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Author(s): Helmut David Baer and Joseph E. Capizzi

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JUST WAR THEORIES RECONSIDERED

Problems with Prima Facie Duties and the Need for a Political Ethic

Helmut David Baer
Joseph E. Capizzi

ABSTRACT

This essay challenges a “meta-theory” in just war analysis that purports to bridge the divide between just war and pacifism. According to the meta-theory, just war and pacifism share a common presumption against killing that can be overridden only under conditions stipulated by the just war criteria. Proponents of this meta-theory purport that their interpretation leads to ecumenical consensus between “just warriors” and pacifists, and makes the just war theory more effective in reducing recourse to war. Engagement with the new meta-theory reveals, however, that these purported advantages are illusory, made possible only by ignoring fundamental questions about the nature and function of political authority that are crucial to all moral reflection on the problem of war.

KEY WORDS: *just war, pacifism, Paul Ramsey, James Childress, just intention, noncombatant immunity*

RECENT DISCUSSION AMONG CHRISTIAN ETHICISTS about the problem of war has given rise to claims of a notable ecumenical achievement: the recognition that the two distinct traditions of just war and pacifism do not rest upon mutually incompatible theological convictions, as earlier representatives of those traditions believed, but instead rest upon overlapping and reinforcing modes of thought. Appreciation for the convergence between the two traditions has been made possible by an impressive meta-ethical account of the just war framework. This meta-theory was originally articulated by James Childress, and later incorporated into official church documents, such as “In Defense of Creation” (1983) by the United Methodist Church, “For Peace in God’s World” (1995) by the Evangelical Lutheran Church in America, and most notably the U.S.

We wish to express our indebtedness to our former teacher Theodore Weber, who has exerted a fundamental influence on our understanding of just war theory as a political ethic.

Conference of Catholic Bishops' "The Challenge of Peace: God's Promise and Our Response" (1983). As Joseph Cardinal Bernardin noted, Childress's interpretation of just war theory exerted notable influence on the U.S. Conference of Catholic Bishops Statement "A Challenge to Peace," and indeed Childress, a non-Catholic, was cited in the document.¹ To be sure, as James Turner Johnson has demonstrated, Childress's meta-ethical account of the just war theory does not have an authentic pedigree in the tradition of Christian political thought (Johnson 1996);² however, the cogency of Childress's account does not depend on its being traditional. Perhaps that is why Johnson's historical criticisms seem to have had a relatively small impact both on official church documents and among Christian ethicists and theologians. Recently, Christian ethicists such as Richard Miller and Lisa Cahill, among others, have sought to build upon Childress's initial account and carry forward the purported convergence between just war theory and pacifism. The pervasive and continuing influence of this distinctive interpretation of the just war framework warrants a detailed examination of it as a meta-ethical theory, regardless of its relationship to the older just war tradition. Proponents of the meta-theory claim that their interpretation offers distinct advantages over previous understandings of the just war framework; first, it leads to ecumenical consensus between "just warriors" and pacifists, and second, it makes the just war theory more effective by reducing recourse to war. We believe these promised advantages are illusory, however, and made possible only by ignoring fundamental questions about the nature and function of political authority that are crucial to all moral reflection on the problem of war.

1. The Prima Facie System Generates Superficial Ecumenical Convergence

Let us first consider the argument for ecumenical convergence. This argument grows out of a distinctive interpretation of the just war theory. According to that interpretation, just war theory begins from a prima facie duty not to harm or kill. According to James Childress, the term "*prima facie* indicates that certain features of acts that have a *tendency* to make an act right or wrong claim our attention" (Childress 1980, 42;

¹ See Joseph Cardinal Bernardin, "The Challenge of Peace: Ecumenical Roots and Relationships," <http://homepage.accesscable.net/~dpoirier/sfo84txt.htm>. Childress is cited in footnote 35 of "The Challenge of Peace," which refers the reader to Childress's article for "an analysis of the content and relationship of these principles."

² Contra Johnson, however, Richard Miller continues to argue that a general "presumption against killing" can be found in the Christian tradition. See Miller (2002).

italics original).³ A *prima facie* duty is one that inclines us to act in a certain direction, but which may also conflict with other duties. In situations where two or more *prima facie* duties conflict, we must weigh all the relevant features and override one or more duties in favor of that duty which points to the genuine obligation. Thus war is justified, first, when the duty not to kill conflicts with the duty to pursue justice, and, second, when the duty to pursue justice overrides the duty not to kill. As Childress explains:

[The] just war tradition can best be understood as recognizing a *prima facie* duty not to injure or kill others and that this *prima facie* duty implies a presumption against war, that is, against the use of violence as the direct, intended physical attack on other human beings. However, the just war tradition also operates with a *prima facie* duty of acting justly and pursuing justice. . . . The moral tension arises when these two *prima facie* obligations conflict. Just war theory indicates when the *prima facie* duty not to injure or kill others can be overridden or outweighed by the *prima facie* duty to act justly and to pursue justice [Childress 1997, 216–17].

