

CIVIL DISOBEDIENCE AND THE STATE

The Democratization of Just War Theory

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It seems true to say that on the matter of war all Christians travel a common path—a path recognizing the sacredness, the high value of life and the awfulness of life-taking—until they come to a fork in that road, with one route being pacifism, and the other being the acceptance of war as a sometimes just act. The essential meaning of Just War theory is portrayed by the second path: it is an assertion that under some circumstances war may be a justifiable enterprise for the Christian. To say that war's justice or lack thereof cannot be known *a priori* but only after an examination of the values at stake and an assessment of circumstances; and thereby to place war along with other classes of human action under the aegis of prudence—that is the basis of the Just War position.

Though such non-Christians as Cicero had formulated thoughts on Just War, it was largely through the works of Augustine, Aquinas, and Grotius that the doctrine or theory of Just War was worked out. It will be useful briefly to note its main elements and to comment on the character of the formula.

There are several rules or criteria for deciding *whether* to war. There is to be a "just cause"—which in the modern situation has come to mean that a nation should war only in self-defense. But this would be done legitimately only after all other means of conflict settlement had been exhausted, such as mediation or arbitration of grievances. Furthermore, before electing to go to war, the nation must judge whether there is a reasonable expectation that the good sought can be achieved without exacting human costs that would outweigh it. (It is at this point, I gather, that the so-called "situationist" or nuclear pacifist enters the argument by saying that war involving nuclear weapons would automatically be unjust and un-doable because automatically disproportionate.) And the decision to war is to be made by the legitimate political authority of the nation.

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But the question of a war's justice does not cease when war is begun, even if begun justly. It must be conducted justly as well, and the primary rules of the Just War theory in this regard are discrimination and proportion. Paul Ramsey's definition of the principle of discrimination, which I accept, is "the moral immunity of non-combatants from direct attack." For Ramsey, and traditionally, this does not mean that non-combatants may not be killed, even knowingly killed, but that their destruction cannot be the object or purpose of military action. The principle of proportion means that the actions taken in war must promise not to produce evil effects greater than their benefits. I interpret this to include also the notion that no greater force than necessary should be employed to accomplish a given objective.

Thus, Just War theory offers several principles to help answer two questions: to war or not; how to war if to war. Perhaps two points most need to be made concerning this formulation. First, it strikes me as pretentious to refer to this Just War position as a doctrine, as if it were a quite elaborate and distinctive structure of thought and value. The essential elements of the formula seem little more than a counsel to approach the problem of war as you would approach any other matter of consequence: with an awareness of its own peculiarities; sorting out and establishing priorities among the various values in conflict; assessing the feasibility and likely costs of alternative lines of action; on balance, deciding what should be done. If you are a Christian, a lover of all men but not a pacifist, you are likely to find the specific rules of the Just War tradition quite obvious workings-out of your general beliefs in the specific context of military conflict.

The second observation is more important for the subsequent parts of this paper. It is that each of these Just War principles, with the exception of the provision for war being declared by a legitimate authority, portrays a situation demanding *judgment*. Is the threat severe? Can it be met successfully? Are there any possibly productive avenues for resolving the problem short of war? How much force is enough? Will a seemingly humane minimal force actually turn out to be inhumane because conducive to protracted

rather than brief conflict? This judgmental character is true even of the principle of discrimination. Paul Ramsey calls discrimination an absolute principle, never to be violated or overridden, and I think he is right, in a sense. It is, I believe, irrational to set out to kill non-combatants, even in a just war. The point of war is to neutralize a force which threatens you, and by definition the non-combatants are not such a force. To intend to kill them would be murder.

But there is another sense in which discrimination is judgmental and applied prudentially. Ramsey says in order to neutralize the threatening force it may be unavoidable and licit to kill non-combatants indirectly and unintentionally—but knowingly. But how much such damage is tolerable? How many people can you knowingly but unintentionally and indirectly kill? This question clearly becomes part of proportionality, and can be answered only with reference to judgments made about the fundamental stakes at issue—and in this it is like the other elements of the Just War position. These principles require evaluation and application in the concrete situation. The answers can seldom be clear, never self-enacting, but only proceeding from human judgments.

And there is the political rub. The principles of Just War become operative only *after* the classic political question is answered: who should do the judging? The question is, should this nation war or not in this specific situation, and how should we do it if we do it; but the question behind the question is who will decide for the nation, or how will the nation decide? This question did not even exist for the Prince, but it exists for democracies, where there are no Princes or rather, where each of us claims to be one. Indeed, as I will suggest below, the question of who is to decide the justness of war is the primary battleground for Just War theory today. It is on this battleground that the problem of Just War's utility for contemporary society must be resolved.

