

**Proposed Project To Be Directed by Leaders  
from Minnesota's Spiritual & Religious Community**

***PROJECT TITLE:***

**“Peace and War in the Heartland. What has history taught us?”**

***PROJECT EVENT:***

**A Public Hearing Conducted by the Spiritual and Religious  
Community to Determine the Role of Moral Witness and Action in Matters  
of Peace and War – Referencing the Historical Lessons Drawn from the  
Moral and Spiritual “Defense of Necessity” Argument  
Pled at the 1971 Trial of the “Minnesota 8”**

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## **Proposed Project To Be Directed by Leaders from Minnesota’s Spiritual & Religious Community**

- **A Public Hearing Conducted by the Spiritual and Religious Community to Determine the Role of Moral Witness and Action in Matters of Peace and War – Referencing the Historical Lessons Drawn from the Moral and Spiritual “Defense of Necessity” Argument Pled at the 1971 Trial of the “Minnesota 8”**
  
- **GOAL: To provide a timely and current body of moral, theological and spiritual information, analysis, and principles, which are presented within a robust historical perspective, to assist young men and women in assessing how to respond as spiritual and religious people to current matters of Peace and War**

The spiritual and religious community in Minnesota has a long history of engagement with state and national governmental authorities (viz., the State) concerning the issues of Peace and War. During the Vietnam War era, a vigorous conversation occurred within the spiritual and religious community about the proper role of moral witness and action. Spiritual and religious people acted, as groups and individually, to support or oppose various war related policies of governmental authorities.

In 1971, one group of local Vietnam antiwar activists, namely the *Minnesota 8*, claimed that it was “necessary” to commit a felony crime in order to be faithful to the moral mandate of a spiritually “higher law.” (See, [www.minnesota8.net](http://www.minnesota8.net)) This was the clearly evident higher law derived from the commandment, “Thou shall not kill.” Of critical significance at the time of the trial - and at present - is that the *Minnesota 8*’s understanding of how a moral person must act “in modern times” was grounded in an eminent moral tradition. Their action was not simply derived from idiosyncratic or aberrant interpretations of the moral demands of the commandment. Rather, during the decade of the Sixties, how to act faithfully, in “modern times,” to this commandment was clearly interpreted, and proclaimed to all “People of God,” by the Roman Catholic Church through the “Documents of Vatican Council II” and the papal encyclical, “Pacem in Terris.” Of note is that both of these latter religious documents were accepted as evidence during the trial. These documents were the anchors and guides for the development of the moral “Defense of Necessity,” and for the claim that the draft raids were “measured” and “reasonable” acts.

Key to the historical discussion is the guidance of Pope John XXIII, who clarified that,

Since the right to command is required by the moral order and has its source in God, it follows that, if civil authorities legislate for or

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allow anything that is contrary to the will of God, neither the laws made nor the authorizations granted can be binding on the

consciences of the citizens, since we must obey God rather than men. Otherwise, authority breaks down completely and results in shameful abuse.

*Read several times during the trial, from Pope John XXIII's Pacem in Terris, Part II, par. 51.*

The *Minnesota 8* broke into various Minnesota draft boards and destroyed “1A” classified files as a symbolic protest meant to draw attention to their belief in the illegality of the undeclared war and the unconstitutionality of the Selective Service System. While a symbolic protest, the raids also prevented the induction of many young men since copies of “1A” files were rarely maintained. The *Minnesota 8*'s crime enabled young men to make a conscious and informed moral decision whether to re-register and so re-enter the draft.

In January of 1971, a seven day trial was conducted with testimony from diverse witnesses, including lay and clerical theologians. The Roman Catholic “Documents of Vatican Two” and the papal encyclical of Pope John XXIII, “Pacem in Terris,” were received by the court as evidentiary exhibits. One of the defendants held a Masters in Theology as a lay Roman Catholic theologian. The other was a former Roman Catholic seminarian. Witnesses included Al Janicke, a priest who had been imprisoned for the “Milwaukee 14” draft raids, and Father William Hunt, then director of the University of Minnesota’s Newman Center. Father Hunt was a *peritus* at Vatican Council Two, a seminary professor, and a key theological assistant to the Archbishop. Through his *Instructions to the Jury*, the judge dismissed the religiously grounded “Defense of Necessity,” and, consequently, did not permit the jurors to consider it as a defense. He judged,

In addition, both defendants ... claim that they were compelled or moved by religious and theological motives and that what they did is characterized in some way as a religious act. ... [A]ll of what has been received along this line is *immaterial*. (Emphasis added.)

#### **“WHAT HAS HISTORY TAUGHT US?”**

The question raised at the present time is, “What has history taught us?” about the “Defense of Necessity” in respect to its use as a defense for moral witness and action which violates State law?