The *ad bellum* just war criteria (legitimate authority, just cause, just intention, last resort) emerge from the attempt to specify the kinds of conditions in which the presumption against killing may be overridden and recourse to war justified. The *in bello* criteria reflect the moral traces left by the initial presumption against war.

Just war theory begins, then, from a position not so far from pacifism; a bias against war. The ecumenical convergence rests on a common presumption against killing in both traditions. Both just war theorists and pacifists are usually opposed to killing, and this fact is significant. As Childress says:

Pacifists . . . and just warriors . . . both share the same starting point—war is at least *prima facie* wrong and thus requires justification. They differ however because absolute pacifists deny that war can ever be justified, while just warriors hold that it can sometimes be justified [Childress 1997, 216].

Furthermore, acknowledging their shared presumption against killing furnishes just war theorists and pacifists with a fuller theoretical understanding of their own commitments. Childress writes, “Just-war theorists need pacifists to remind them of their common starting point: the moral presumption against force and war. And pacifists need just-war

³ Childress’s essay “Just-War Criteria” (Childress 1980) appears to be a slight reworking of his “Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria” (Childress 1978).

theorists to provide the framework for debates about particular wars and for the restraint of the practice of war" (Childress 1980, 40, 53; Miller 1991, 18). Miller expands on the "mutual need" pacifists and just war theorists have for each other (Miller 1991, 106–24).⁴ As Childress and Miller make plain, this need does not arise from the esthetics of moral diversity, but from theoretical grounds. That is, just war theorists require pacifism in order to gain adequate self-understanding. Just war theory is deficient without pacifism. Indeed, according to Miller, once the just warrior has overridden his presumption against war, he needs, "the shadow of pacifism to loom over the subsequent course of action" (Miller 1991, 40–41).

As impressive as this convergence sounds, however, we should pause before celebrating it prematurely. Although one would be hard pressed to dispute the claim that pacifists and just war theorists share opposition to many instances of killing, these shared judgments may not prove theoretically or theologically significant. After all, people of diverse moral backgrounds often share judgments on particular questions without converging at the level of fundamental beliefs. Just war theorists and realists, for instance, share a judgment about the nature of political power as essentially coercive and war as a necessary instrument of politics; while pacifists and realists share a judgment that "war is hell," and a common criticism of just war theorists as naïve moralists. Which of these shared judgments point to a basic convergence, and which point merely to judgments that coincide "ad hoc"? Why should we regard a shared bias against killing as significant, especially since that bias might not be shared by pacifism and just war theory alone?⁵

One way to evaluate the depth of the purported convergence would be to ask whether agreement has been reached on a question that touches the core theological convictions and fundamental framework of beliefs for each tradition. Significantly, however, by interpreting just war and pacifism within a system of *prima facie* duties, the convergence thesis circumnavigates the core theological convictions of each tradition, and produces instead only a public lexicon for debating the question of war.

The public lexicon provided by the convergence thesis is nothing other than the just war criteria themselves. These criteria are accessible to all parties debating the question of war and therefore provide a public

⁴ Miller cites Reinhold Niebuhr's concession of the necessity of pacifism to nonpacifism (Miller 1991, 107; see Niebuhr 1940, 7).

⁵ Even on the evidence Miller and others supply, a bias against killing is unspectacular. Miller claims the bias characterizes the entirety of Western ethics (Miller 1991, 16). If that bias characterizes Western ethics *in toto* (and why not non-Western?) what is significant about two branches of Western ethics sharing the bias?

framework for moral discourse. The accessibility of the criteria, however, depends on their formal character. Thus, the just war system enforces transparency among interlocutors, but does not necessarily lead to agreement. As Childress points out, the just war criteria “constitute a formal framework within which different substantive interpretations of justice and morality as applied to war can be debated” (Childress 1980, 51). All claims about war must be fit into the categories the just war system provides, although parties may disagree about the proper application of those categories. For example, any debate about a particular war needs to locate a just cause, but those debating the merits of the war need not agree about what constitutes just cause. In fact, the *prima facie* framework anticipates disagreement about such specifics. People just do and will disagree about particular judgments, but the *prima facie* system provides a public framework within which they must explain their judgments.

