, no more cruelty, no more greed . . . I suppose the big problem would be that we would fall down and worship each other. But this cannot be seen, only believed and understood.⁸⁰

ACKNOWLEDGMENTS

The Frederick W. Reynolds Association invited me to present their 1987 lecture and gave me rein to select my own topic. They expressed awareness, however, of my concern with weaponry, peace, and the international scene, and hinted that they would

78. THE LITTLE FLOWERS OF ST. FRANCIS (R. Brown trans. 1958).

79. R. GOFF, ASSISI OF ST. FRANCIS 121 (1908).

80. T. MERTON, CONJECTURES OF A GUILTY BYSTANDER 158 (1966).

smile on my addressing that topic. The charter of the Association directs that the faculty member delivering this lecture treat a topic "arising out of his research or thought." I am most grateful for this, for it allowed me to review two decades of my own work and then reveal where I am now. Members of the Frederick W. Reynolds Association Executive Board are: B. Gale Dick, Robert Helbling, William Mulder, Walker Wallace, Virginia Frobos Wetzel, J.D. Williams, and Oakley J. Gordon.

My earliest professional writing addressed the attempts of law and government to meet violence, preserve peace, do justice, and somehow deal with the spectre of nuclear weaponry. From the beginning of the 1960s to the present time this has been my theme.

I am grateful to wonderful teachers along the way: to Mary and Ed Firmage, my parents, and to my grandparents, for loving nurture; to Jessie Arrowsmith, Mima Rasband, and Kate Mathews of the Maeser Elementary School in Provo, Utah, who taught peace early and best by living it; to Harry Kalven, Jr., at the University of Chicago for his sensitivity to the Constitution, particularly to the first amendment; to Hubert H. Humphrey, Roy Wilkins, and the Rev. Martin Luther King, Jr., for teaching a very provincial young man through humane example and friendship; to Hugh B. Brown for the integrity of a lifetime's commitment to civil rights and freedom of conscience; and to Francis Wormuth for a decade's loving friendship and collaboration on *To Chain the Dog of War*.⁸¹ We see the Constitution through the same lens.

The MX controversy introduced me to new friends who profoundly influenced my life. This event also propelled me from academic observation into political activism and interfaith dialogue. From within my own religious tradition, I had previously read the writings of J. Reuben Clark, Jr. He enjoyed a secular career as legal adviser to the Department of State and this country's negotiator of disarmament agreements between World Wars I and II. The other half of his adult life he devoted to a remarkable ministry of peace. For decades he preached against war, a peacetime draft, military alliances, the arms race, and particularly the nuclear arms race. With courage and eloquence, he condemned our use of nuclear bombs at Hiroshima and Nagasaki. He saw our nation as a natural and neutral participant in the peaceful resolution of international disputes. Spencer W. Kimball, President of the Church of

81. F. WORMUTH & E. FIRMAGE, *TO CHAIN THE DOG OF WAR: THE WAR POWER OF CONGRESS IN HISTORY AND LAW* (1986).

Jesus Christ of Latter-day Saints, was deeply influenced by President Clark's teaching through many years of service together. President Kimball held similar beliefs, which were most concretely manifest in the First Presidency's pronouncements against the nuclear arms race and the MX missile. Truly he was a man of peace. President Gordon Hinckley played a critically important role in those statements as well.

The Rt. Rev. E. Otis Charles, then Episcopal Bishop of Utah and now Dean of the Episcopal Divinity School in Cambridge, Massachusetts, opened the doors of St. Mark's Cathedral for all the interfaith meetings held during the MX debate. He also opened the inner door of meditation and contemplation to many of us whose lives before had been all too external and were then under too great a stress to survive without renewal. The Most Rev. William Weigand, Catholic Bishop of Utah, spoke eloquently against MX and in favor of life. Otis and Bishop Weigand taught me by the lives they live and became dear friends. Admiral John Marshall Lee (USN Ret'd), the late Major-General William Fairbourn (USMC Ret'd), and Cecil Garland, a rancher from Caliao, Utah, were frequently my speaking companions in different parts of the country. A bond exists between us of the sort that occurs only among mates who have somehow survived stormy seas together.

Most important of all are four women, three representing a tradition known but then unfamiliar to me—sisters in religious orders, two of them Franciscans. Across the nation wherever I spoke on the nuclear arms race, I found the sisters of the Roman Catholic Church usually better informed, and always better organized, than the local clergy. I came to love them dearly and respect them enormously. For sixteen years, headquartered in Rome, Sister Rosemary Lynch was chief troubleshooter (my job description, not her official title) for female Franciscans world-wide. We met in Santa Fe, New Mexico, early in the MX controversy. By the peacefulness of her life she demonstrated a better way to her abrasive and pugnacious friend. Along with her Franciscan colleagues, but more directly than any other, she also introduced me to Francis of Assisi by the life she led.

Frances Russell, another Franciscan sister, directed peace activities during the MX debate in Cheyenne, Wyoming. We formed a lasting friendship and I was the better for it.

Sister Mary Luke Tobin, a colleague of Thomas Merton and the only woman from our country invited to Vatican II, introduced

me to the writings of her mentor. My life is incomparably richer for knowing both.

Finally and most important of all, the former co-chair of Utahns United Against MX, Gloria Firmage, is quite simply the most peaceful and loving person I know.

I prepared early drafts of my paper while I was Senior Fellow at Keynes College, University of Kent, in Canterbury, England, during the first half of 1987. My thanks to my friends and colleagues there. Jan Moffat, with a knowledge of style greater than my own, prepared many versions of this manuscript and improved it.

David Peck helped put the footnotes in order. Keven Rowe helped me prepare statutory material related to the Iran-Nicaragua crisis. Polly Richman handled public relations and supervised the final preparation of the printed manuscript.