- Historically, the trial of the *Minnesota 8* demonstrates how the State receives and judges moral witness and action. In brief, the message from the State is that religious and spiritual people have no legal “standing,” and that their arguments and claims are judged “irrelevant and immaterial.”
- What is being asked at this time is, “What is the moral responsibility of religious and spiritual people when the State, itself, tacitly invokes a Defense of Necessity when it

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violates bedrock spiritual and moral laws (e.g., the Judaeo-Christian commandments) as it engages in war?”

- This is a peculiarly cogent question raised at a time when a war is waged in apparent violation of international law.
- It is an even more compelling question when the war is launched as a pre-emptive strike, and so fails one or more of the requirements of the long-standing moral test of the “Just War” theory.
- It is also a compelling question when governmental authorities, among themselves, engage in public argument, as to whether a war has been legally declared according to the State’s own policies, procedures, principles and precedents.
  - Who, then, will morally guide the populace if not the religious and spiritual community?

In light of the historical issues and perspectives on the rights and responsibilities of the religious and spiritual community in times of great moral uncertainty and unrest, which were and are presented by the trial of, and the theatrical play about, the *Minnesota 8*, the following questions stand to be answered.

- Is it a proper exercise of their moral authority for the spiritual and religious community to convene a public hearing to clarify the moral character and/or validity of the State’s Defense of Necessity?
- In light of both the ecumenical and global character of the religious and spiritual community which is evident in Minnesota, how can such a public hearing be designed and organized?
- Can the historical lessons and insights drawn from the legal trial of the *Minnesota 8* assist the spiritual and religious community as to how it might conduct a public hearing?

### **“9/11” TERRORIST ATTACK**

It is **proper, timely and morally responsive**, at this present moment of pre-emptive warfare, for the spiritual and religious community to present and conduct such a public hearing since it is arguable that all the spiritual and religious community’s traditional assumptions and arguments surrounding the issues of Peace and War are moot after the actions of “9/11.” In this vein, so are the State’s traditional assumptions and arguments moot.

- To wit, what does “peace” and “war” mean in an age of terrorism?
- What can the spiritual and religious communities offer as moral and spiritual guidelines in this time of the suicide bomber and war-without-borders?

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- Has the emergence of the “global community” and “world courts.” i.e., the United Nations International Court of Justice (ICJ) and its International Criminal Court (ICC) made the appeal to universal moral laws more relevant and material, and, within this perspective, are the sovereign claims of nation-States irrelevant and immaterial? (See, <http://www.icj-cij.org/>)
- Does any community other than the spiritual and religious have a tradition of moral principles and laws which can serve as the basis for the guidance of and judgments upon sovereign States?

Historically, and at present, these and numerous other questions arise and challenge the religious and spiritual community to respond.

### **Specific Objectives**

- To design and conduct a public hearing to engage the spiritual and religious communities in discerning the proper role of morally based acts which violate the laws of the State, here, specifically American laws
- To frame the arguments in a historical perspective using the specific issues raised during the trials of the “Minnesota 8” who violated United States Selective Service law
- To determine if any uniform and universal “moral law” can be articulated to guide spiritual and religiously faithful people as they address the issues of Peace and War in America’s Heartland during an era of terrorism and pre-emptive wars

### **A. Core Questions**

- 1) “Is there ever a moral justification for violating the law of a sovereign State?”
  - “Is a sovereign State ever justified in violating a moral law?”
- 2) “Is there ever a time and place where it is necessary to violate the law of a sovereign state in order to faithfully obey a claimed ‘higher law’ based in a religious tradition?”
  - “Is a sovereign State the arbiter of what is claimed as a ‘higher law’ by a citizen whose primary allegiance is to a spiritual authority?”

### **B. Background**

#### **The History of the “Minnesota 8”**

In 1970 two members of a group, named by the press as the *Minnesota 8*, claimed a moral

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justification, based upon Roman Catholic Christian Tradition, for breaking a federal law. They were indicted on a violent felony charge of “interfering by force, violence or otherwise” with the Selective Service System. They broke into a draft board and destroyed a specific set of files, namely, those classified “1A.” Those Selective Service registrants classified as “1A” formed the pool of that board’s draftable males. (See, [www.minnesota8.net](http://www.minnesota8.net) Click on “Religious Public Hearing Project” for trial facts and arguments as presented in the appellate briefs of the prosecutor and defendants, as well as the Appellate Court’s decision.)

Since registering with the Selective Service System is the *sole and only legal* act which every American male must do, destroying the “1-A” files was reasonably considered a symbolic act. Regardless of physical or mental health or condition, every eighteen year old male must register with the draft or risk being indicted for a felony transgression. Once registered, deferments are given, but every male must comply with the law, first.