Childress recognizes a loss entailed by this formal characterization of the theory. He writes, “This formal function of the criteria is hardly what traditional just-war theorists expected, for they developed their criteria within substantive theories of justice and the common good” (Childress 1980, 51). Traditional just war theorists expected more bite from the theory. They expected a theory capable, for instance, of discriminating meaningfully between just and unjust causes. The formal characterization, however, gains public inclusiveness. Childress acknowledges, then, that the recommendation of the formal version gains traction from what John Rawls calls the “fact of reasonable pluralism” (Rawls 1993). We simply cannot proceed as though there is an agreed-upon substantive notion of justice. We must search, instead, for alternative and effective moral vocabularies capable of fostering public conversation.

Thus, the *prima facie* just war system provides the ground for an inclusive public conversation about war, but only by detaching the just war criteria from larger, substantive judgments about the nature and meaning of politics. Importantly, however, those substantive judgments are the source of disagreement between pacifists and just war theorists. Thus the *prima facie* system generates convergence by asking the representatives of the different traditions on war to misconstrue or distort their basic commitments.

Consider, for example, what the convergence thesis does to the pacifist’s basic commitments. Childress and Miller acknowledge that pacifism *means* the absolute rejection of lethal force in war (see Miller 1991, 12). Within the terms of a system of *prima facie* duties, we can say that pacifism regards the duty not to kill as an “actual” obligation; from the pacifist perspective, the obligation is never merely apparent. Whether pacifists regard their commitment to nonviolence based on a duty of nonmaleficence is unclear. We know as well that many pacifists are not

interested in the kind of public effectiveness convergence theorists offer them. Those who do desire such effectiveness, and enter the public conversation by adopting the language of the prima facie system, however, implicitly accept the charge that pacifism is politically irrelevant. A pacifist who based her opposition to a particular war on just war grounds would, at some level, be abandoning her basic commitments. She would have to proceed as a just war pacifist; acknowledging the possibility that war is an acceptable means to pursue justice, even while maintaining that here and now this war is not. Her objections to war, then, would depend upon judgments of fact about which reasonable people might disagree, rather than a principled objection to the use of violence in pursuit of justice. Thus, the pacifist would be adopting just war language for an ostensible strategic gain, while tacitly admitting that, on its own terms, pacifism is politically irrelevant. Indeed, after careful reflection one wonders whether the prima facie system does not contain an implied judgment that pacifism, understood as an absolute rejection of violence, is an unreasonable position to hold in public.⁶

2. The Prima Facie System Deprives Just War Criteria of Their Intelligibility

If pacifists have reasons to be uncomfortable with the convergence thesis, however, so do representatives of the just war tradition. To conceive just war theory as a system of prima facie duties requires the just war theorist to relinquish his basic conviction that the forceful exercise of political power is an integral part of God's providential care for creation. This is because for traditional just war theory the fundamental judgment about the place of force in politics *precedes* the articulation of the just war criteria, whereas for the prima facie just war system the fundamental judgment about force *follows from* the application of the just war criteria.

Just war theory is properly understood as an expression of a tradition in Christian political thought that can broadly be described as Augustinian. Central to this tradition are a number of convictions. First, political authority is essential to social life. Social action depends upon ordered social relations, and ordered social relations depend partly upon the exercise of organizing power, or authority. Thus, within any community, there are competing interests that political authority must order and adjudicate. Second, force is an essential element of the exercise of political power. Because the ordering of social life encounters resistance from parties pursuing private interests, who if left unopposed would

⁶ Childress writes that pacifists "too should be committed provisionally to something analogous to just-war criteria" (Childress 1980, 53).

jeopardize the social order, political authority must preserve order and convince private interests to act for common goods they would not typically pursue. Third, the exercise of political power should be placed in the service of genuine goods, such as order, justice, liberty, and community. That is, the forceful power of government must itself be ordered by being brought into conformity with the requirements of morality.

Just war theory emerges from the attempt to apply this understanding of political authority, which originally concerns the exercise of power within a discrete political community, to the exercise of political power in the area of international politics. Just as the protection and promotion of political goods within a discrete political community depends upon the exercise of political power, so too in international politics, the protection and promotion of political goods depends upon the exercise of political power. Just war theory, therefore, and the just war criteria, follow from, and are discrete expressions of, an underlying political theory that understands power as essential to political order, as necessarily forceful, but also to be placed at the service of genuine goods.

The *prima facie* interpretation of the just war theory, however, brackets fundamental questions of political theory, isolates the just war criteria from their larger political context, and reduces them to components in a meta-ethical theory of exception making. Childress writes, “Just-war criteria thus are not involved in the debate between the pacifist and the just-war theorist over whether war can ever be justified. This debate hinges on general theological, anthropological, and moral convictions (e.g., sin, the place and function of the state, and political responsibility)” (Childress 1980, 53). *Prima facie* just war theorists thus prefer to view the system as of very limited purpose. It serves solely to determine when war may be justified, given that one has accepted (at least for argument) that war may sometimes be justified, rather than serving to shape reflection on political policy. Thus Lisa Cahill speaks of just war theory in terms of exception making:

