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A CONSISTENT ALTERNATIVE VIEW WITHIN THE JUST WAR FAMILY

John H. Yoder

The most sensitive contemporary interpreters of the Just War Tradition (JWT) among Christian ethicists, like James Childress,¹ James Johnson,² and David Hollenbach,³ are clear that in terms of moral typology the JWT is a subform of pacifism. Both the JWT and pacifism begin with a *prima facie* presumption against war. Both thereby reject the “realism” which exempts war from moral limits, and the “holy war” which gives it transcendent warrants. Pacifism denies that there are justified exceptions to that presumption,⁴ whereas the JWT holds that such exceptions can be identified by the use of a variety of discriminating criteria.

I am then talking about pacifism and the warrants for it, when I test for internal coherence the set of arguments against the *prima facie* presumption. In so doing, one discovers that the JWT is a family of diverse views, not just one. That should be no surprise. Any multi-criteria moral system has to be open to variant lexical readings of how its varied considerations are weighted. More important is the discovery that the most important current mutant of the view is one which most interpreters have not labeled as such. That is the topic to which I propose that we should attend.

The ethicist looking at the vast complexity of the just war tradition is struck first of all by the disparate styles of moral reasoning at work. Some of the criteria are procedural. Of these some are juridical: i.e., ideally they would admit of resolution through a court of law or a constitutional election. This applies in the ideal case to the criteria of just authority and of just cause. In other cases they are procedural without being juridical: e.g. the criterion of last resort. Another set of criteria are deontological. War must be fought within the rules established by international conventions. The definition of the rules is juridical, dictated by past diplomatic process written or unwritten, but the obligation to recognize them is deontological. The same applies to the most broad and most ill-defined of the classical criteria, namely that the means used must be “consonant with the rational nature of man.” Classically this meant no lying, no rape or pillage, and no torture. These were principles to which no exception could be tolerated, although there might be difficult casuistic collisions in their definition.

The immunity of the innocent at first is a deontological quality, but as the



tradition developed in its application to fortresses and guerrilla combat, this obligation became increasingly qualified by double effect considerations.

Another set of categories refer to "intention." This covers a variety of kinds of reasoning. Sometimes (a) "intention" is used to refer to the responsibility which the agent in a justifiable war takes for seeking to bring about the ultimate state of things which will add up to the greatest good and the least evil. This is a careful consequentialism. In this sense it is under the heading of right intention that the sub-criterion of proportionality is applied. The sum total of foreseeable good and evil outcomes must be greater with the war than without it. Thus *one* meaning of "right intention" is thoroughly consequentialist. It lays itself open, as does all consequentialist reason, to debates about how well one can predict the outcomes of one's action, about how to weigh apples against tomatoes and potatoes and pomegranates (lives against freedoms, territory against honor, sovereignty against prosperity...), and about how responsible one is, in a justification based on calculated outcome, to factor in percentages of uncertainty and probabilities of backlash.

At other times, "intention" has a more subjective or inward meaning. Then (b) it seeks to discriminate with some precision between what one knows will happen and the grounds on which one takes responsibility for particular decisions. Here we encounter the formidable complexity of the traditional discriminations of double effect, "doing evil to achieve good." Moral authenticity is then not out there in the world system, but in the willing of the agent, who may "intend" by his or her action something distinguishable from what he or she knows the deed is in actuality likely to bring about.⁵ The action can be willed morally in a way that may disavow blame for the evil effects. At this point calculations of probability and proportionality arise again.

Proportionality is one of the criteria of double effect reasoning. This is not because double effect reasoning itself is consequentialist in a global sense. Its very point is to be able morally to disavow some of the consequences which one is relatively sure are going to be entrained by one's decision. Proportionality is however still in the calculus on a second level, as a criterion for evaluating whether one's discriminating intention is honest, as over against merely *saying* that one does not "intend" the evil which comes as a side effect of the action one does for good reasons. To take one of the classical examples: if I crush a virus-bearing mosquito on my neighbor's head with my handkerchief or with a slap, it is clear that the pain and surprise I inflict upon him are less important than saving him from disease. If however "intending" to kill the mosquito I also kill my neighbor with a sledge hammer, the disproportion between the bad effects and the "intended" good effects will cast serious doubt on the honesty of my claim that the good effects were what I wanted. But the fact that this is well characterized as "casting a doubt on my honesty" indicates that the location of

the “intention” in question is within my will. The criterion of proportionality is not an ultimate consequentialism but a subordinate criterion of the authenticity of the intention which wills the good effect and is not disqualified by the bad effects.