The defendants cited a legal defense promulgated in the American Law Institute’s “Model Penal Code” which permits a “Defense of Necessity.” (See, “Model Penal Code,” below.) This legal “Defense of Necessity” argument is not a law of any individual state of the United States. As a “model” legal defense it lacks a clear and precedent rich case history. By the ambiguity of the word “Necessity,” itself, the defense is considered to apply in very special and particular, if not peculiar, situations. Yet, it is modeled in the penal code because common sense recognizes situations where one law is violated as another is being obeyed or affirmed. These are described in terms of a “choice of evils.” Simple cases involve, e.g., the blowing up of a dam which drowns a thousand people to save the lives of a million. In like manner, but with a higher claim on how and why the choice was made, is the example of a police officer who shoots a suspected terrorist if he reasonably anticipates that numerous lives will be lost. Even if the slain is judged not to be a terrorist, the officer’s action could be assessed as “justifiable homicide.”

More complex cases involve those where the “action and response” time-frame is not immediate and direct. For example, the Defense of Necessity has been attempted by those who murder abortion doctors to prevent the alleged future murder of hundreds of human fetuses. Among the many issues which define the Defense are a) the use of violent or nonviolent means, b) the time-frame of immediate versus planned action, and c) the judgment about which law is “higher.”

### **Model Penal Code**

The Model Penal Code of the American Law Institute (<https://www.ali.org/>) adopts a belief-based "choice-of-evils" theory of necessity in Section 3.02 - "Justification Generally: Choice of Evils":

§ 3.02 (1) Conduct which the actor *believes to be necessary* to avoid a harm or evil to himself or another is justifiable . . . .

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The use of the defense is subject to certain limitations, notably: that the harm to be prevented be greater than that caused (§ 3.02(1)(a)); that it not be excluded by the law (§ 3.02(1)(b)) or a plain legislative purpose (§ 3.02(1)(c)); and that the actor not have recklessly or negligently have created the emergency, where the crime charged requires recklessness or negligence (§ 3.02(2)).

Note that the Model Penal Code is *not* the law of any state, though many states have adopted some of its rationale or provisions. See, <http://en.wikipedia.org/wiki/Necessity>

### **The Spiritual Challenge**

While the moral traditions which claim the Bible as revealed scripture are robust, complex, diverse and intellectually rich, a common reference to the New Testament quote in Matthew 22:21, “Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's,” highlights the complex character of the spiritual challenge. Though this is a Christian scriptural quote sourced in the Judaeo-Christian spiritual and religious Tradition, it is also a core referent for the American State’s development of its “separation of Church and State” doctrine. In this light, every spiritual and religious Tradition which seeks to address the moral issues within the American context must interpret this quotation.

Even in the quoted scripture it is clear that determining what is “Caesar’s” has been, and continues to be, a knotty challenge for spiritual and religious people. However, it can be argued that such has not been a knotty challenge for Caesar – that is, for the modern sovereign State. When there is a conflict between a State’s laws and moral claims, it is spiritual people who have to prove that their moral truths are valid, cogent and actionable. The tide of justification does not flow the other way, that is, there are no “moral” or “religious” courts that the modern State recognizes as a sovereign authority. A State claims unchallenged sovereignty and the right to make, amend and abolish laws, regardless of their moral character or impact.

In the modern era, it is rhetorical to ask, “Has any State ever petitioned any spiritual or religious authority for discernment of the moral truth of its legislation or actions?”

It can be asked, in this era of globalization, “Have times changed such that a trans-State, global and ecumenical moral authority is required to morally guide and judge sovereign States?” Clearly, the issue is not to create another version of a theocratic State but to create an innovative process in which to ground a trans-State moral authority. One objective of the public hearing is to consider potential formats for such a global and ecumenical trans-State moral authority, if the spiritual and religious community determines that such is its proper role.

If such a global and ecumenical trans-State moral authority cannot be formed, then, is the spiritual and religious community “irrelevant and immaterial” in this age of terrorism and pre-emptive war?

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### C. DOCUMENTS

At [www.minnesota8.net](http://www.minnesota8.net) the following documents can be downloaded.

- “Brief for the Appellant Francis X. Kroncke”
- “Brief of Appellee” Robert G. Renner, US Attorney
- “Decision of the Appellate Court” Circuit Judge Heaney

### D. ORGANIZING COMMITTEE

An Organizing Committee will be established consisting of broad spectrum of spiritual and religious individuals, institutions and agencies. The committee will design the public hearing project and process. Organizing committee members will be sought among faith and interfaith associations across all religions, sectarian identities, and theological schools. Members from the public will also be identified and invited to join the Committee.

The form of the public hearing is open-ended. The ideal **timeline** pivots around two History Theatre [www.historytheatre.org](http://www.historytheatre.org) related events.

- On September 17, 2006 a “Raw Stages” reading of the play about the *Minnesota 8* by Doris Baizley will be held at the History Theatre in St. Paul, MN.
- During the fall of 2007, the play will premier at the History Theatre.

It is anticipated that a series of thematically relevant seminars, public lectures, classroom lesson plans, essay contests, etc., will be developed by the Organizing Committee to generate as diverse and broad a public discussion and interest in the public hearing as possible. These events are targeted to occur during the fall of 2006 and 2007.

END