The theoretical and rule-oriented nature of just war thinking is indicated by the fact that it is generally understood as an “exception-making” enterprise. At least in its most honest forms, it presumes a norm against violence and killing, and then questions the application of that norm in conflict cases. Consequently, just war thinking takes the mode of elucidating criteria for exceptions as clearly as possible [Cahill 1994, 229].⁷

⁷ When Cahill writes of how the just war theory is “generally understood” she makes a claim about the current state of the art, a claim with which we concur. The “presumption against war” view, of which hers is a version, dominates among theologians today, although as James Turner Johnson has shown, this interpretation is untraditional. For Johnson’s argument, see Johnson (1996, 1999). See further Joseph E. Capizzi, “On Behalf of the Neighbor: A Rejection of the Complementarity of Just-War Theory and Pacifism” (Capizzi 2001).

The just war criteria become tests to determine when to override the rule against killing and use force legitimately. We begin with an initial rule, or *prima facie* obligation, not to kill, and then look for the conditions in which that *prima facie* obligation may be overridden. The theory tells us that those conditions are met when there is legitimate authority, just cause, just intention, last resort, and so on. Once these conditions are met, we have a legitimate exception to the rule against killing and a right to use force. Understood this way, the just war criteria enable us to decide (or at least debate about) whether we have arrived at the exception case where force is justified, but what the criteria cannot do is help us to debate more fundamental questions of policy and political ethics.

Perhaps we can illustrate the difference between just war theory as a political ethic and just war theory as a meta-ethical framework for exception making by discussing the different ways these two conceptual frameworks understand three of the just war criteria, legitimate authority, just intention, and noncombatant immunity. The criterion of legitimate authority, understood as an expression of a theory of politics, tells us something important about the reasons government may use deadly force as well as government's legitimate purposes. The right of government to use deadly force derives from its responsibility for the discrete common good of a particular political community. Independent of that common good, independent of the intrinsic relationship between authority and community, the right to wage war does not exist. Thus, the criterion of legitimate authority both justifies and limits the right of governments to wage war. A government may wage war on behalf of the discrete common good for which it is responsible, but it cannot wage war on behalf of political goods in general.⁸ The criterion of legitimate authority understood as an expression of a theory of politics implies limited authority, so that if a government wages war to promote purposes unrelated to its common good, it ceases to act legitimately (Baer 2002).⁹

⁸ In asserting an intrinsic connection between the right to wage war and the discrete common good, we do not mean to deny the moral possibility of military interventions (even preemptive interventions). We believe, however, that military interventions need to be justified in light of the relationship between the discrete common good and the international common good, in which all political communities have a stake and legitimate interest.

⁹ The concept of legitimate political authority implies restrictions not only on the means government may use to pursue political goods, but also on the kinds of political goods single governments may forcefully pursue in the international political arena. No single government has total responsibility for the shape of the international order, because the international order itself is the configuration of multiple interests represented by a multiple of duly constituted political authorities. That is, legitimate political authorities limit one another. Unfortunately, just war theorists have often overlooked the nature of this limitation, although it was perceptively noted and discussed by Helmut Thielicke (Thielicke 1969, 430–51).

Within a theory of exception making, however, the criterion of legitimate authority loses much of its intelligibility. According to Childress, legitimate authority indicates who is responsible for deciding whether the other criteria have been met, so that once the legitimate authority has made the decision to go to war, citizens should begin from a presumption that the war is justified (Childress 1980, 46). This, however, misconstrues the criterion. The legitimate authority question is best formulated not as concerning who decides whether a war is justified, but as concerning who has the right to use deadly force. After all, the issue of who decides is often contested. Does the United States or the United Nations have the authority to decide whether war against Iraq is justified? Alternatively, does anyone with access to weapons, including terrorists and insurrectionists, have legitimate authority to declare a just war? Only when we know who has the right to use deadly force can we begin to address the question of who decides to go to war, and the answer to the question of right depends upon a theory of politics. The right to use deadly force derives from responsibility for the common good. Thus government has the right to wage war to protect its common good. Absent a theory of government, however, it is hard to see how Childress could answer his own legitimate authority question.

The criterion of just intention, within a theory of politics, concerns the teleology of power. It expresses the normative principle that orders the use of force to the pursuit of political goods. Just intention makes a claim on the practice of warfare by insisting that war, like every exercise of political power, be in the service of politics. War thus has an instrumental character, and the task of just intention is to politicize, hence civilize, warfare. Because of its politicizing character, just intention is also the most forward looking of the *ius ad bellum* criteria. It requires belligerents to look beyond the justness of the particular cause to the justness of the newly emerging political order (Weber 2000, 171–73).

