

Pacifism, Just War and Civil Liberties in a Multicultural Age

Written by Patricia Sohn

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<https://www.e-ir.info/2016/11/11/pacifism-just-war-and-civil-liberties-in-a-multicultural-age/>

PATRICIA SOHN, NOV 11 2016

I am a Buddhist – not as a cool new thing to do out of Hollywood, but, actually, as a rather serious practice. I follow Tibetan Buddhism, also known as Vajrayana Buddhism. And one of the tenets that I follow is, I will not fight. I will defend myself – sometimes. But I will not fight, at least, not for a very, very long time. It takes many years before I am willing to fight in a serious way, even in my own self-defense. On occasion, I will fight for others before I will fight for myself. But, most importantly, as a matter of religious conscience:

I will not fight for my rights. I will not fight for my freedoms. I will not fight for my place in the political process. All of these are granted to me either by birth as a human being, or by citizenship in my national home. These presumptions are true under many national declarations of independence, national charters, constitutions, as well as under the United Nations Universal Declaration of Human Rights (full text here). It is not my responsibility to fight for my rights. It is the responsibility of the (nation-)state to order itself in a way that protects those rights, *inherently*.

Only 5.9% of the U.S. population is non-Christian. In 2010, 74.5% of Europeans identified as Christian in some way, while 5.9% identified as Muslim, and 0.2 each identified as Jewish, Buddhist, or Hindu. Some among Jewish and Muslim Orthodox (see below), and some among Buddhists (see below) and Hindu peoples are pacifists to some degree. Likewise, some Christians are pacifist, including many Quakers and Mennonites. Buddhists are some of the greatest pacifists – and also the greatest warriors – in the world, remembering that Buddhism has, in some periods, been an important religion in countries (Pew Research Center data) such as China and Japan. Indeed, the development of martial arts as methods of war have been associated with Buddhism, as with other religions in Asia. In Buddhism, a general admonition not to kill or even to cause death unnecessarily is pre-figured by an awareness of the evils of injustice and tyranny, and the rights of people to live freely and to fight for their own freedom under conditions of oppression. However, war has a cost in lives, and every death we cause has a cost attached to our individual souls. Buddhists believe in reincarnation. So, unless you want to come back as a newt (kudos to Monte Python) or something even more terrible, in all seriousness, you do not want to go around causing great amounts of injustice or death, at least in a Buddhist world view.

Hence the admonition neither to fight nor to live in perpetual conflict, or to fight only when absolutely necessary. And herein lies the link between pacifism as usually practiced and the question of civil liberties in a multicultural age. Some Western legal systems are based upon the principle of adversarial engagement, be it in court, in legislatures and parliaments, within executive branches, or within society. As a scholar of comparative courts, I am most interested in the judicial part of this process.

The adversarial principle in some Western countries, including the U.S., means that citizens are expected to “fight” for their rights – rights that are enshrined in law and/or constitutions. If a citizen or part of the state challenges the rights of an individual, that individual is expected to take them to court – or to respond to them in court if the challenge comes as a legal attack against themselves. The notions of presumption of innocence until proven guilty, and burden of proof on the accuser – both in place to avoid endless and meaningless conflict and intervention into the life of the individual – seem to have flown out the window altogether. And herein lies the rub.

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Pacifists will not fight as a matter of religious conscience. But pacifism is not fundamentalist, it is not one single thing in any of the traditions mentioned above. Some pacifists will fight eventually, but along lines that may be unexpected to a secular person, or to a non-pacifist. Some might be willing to defend themselves only in cases of physical assault or imminent death. Some might be willing to defend their families but not themselves. Some might be willing to use the pen but not the sword. Some might be willing to use the sword, but only as a last resort and then with varying degrees of force (light injury to lethal harm). Some might be willing to use highly-disciplined martial arts within a religious and meditational framework, but not the fist, *per se*. However, many pacifists will *not* mount what some lawyers would consider an “appropriate” degree of self-defense in a courtroom setting, as a matter of religious principle.

Westerners who are either not religious or not pacifists may not value this principled position. Some pacifists will never fight. Some pacifists will fight only after a certain line, and only using certain types of methods. Both that line and the methods are almost always left to the discretion of the individual soul in pacifist traditions. So, there is a natural range, making it extremely difficult to identify pacifists for legal systems bent on binary definitions of pacifism.

According to Pew Research Center, 45.5% of the world population is either Muslim (23.2%), Hindu (15%), Buddhist (7.1%), or Jewish (0.2%). Within all of these traditions strong philosophies emphasizing the presumption of non-violence prevail. This is true for many Christian traditions as well. Many who are pacifists will fight when driven to a certain extreme by external conditions. Many readers are likely aware of pacifist traditions in Buddhism and Hinduism, although some may not be aware of pacifist traditions in Islam. Indeed, a long philosophical tradition of “just war theory” emerges in Islam, as in Buddhism, precisely out of the dilemma between conditions of domestic tyranny or external oppression, on the one hand; and the question of when to fight and cause bodily or other sorts of harm or conflict, on the other hand. For a pacifist, unnecessary court room battles in and of themselves constitute conflict and severe harm.

So, what do those of us do, who, as a religious matter of conscience, *will not* engage in certain kinds of conflict when we are forced by circumstance to live in an *adversarial* legal system?? It may be time to reflect on *why* we predicate so much of our legal system, institutionally, on a *presumption of conflict* rather than on the *presumption of non-violence*.

About the author:

Dr. Patricia Sohn, Ph.D., is Associate Professor of Political Science at the University of Florida. She is co-editor of *Beyond the Death of God: Religion in 21st Century International Politics*, (University of Michigan Press 2022); and author of *Judicial Power and National Politics: Courts and Gender in the Religious-Secular Conflict in Israel* (SUNY Press 2017 and 2008).