There are yet other criteria of “intention” (c) which are likewise subjective, but not subject to that kind of second order adjudication in the real world. In his classical passage, Thomas quotes Augustine as saying that even with proper cause and authority a war is morally disqualified if its motivation is hatred or the desire for personal vengeance or aggrandizement.⁶ This too is called “intention.”

To proceed still further down the list of traditional JW criteria would be necessary for completeness but is not essential for present purposes. What this superficial beginning has already shown is that the classical JWT is mixed in terms of types of moral reasoning. What it lists are not simply a few parallel guides for the testing of particular cases, all within one framework of moral reasoning, but rather a selection from across the span of various kinds of argument. The classical doctrine is not clear about the lexical ordering of these criteria. Neither are the contemporary theorists who are currently attempting to restore the validity of the tradition. It is not our present concern to argue this observation, either as a vice or as a virtue of the tradition. Classically it should be assumed it was a virtue. Moral discernment has many dimensions: should they not all be counted in an adequate casuistry?

If multidimensionality is identified as a characteristic of the JWT, we are ready to recognize the originality of the view to which we now turn. Its peculiarity will be clearest if we contrast it with the mainstream tendency.

The recent increase in articulate public concern about nuclear warfare accentuates a triad of considerations regarding *jus in bello*:

- a. There is the criterion of proportionality, a quantitative measure, utilitarian in its style. A military action is wrong if it does more harm than the harm it prevents.
- b. There is the immunity of noncombatants: we tend to think about civilians in an enemy city, but it must apply as well to neutrals in nonbelligerent countries, to pilgrims and travelers, and even (according to the law) to soldiers who have surrendered or are not in active duty. This is a qualitative consideration, whose ancestry is deontological. An act of war is wrong if it destroys innocent life. More careful or more defensive definitions will of course add modifiers: the killing of the innocent must not be (1) directly (2) intended.
- c. Distinguishable from the above two criteria is a third: namely the ability to control or to discriminate. If a weapon’s impact is indiscrimi-

nate, then by definition its user cannot guarantee either proportionality or immunity. Thus discrimination is a procedurally prior condition of meeting the other two requirements. It thereby becomes a requisite in its own right. This has become visible in recent Vatican statements, where discrimination has itself been named as the requirement without pointing beyond it specifically to noncombatancy or proportionality.

This triad of logical requirements has been taken seriously by the four elder statesmen who recently proposed an American commitment to renounce the first strike. It is the prime consideration of Vatican documents and now of the United States bishops' *Challenge of Peace*. The attention given to this one set of *in bello* criteria is merited, because of their intrinsic clarity and their obvious application to the nuclear arms race. This has however led to broad neglect of all of the other criteria which the classical tradition also asked about.

We turn now to a contrasting mood of moral reasoning about war, which by no means could be held to be without moral concern, but which wittingly and willingly sets aside that triad in favor of another set of measurements. This view, which pending clarification I propose to label by the names of its proponents, is the Orwell-Dulles argument. The readiness for "massive retaliation" which dominated American strategic thought, at least in the public arena, especially before the USSR approached nuclear parity, set aside globally and with a good conscience the classical criteria of proportionality and discrimination. If ever the button were to be pushed, the destruction inflicted by the US on Soviet targets, whether forces or cities, would *intentionally* be so much greater than any benefit the Soviets could be working toward that the exchange would be, in the understated parlance of the time, "unacceptable." That it is intentionally disproportionate and probably intentionally indiscriminate is why it works so well to deter.