Within a system of *prima facie* duties, however, the criterion of just intention is subsumed under just cause. Just cause becomes the central and governing criterion of the just war framework, because it is the criterion that most directly rebuts the presumption against war. The link presupposed by cause and presumption colors the rest of the just war logic. If the cause is great enough, then the presumption against war is overridden, and accordingly, once war is begun, the intention of war is to vindicate a just cause. As Childress writes, “For the war as a whole, right intention is shaped by the pursuit of a just cause” (Childress 1980, 48). To subsume intention beneath just cause, however, is to risk severing war from politics in its full longitudinal character. A subsumed just intention looks only backward to the grievance that justified overriding the initial presumption. It focuses on particular provocations rather than the full political context, with a history and complicated interrelationships that

have given cause to conflict. When governed by just cause, the just war system becomes no more than a framework to justify the righting of past wrongs, and vulnerable to the pacifist critique that its analysis truncates political reality. As Theodore Weber has argued:

When just cause is given priority in moral reasoning, the analysis tends to focus on particular provocations rather than on broader spatial and temporal contexts and complicated relationships. The “just war paradigm of decision” becomes vulnerable to John Howard Yoder’s criticism (otherwise untenable) that it “assumes a punctual conception of legal-moral decision,” and discounts the breadth and depth of reality [Weber 2000, 173].

To be fair to Childress, he does recognize that peace is the proper focus of just intention (Childress 1980, 48–49). However, he construes the end of peace in a way that simply reformulates the original presumption against war. Childress writes, “one can see how the *prima facie* obligation not to injure or kill others persists even in the midst of war by mandating the ultimate object of peace” (Childress 1980, 49). Understood this way, the requirement to intend peace is a requirement to restore the original presumption against killing as soon as is reasonably possible. That presumption can only be restored, however, when the original grievance has been vindicated. Within the context of a political ethic, however, the peace that is the object of just intention means more than the absence of hostilities or even a return to the status quo that initially gave rise to armed conflict. As Augustine pointed out, peace is the tranquility of order arising from the agreement of wills. The goal of just intention, therefore, is not merely to right past wrongs, but to give shape to a more just and stable political order.

The de-politicizing logic of the *prima facie* system is further evinced in the assertion, frequently made by *prima facie* just war theorists, that war is an exceptional event, beyond the pale of normal moral reasoning. Miller argues:

One essential implication of Childress’s argument is that, from the perspective of the just-war tradition, the use of force is an exceptional act, requiring special claims under grave circumstances. Such claims override the basic duties that govern our ordinary, workaday commerce with one another. By this account, the use of force requires special permissions and grave limitations, however just its apparent cause might be. The fact that appeals to justice require such caution is only intelligible if the act itself—war—is perceived as an extraordinary affair, lying on the limits of our moral experience, disanalogous with other acts in which justice might be invoked without reserve or qualification [Miller 1986, 468].

From the point of view of a theory of politics, Miller gets the relationship between war and normative politics exactly backward. Just war theory, precisely by bringing moral considerations to bear, seeks to politicize war, and to politicize war is to civilize it. If war were truly discontinuous with politics, then the aims in war would be different from the aims of politics in peacetime, and recourse to war would entail an abandonment of the goods of politics. Far from relegating war to the twilight of our moral and political imagination (where war would necessarily assume a logic of its own) just war theory seeks to domesticate war by relating it to politics.

Finally, the *prima facie* just war system cannot provide an account of the principle of noncombatant immunity, at least as that principle has become enshrined in international law, because, despite assurances to the contrary, it cannot distinguish intelligibly between combatants and noncombatants. The system begins from a general presumption against killing all human beings, and then overrides that presumption once the just war criteria are met. Once the presumption has been overridden, however, why should lethal force be directed only against combatants? Childress avers that the distinction between combatants and noncombatants arises from the “moral traces” left by the presumption (Childress 1980, 49–50; Miller 1991, 122). The presumption against killing places a blanket of protection around noncombatants. Childress explains, “directly to attack noncombatants is not legitimate. . . . indiscriminate methods of warfare are prohibited” by the presumption against killing (Childress 1980, 49, 50). Why, however, should the “traces” of the original presumption extend to noncombatants differently than to combatants, unless some other principle were at work distinguishing soldiers from innocents that was not *prima facie*? Working within a system of *prima facie* duties alone, the just war framework is unable to generate an inviolable prohibition against the direct attack of noncombatants such as that instantiated in international law. At best, the principle of noncombatant immunity can itself be only *prima facie*, subject to suspension when overridden by some conflicting duty.

Within just war theory properly understood, however, the principle of noncombatant immunity derives from the political and theological commitments of the theory. The promotion of political goods through lethal force, which in certain circumstances is intrinsic to the proper exercise of political authority, can never be reconciled with the intentional killing of innocents (Weber 1968, 33–34). This point was made well by Paul Ramsey, through what he called the “twin-born” justification and limitation of war (Ramsey 1976, 34–59; Ramsey 1983, 143–44 and 152). Crucial to the principle of noncombatant immunity is the fact that it flows from the intention that justifies war in the first place. Precisely because killing

in war is justified only to protect the innocent, killing in war must never extend to innocents.¹⁰ Thus the very political act that leads government to pick up the sword also restrains the way government uses the sword. A government that adopted a policy of killing innocents would abandon the principles of good politics that imparted the right to use lethal force in the first place.

Furthermore, although Ramsey did not make the point explicitly, his “twin-born” justification of war reveals the intrinsic link between the *ius ad bellum* and *ius in bello* criteria. The political act of targeting innocents tells us not only that government has disregarded an important *in bello* criterion; it reveals something fundamental about the purposes to which that government is placing power in general. A government that intentionally targets innocents is not good government and cannot be pursuing purposes governed by just intention. Thus all the just war criteria, both *ad bellum* and *in bello*, are discrete expressions of one unified moral theory of political power. Together they constitute a set of interrelated and interlocking guidelines that both frame questions of policy and provide a means for evaluating particular wars. The unifying, and hence governing, criteria of the just war theory are just intention and discrimination. Any interpretation of the just war framework that bifurcates these two criteria, or elevates in importance one set of criteria (*ius ad bellum*) at the expense of the other set (*ius in bello*), also dismantles the theory of politics that justifies and regulates the use of force by government.

The de-politicization of just war theory carried through by the prima facie interpretation constitutes one of its greatest shortcomings. Indeed, this shortcoming is so great that it renders the prima facie just war system politically ineffective.

3. The Prima Facie System Renders Just War Theory Ineffective

Proponents of the prima facie interpretation claim that their understanding of the just war theory increases its effectiveness. This might

¹⁰ The intrinsic link between noncombatant immunity and just intention was noted more than thirty years ago by Theodore Weber (Weber 1968), whose argument may even have influenced Paul Ramsey. We agree with Ramsey that the only theoretical justification for intentional killing in war is to protect the innocent. This underlying theoretical justification, however, should not be confused with the specific reasons that might give rise to just cause in a particular instance of war. In principle, at least, a government can legitimately wage war to protect a wide array of national interests (a slice of land, trading routes, etc.) provided the threat to those interests is unwarranted and constitutes a genuine threat to the well-being of the innocents for whose care the government is entrusted. One cannot exclude *a priori* any candidate for just cause, although every just cause must ultimately trace back to the original justification for war, namely, to protect the innocent from unjustified harm.

seem a surprising claim, given Childress's description of the prima facie system's formality. One would think that the inability "to dictate the material outcome" of debates about cause and authority would undermine the theory's effectiveness. Nevertheless, proponents believe otherwise. They think that the loss incurred by the formal approach converts to a net gain. By conceiving the theory formally, the pacifist voice enters into the public conversation, and the essentially nonviolent perspective of the just war theory is kept in view. The proximity of the pacifist keeps the just war theorists from lapsing into an easy acceptance of war. Thus, Childress states that his version of the theory makes recourse to war less likely (Childress 1997, 218). Just war theory, understood as a system of prima facie duties, begins with a presumption against war, thereby shifting the burden of proof onto those who would support a war. This shift in the burden of proof, prima facie "just warriors" say, has enormous implications. In *Interpretations of Conflict*, for example, Miller has argued that, "While shifting this burden of proof may seem to lack any practical consequence, it actually distills the ethical agenda of many who dissented from the Vietnam War" (Miller 1991, 123). Those who protested the Vietnam War found themselves justifying their opposition to warfare, having to explain how Christians or non-Christians could possibly oppose a war in which their country was engaged. Thus, shifting the burden of proof to those who would support war strengthens the hand of those who believe war must be justified, and fosters a critical posture toward the "regal claims of political authorities during times of conflict" (Miller 1991, 123).¹¹

There are at least three reasons, however, to doubt the claim to greater effectiveness. First, the argument depends on an empirical claim that is difficult, if not impossible, to test. Second, the argument rests on an unproven premise that just war theory will be more effective the more frequently it says "no" to war. That premise, however, must properly follow an argument that demonstrates wars are more frequently unjust than just. In other words, the effectiveness argument made by the prima facie "just warriors" assumes the very thing it seeks to prove, namely, that wars are usually unjust and that just war theorists should be predisposed against them. Third, the argument may misidentify the locus of effectiveness. Why assess the theory's effectiveness by reference to statistics of its disapproval rating on particular wars? Why not judge the