After the development of a comparable Soviet arms system, we found that in a new key the same reasoning could still apply. Now the label was "mutually assured destruction" (MAD). Since this disproportionate and unacceptable level of probable cost from a nuclear exchange is what deters, each party has an interest in the *other* side's overwhelming second strike capability being credible, so that they know that we know that we can never afford to give occasion for their second strike power to be used. Second-order conclusions are then drawn from that. We taper off on civilian defense and ABM, to signal that we accept our second-strike vulnerability. If the degree of threatened overdestruction were decreased, the danger of the use of the bombs would be greater. It is this threat which current (1981ff) talk of a "winnable" nuclear war now undercuts in a destabilizing way.

What in the American nuclear policy of 1945-56 was articulated as "massive retaliation" was of course not a new idea. What was new, and what justifies our

using the name of John Foster Dulles, is that such a recourse is stated soberly, in moral terms, with no macho braggadocio, by a man who figured also as a churchman and a peacemaker. Apart from that, we should realistically recognize that similar reasoning processes were there before in the minds of less accountable spokespersons. Let one sample among many be the British admiral John Arbuthnot Fisher (1841-1920):

The supremacy of the British navy is the best security for the peace of the world.... If you rub it in, both at home and abroad, that you are ready for instant war, with every unit of your strength in the first line and waiting to be first in, and hit your enemy in the belly and kick him when he is down and boil your prisoners in oil (if you take any) and torture his women and children, then people will keep clear of you.⁷

George Orwell argued in a similar key though on other sides of the tradition, taking off from his polemic against those who in WW II were condemning obliteration bombing. Why keep non-combatant immunity as a near-sacred limit, he asked, when the other restraints are let go? Why respect restraints at all, if they only prolong a war, and thereby increase the cumulative quantity of destruction? The moral posturing of JW finickiness makes war worse by trying to make it respectable.

...there is something very distasteful in accepting war as an instrument and at the same time wanting to dodge responsibility for its more obviously barbarous features. Pacifism is a tenable position, provided that you are willing to take the consequences. But all talk of "limiting" or "humanizing" war is sheer humbug,...

Why is it worse to kill civilians than soldiers?...

War is not avoidable at this stage of history, and since it has to happen it does not seem to me a bad thing that others should be killed besides young men...the suffering of this war has been shared out more evenly than the last one was. The immunity of the civilian, one of the things that have made war possible, has been shattered.... I don't regret that. I can't feel that war is "humanized" by being confined to the slaughter of the young and becomes "barbarous" when the old get killed as well.

...War is of its nature barbarous, it is better to admit that. If we see ourselves as the savages we are, some improvement is possible, or at least thinkable....

I do object to the hypocrisy of accepting forces as an instrument while squealing against this or that individual weapon....⁸

William V. O'Brien has long argued, as early as 1967,⁹ that the rest of the JWT can be preserved by abandoning the principle of non-combatant immunity.

Credible deterrence demands that there be no such restraint. Proportionality and the other criteria can still be respected. His careful redefinition is the smallest, yet sufficient component of the shift which Orwell and Dulles had made more massively.

This view must certainly be taken account of in any typology of attitudes to the morality of war which intends to deal with the real world. Yet it is not identified, and even less made an object of serious dialogue, in the bulk of contemporary literature by our most expert colleagues. Some of the ethical moves it makes are illegitimate, when measured by the classical theory, but that is a petitionary observation, since the adequacy of the classical JWT is itself what is under question. Even those who claim that the classical JWT is capable of undergoing rehabilitation with a view to effective application grant that it has long not been applied effectively, whereas this view can claim decades of "success" in averting nuclear war.

This view is not a "holy war" view. It does correlate with a high view of the moral values being defended by one's own political system, so that for both the Soviet strategists and our own great risks are justified; but there is no desire to destroy the enemy as long as the ultimate shootout can be avoided. There is no claim that the enemy's infidel status demands his destruction or the subjection of his lands to our administration. The umbrella of MAD can even shelter the ephemeral *detente* of SALT and Helsinki.

This view is not machiavellian, absolutist, or "realist." It is humane, morally accountable, humble in its awareness of the ambivalence of all simple answers, and concerned lest civilization be destroyed, not jingoist, chauvinist, or unself-critical. In Orwell's use it is conscientious about other values; he rejects name calling and lying. As long as the disproportionate threats do succeed in mutual deterrence, they not only ward off the nuclear holocaust which they menace the enemy with; they may even impose some limits on the degree to which conventional wars are permitted to escalate. To the extent to which local wars in Indochina, the Middle East, southern Africa, or the Persian Gulf are dependent for their escalation upon superpower supply lines, the ultimate fear may motivate the superpowers to discipline such escalation. Certainly such ultimate fear was part of the reason for the decision of President Eisenhower not to intervene for the defense of free Hungary in 1956, whereby the other pillar of Secretary Dulles' announced policy, the rolling back of the Iron Curtain, was tacitly abandoned.