¹¹ Miller's claim concerning the critical posture of the prima facie system toward political authority does not take into account the criterion of legitimate authority, and seems to run contrary to Childress's assertion that, "Whereas the proper authority has to confront and rebut the presumption against war, the subject-soldier now confronts the presumption that the war is just and justified because the legitimate authority has so decided in accord with established procedures" (Childress 1980, 46).

effectiveness of just war theory by its influence on international law? The Geneva Accords, the International Criminal Court, the United Nations, and the body of international law generally might all be understood as giving expression to just war principles, thus testifying to the effectiveness of these principles, even though the conflict of power with power and the wars that ensue from those conflicts remain a recurring feature in human history.¹²

Moreover, the shift in the burden of proof caused by the *prima facie* just war theory gains its strength only from a lack of clarity about the specific conditions in which war is justified. To be effective, the *prima facie* theory would need to stipulate clearly the circumstances in which the rule against killing no longer applies. This, however, is something the theory cannot do because of its formal, meta-ethical character. Indeed, because the *prima facie* system prescind from substantive discussion of politics, the just war criteria are subject to the widest possible use and abuse. The politician can claim just cause and last resort, while the just war theorist denies this, but once the criteria are adverted to in public conversation, what more needs to be done? The *prima facie* system is designed for pluralistic stasis: there is no device by which to judge disagreement, no means of moving beyond individual judgments about this or that criterion. Thus the politician, agreeing to disagree, can opt for his or her chosen policy, while the just war theorist can demonstrate his or her effectiveness by saying “no!” in a loud voice. Absent some substantive account of normative politics, the *prima facie* just war system does not have the conceptual apparatus necessary to move beyond formal meta-ethical discourse to concrete judgments about the justness of particular wars.

Thus the ineffectiveness of the *prima facie* just war system is a further consequence of its de-politicization of just war theory. The de-politicization, in turn, is partly a consequence of misguided attempts to manufacture convergence between just war and pacifism where none exists. Although proponents of the *prima facie* system are impressed by the

¹² To those who might object that the *prima facie* understanding of war could also give rise to international laws governing warfare we respond that evidence to the contrary is found in the inability of the *prima facie* system to maintain the inviolability of innocent life, which is protected by international law. Unlike “classical” just war theory, the *prima facie* view shares with pacifism a theoretical indifference to the distinction between guilt and innocence. The pacifist is indifferent because he views all intentional killing as murder; the *prima facie* warrior indifferent because he views all killing as potentially justifiable, if the weighing allows it. Thus Childress’s statement of the *prima facie* theory’s presumption (“that this *prima facie* duty implies a presumption against war, that is, against the use of violence as the direct, intended physical attack on other human beings” [Childress 1980, 216]) is a misstatement of the classic theory’s objection to the use of violence as the direct, intended physical attack on *innocent* human beings.

challenges pacifists pose to just war theory, they might do well to attend also to the challenges just war theorists pose to pacifism. Just war theory grows out of a theory of political authority, or good government. A theory of good government, however, is what many Christian pacifists reject as outside the bounds of Christian concern.

4. Pacifists Have Yet to Answer the Challenge of Just War Theory

Historically pacifists have advanced the claim that Christians may not wage war because Christians may not participate in the coercive functions of government. One classic expression of this position is the *Schleitheim Confession* of 1527. In the words of Article Six of that confession:

The sword is ordained of God outside the perfection of Christ. It punishes and puts to death the wicked, and guards and protects the good. In the Law the sword was ordained for the punishment of the wicked and for their death, and the same [sword] is [now] ordained to be used by the worldly magistrates [Lumpkin 1959, 27].

Thus, *Schleitheim* recognizes the legitimacy of political authority as a divinely ordained institution but asserts that political authority falls outside the perfection of Christ. The difficulty is that *Schleitheim* rejects the use of the sword for Christians while simultaneously affirming that government is ordained by God and that intrinsic to government is the use of the sword. Thus, although forceful government performs a legitimate work of God's providence, Christians are not to participate in government because government is of the world and to follow Christ Christians must separate themselves from the world. On the one hand, government performs a legitimate work of God's providence by using the sword to punish the wicked and protect the innocent. On the other hand, Christians are not to participate in government, since government relies on the sword, which is unchristian. The *Schleitheim Confession* thus understands government's use of force to be simultaneously good and evil—which is to say *Schleitheim* does not provide a clear interpretation of government.

Nor do we believe that these difficulties are unique to sixteenth century pacifism. Contemporary pacifists have also failed to provide a full account of political power and the place of government in God's providential care for creation. At least one pacifist has even denied the need to give an account of political authority at all. Thus, Stanley Hauerwas has boldly asserted, "I simply do not believe that Christians need any theory of the state to inform or guide their witness in whatever society they

happen to find themselves” (Ramsey and Hauerwas 1988, 175). Surely, however, providing some account of the state is a necessary implication of providing an account of the victory of Christ over the powers of this world. If, as Hauerwas has eloquently argued, Christians place their hope in the Kingdom of God, and seek to embody that Kingdom by living faithfully as church, then they need to have some understanding of the relationship of God’s Kingdom to political power. Is the power of the sword now superfluous? Is the sword a manifestation of the Devil’s remaining power, a form of the Antichrist? Or has the sword been subjected to Christ’s rule and placed in the service of Christ’s Kingdom? To fail to provide a theological account of political power is to set premature boundaries around Christ’s Kingdom. Thus when Hauerwas asserts, echoing the *Schleitheim Confession*, that “the sword of the state is outside the perfection of Christ” (Ramsey and Hauerwas 1988, 178), the question we want to ask from the standpoint of the just war tradition is, how can Christians allow the sword to remain outside the perfection of Christ? Has not the sword, too, been claimed by Christ and brought under his reign?

John Howard Yoder, one of the most intellectually imposing and perhaps the most eminent of contemporary pacifists, also had trouble providing an adequate account of political power. For example, in *The Original Revolution*, Yoder tackles head-on the problem of political authority, and in doing so seems to suggest that the use of force is part of the proper function of political authority, so long as it is morally constrained. Yoder writes:

Romans 13 and the parallel passages in 1 Timothy 2 and 1 Peter 2 give us the criteria for judging to what extent a state’s activities . . . are subject to Christ’s reign. If the use of force is such as to protect the innocent and punish the evildoers, to preserve peace so that “all men might come to the knowledge of the truth,” then the state may be considered as fitting within God’s plan, as subject to the reign of Christ [Yoder 1997, 59–60].

The position expressed here, precisely because it endorses the forceful function of government, is hard to distinguish from the understanding of government held by adherents to the just war tradition. That tradition has never endorsed the coercive use of political power in an unqualified way, but has always insisted that the purpose of political power is to promote genuine political goods.

Should we, therefore, understand Yoder as conceding that war, so long as it is morally constrained, is morally acceptable? That seems unlikely, and yet a discussion of the problem in a later work, *The Politics of Jesus*, does not provide much clarification. There, in the course of an exegesis of Romans 13, Yoder draws a distinction between government’s police function and the practice of war. He writes:

The distinction made here between police and war is not simply a matter of the degree to which the appeal to force goes, the number of persons killed or killing. It is a structural and a profound difference in the sociological meaning of the appeal to force. In the police function, the violence or threat thereof is applied only to the offending party. The use of violence by the agent of the police is subject to review by higher authorities. He applies his power within the limits of a state whose legislation even the criminal knows to be applicable to him. . . . In all of these respects, war is structurally different. The doctrine of the “just war” is an effort to extend into the realm of war the logic of the limited violence of police authority—but not a very successful one. There is some logic to the “just war” pattern of thought, but very little realism [Yoder 1994, 204].

Here again, Yoder appears to recognize the coercive nature of political authority, and perhaps even the right of the state to kill in the exercise of its police function, but then on the grounds of “sociological meaning” distinguishes sharply between policing and war. The distinction is sharp enough to deem the state’s police function acceptable while deeming its war function unacceptable. Although the passage is sufficiently obscure to admit multiple interpretations, on any reading Yoder seems to run into unmasked and unanswered questions about government and its use of force. Even if one grants the claim that government’s exercise of police power is morally constrained in a way its exercise of military power is not, Yoder still must answer the question Reinhold Niebuhr put to pacifists fifty years ago: why is even the police function legitimate when it depends upon the use of force? Representatives of the just war tradition are entitled to a fuller account from pacifists of the ways government may and may not exercise lethal power on behalf of political goods.

The larger point, of which we hope the just war criticisms of pacifism are illustrative, is that these two traditions of Christian reflection on war hold fundamentally divergent judgments about the nature of government and the proper exercise of political power. Thus, any effort to achieve ecumenical convergence between the two traditions must necessarily address those fundamental differences. Even more, any attempt to bring moral reflection to bear on the exercise of political power must address those fundamental questions, because implicated in every interpretation of warfare are basic judgments about the place of force in the pursuit of genuine political objectives. The *prima facie* just war system fails on both counts. By mistaking a superficial convergence as a fundamental one, the *prima facie* system overlooks the deep issues dividing pacifists and just war theorists. Rather than addressing the central questions of political theory that animate just war theorists and pacifists, it provides a new framework for thinking about war, one that forsakes the most serious insights of both the just war and pacifist traditions, and bequeaths in their stead a formal meta-ethical system that lets ethicists

talk about war without engaging in substantive political reflection. The advantages of the prima facie system thus disappear on closer investigation. Rather than expending their energy on meta-ethical discourse alone, Christians concerned about the problem of war would do better to return to fundamental theological questions and make a decision to speak up for just war or pacifism.

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