So we have to recognize a new logical type demanding recognition as such. If we call it a variant of the JWT, then it must be seen to be as different from the classical multivalent form as is the holy war.

Now we can proceed to a formal description of the Fisher-Orwell-Dulles position. It is a fair characterization to say that this position is consistently consequentialist. It gives to "peace" a very great value. It gives to the maintenance

of a tolerable balance within the present world political order a greater value than to any profound change within sections of the system or the total system. Once "peace" is so defined, then a wager in which enormous threats keep that "peace" from being shaken is a wise wager, as long as the probability of preventing the worst seems to the experts to be high. That it "works" is proven by the way in which the generation of the active involvement of Admiral Fisher the British control of the seas did actually exclude any world conflagration. It is demonstrated again by the way in which the nuclear balance of terror claims to have successfully kept world "peace" for the last generation. It is demonstrated in the way in which the network of "National Security" states have held the lid on domestic change in South America since the fall of Allende. The condition of its working is the credibility of the threat of utterly disproportionate retaliation. Meeting this requirement includes both technical questions such as whether our weapons are really that strong, and psychological questions such as whether we are really ready to use them, or the more refined question of whether we can convince the Russians that we are ready to use them. All of this is thoroughly consequential. What it would take to refute it in its own terms is clear. That it is deeply different from the classical JWT is clear. Asking what it would take to refute it on systematic grounds sends us back to the classic ethical debates about the limits of utilitarian reasoning, and therefore is not specifically a debate about the just war.

Within its own terms this view has a strong case. By abandoning the unmanageable mixture of styles, it promises to shorten war once it has begun, by not being finicky about means, and to prevent all-out nuclear war completely by effective disproportionate threats.

All that it sins against is the deontological immunity of the innocent; but one can argue that that value had already become vestigial under the impact of double-effect reasoning. To put it another way: in the mix of logics, the multi-valent JWT has long been the terrain of a losing battle, with deontological and juridical styles losing ground before consequentialist and national-sovereignty pressures. Orwell's defense of obliteration bombing (more consistent than Michael Walzer's effort to explain it *within* JW categories by inventing a new but undefinable limiting concept of "supreme emergency"¹⁰) rounds off that victory of consequential reason for WW II and opens the door for Dulles.

Though they are the same with respect to what I am discussing (disregard for the triad of discrimination, proportion, and immunity) Orwell and Dulles differed in one way. With Dulles the threat successfully deters; it is possible to bluff (or, as a part of negotiation, to delay striking). The disproportionate damage is never actually inflicted. With Orwell, one actually fights indiscriminately in order to minimize total disutility. The Orwellian approval of city bombing in WW II could be carried out without destroying the world; MAD cannot. Is this a differ-

ence of kind or only of scale? Or of timing?

A sincere user of the Fisher/Orwell/Dulles view needs to defend it against the classical JW view (as Orwell was doing in the text I read). Likewise the JW view, if any restraints are to continue to exist, derived from proportionality and noncombatant immunity, without being whittled down to insignificance by double effect and supreme emergency, needs to argue against Orwell/Dulles. The "realist" or the pacifist cannot argue against both at once, for they differ. The difference between them matters more for national policy than does their common rejection of pacifism, of "realism," or of the crusade. Yet there has been little such debate. Since John Kenneth Ryan in the 1930's¹¹ and John Ford in the 1940's,¹² people trying to resuscitate the JWT have been arguing that the notion of the noncombatant has not become meaningless. Some Vatican documents have put the whole weight of their rejection of nuclear weapons on the ground that it is in principle indiscriminate or disproportionate. But none seem to have argued openly, in the awareness that it is an argument between ethical systems and therefore calls for other than petitionary proofs, why proportion is always necessary, if in fact a wildly disproportionate threat will keep the peace. Nor has it been argued why noncombatants ought to be spared, if by being less careful about them one would win the war with less total death and destruction (especially since, with considerations of double effect, fortress theory, and supreme emergency, their immunity was already far gone).

If this is the lay of the land, just war discriminators and utilitarian deterrers should debate more with each other rather than ganging up on the pacifists. (The pacifist agrees with the JWT that indiscriminate consequentialism is wrong, and agrees with Orwell that the JW discriminator's scruples are ineffective.) The recently broadened nuclear debate boils down to this: utilitarian deterrence vs. classical JWT discrimination.

As far as a third party observer can say, the argument could logically go either way. Orwell might be able to argue effectively that the classical multi-logic JWT was always a confusion in principle, and boiling it down to an honest consequentialism updates its essence faithfully. An anti-Dulles JW advocate would need in return as never before to clarify what the non-negotiable non-consequentialist elements in the tradition still are, and how to make them work. Either way we should gain in clarity.

NOTES

1. James F. Childress, *Moral Responsibility in Conflicts*, Baton Rouge, Louisiana State University Press, 1982. Similarly, Ralph B. Potter, Jr., "The Moral Logic of War," *McCormick Quarterly*, Vol. 23 (1970), p. 203-33.
2. James Turner Johnson, "Toward Reconstructing the *Jus ad Bellum*," *The Monist*, 57/4, October 1973, pp. 461-88; *Ideology, Reason, and the Limitation of War*, Princeton, Princeton University Press, 1975; *Just War Tradition and the Restraint of War*, Princeton, Princeton University Press, 1981; "Just War Theory: What's the Use?" *Worldview*, July/August 1976, p. 41-47.
3. David Hollenbach, S. J., *Nuclear Ethics: A Christian Moral Argument*, New York, Paulist Press, 1983.
4. Strictly speaking, pacifism need not argue so much. To deny that there could ever be conceivably justified exceptions to a general prohibition represents an extreme statement more pertinent as an exercise of metaethical methodologism than as ethics. To sustain pacifism as a social ethic, it suffices to deny that the case overriding the prima facie untouchability of life is sufficiently weighty and probable to justify *institutionalizing* provision for war as a normal peacetime institution. Pacifism need not deny conceivable exceptional situational warrants for one life's being saved at the price of another, or even for some other value's being worth the loss of life. What it denies is the legitimacy of war as a civil institution.
5. The classical debate is reviewed in Richard A. McCormick and Paul Ramsey (eds.), *Doing Evil to Achieve Good*, Chicago, Loyola University Press, 1980.
6. *Summa Theologica*, Part II/II, Q. 40, First article, quoting Augustine *Contra Faustum* XXII. 74. Reproduced most accessibly by Arthur Holmes (ed.) in *War and Christian Ethics*, Grand Rapids, Baker, 1975, 106ff.
7. Cited in Barbara Stanford (ed.), *Peacemaking: A Guide to Conflict Resolution....* London/New York, Bantam Books, 1976, p. 6.
8. George Orwell, *As I Please*, Vol. 3 of *The Collected Essays of George Orwell*, London, Secher and Warburg, 1968, pp. 199-252.
9. William V. O'Brien, *Nuclear War, Deterrence, and Morality*, New York and Westminster, 1967, pp. 60, 85ff.
10. Michael Walzer, *Just and Unjust Wars*, New York Basic Books 1977. Walzer argues for the concept of a "supreme emergency" releasing the defender of Western democracy from the constraints of noncombatant immunity, "Do justice unless the heavens are (really) about to fall." At that point "necessity" takes over and there is no real choosing. Yet he rejects the real strategic decisions made in World War II under that justification. Kenneth L. Brown critiques Walzer appropriately in "'Supreme Emergency': A Critique" in the *Bulletin of the Manchester College Peace Institute*, Vol. 13, (1983), p. 6-15.
11. John Kenneth Ryan, *Modern War and Basic Ethics*, Dissertation, Washington, D.C., Catholic University of America, 1933, also Milwaukee, Bruce, 1940.
12. John C. Ford, S. J., "The Morality of Obliteration Bombing," *Theological Studies*, Vol. V, 1944, p. 261-309.