Before grappling with that problem, however, several additional analytic points about Just War's meaning should be noted. As we have seen, the Just War theory is simply an attempt to devise a logical structure for deciding whether to war, and for maintaining human control during war. But it is both these things and is rational only *after* the judgment is made that the pacifist path is not the proper path of Christian judgment. I believe that judgment to be correct and reject pacifism on the basis of a straight-out greater good/lesser evil projection: I believe that greater evil to my brothers would be forthcoming from the adoption of a pacifist stance than by its rejection.

Joan Tooke establishes that the very early Church

was significantly, though not uniformly, pacifist. But under several impulses, the Christian attitude toward war began to change. "Gradually, the toleration of war increased. There developed a moral laxity within the Church which encouraged compromise with secular practices, the hope of the immediate return of Christ faded, and with it a certain unworldliness." (*The Just War in Aquinas and Grotius*, London, 1965, p. 7.) To refer to this as a "moral laxity" appears to beg the central question. That a change occurred is clear; that it involved an accommodation of the faith to the world is equally apparent. But was it, is it, moral laxity?

It seems not so to me. In his *Church, State, and Education* Sir Ernest Barker notes comparable changes but offers a quite different interpretive framework for them. Barker suggests that in making such accommodations the Church was deciding to be a Church of the people rather than a sect on the fringes of society. In this interpretation, which impresses me, the Church was certainly not endorsing war or selling its own virtue, but recognizing that states *do* war and trying to bring it under some rational, human, and Christian control.

I think this same attitude can be seen, for example, in the works of Ramsey, to my knowledge the most important contemporary commentator on Just War theory. The primary thrust of Ramsey's work has consistently been on the principle of discrimination, on differentiating tolerable and intolerable strategies and devices of warfare. This is not because Ramsey delights in war, but simply because he anticipates its recurrence, and does not want to see reason abandoned in the doing of it.

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I think this is a totally rational posture, but I have doubts that a Christian can be content with it as a final conceptual resting place. Conflict undoubtedly is chronic among men, but war need not be. I see no possibility of war being overcome by one nation or one people renouncing it on pacifist grounds. If one seeks the circumstances in which war might indeed be overcome, I think they are to be found only under a political authority, i.e., in a unified world government. War seems to be a characteristic among states; it is not a characteristic *within* states blessed with effective political institutions. That the prospect of a one-world government carries with it its own potential horrors—especially that of eliminating political options—is clear. Still, if one wants the avoidance of war badly enough, this seems to me the only condition for its attainment.

A final point on this issue. From one perspective,

Just War theory, though ancient, ought to feel very comfortable to moderns. It is an early instance of a normatively informed situationalism or contextualism. It does not say there are no moral rules for war, but it does say these rules are not operative before and outside the actual existing situation. It says, in a sense, that as a matter to be decided by political man, war is not unique. It must be governed by justice, particularly by a sense of proportion, and if one can devise a kind of formula for it, so much the better. One could equally well elicit principles concerning, and thus a prudential apparatus for, a just interest rate, a just wage, or, as I was once asked to do, a just drunk. In all of these areas, judgment is still required.

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So conceived, what is the relevance and utility of Just War theory in the modern, democratic state?

As I suggested above, I take this to be the primary area of conflict for Just War theory. Some of the major forces in the conflict can be identified: on the one hand, we have several impulses toward individual autonomy; on the other we have several traditional impulses toward social and political unity.

Democracy itself is an invitation, if not a demand, for the individual to assert himself, to play in some fashion a decisive role in the shaping of national policy—including war. But some factors of more recent vintage have magnified this institutional tendency. A burgeoning personalism is one such factor: this includes the belief that the individual can no longer hide his own responsibility behind the curtain of authority; and it is accented by the growing religious awareness that religious convictions must find social expression, which necessarily involves overt action. And surrounding these factors is another of immense significance: the absence of a transcendent social value-giver recognized as authoritative by most of society's members. There is no church and increasingly there seems to be no fountain of myth which can claim ethical preeminence. This serves further to free the individual, but we need to note that it also frees the state.

In very real tension with these conditions are several political factors quite *unchanged*—indeed, as far as I can see, essentially changeless. There is first of all the unchanged need for political authority as the ultimate integrator of society's multiplicity. And there is the companion of this, that political authority exists to act, to decide what should be done when there are significant social disagreements about precisely that. And this means, even if one grants that justice itself is a transcendent value, that political

justice ultimately comes down to a specific decision by some specific agency—and some in society will inevitably disagree with the justice of that decision.

Taken singly, these assertions about contemporary reality will cause little stir and they shed little new light. The problem, however, is to see them as related to each other, to see what they mean when synthesized. In my judgment, most of the current confusion about the utility of Just War theory derives precisely from a rather general failure to bring these several values together. The tendency rather is to so exalt one set of values as to exclude the other. If these multiple values are brought together, what should it mean for society and for the individual; and what should it *not* mean? I trust it is clear that in the following comments I will be suggesting how, on the matter of Just War's implications, I think the individual's conscience should be formed. I am not suggesting, in other words, that the individual should follow these strictures even if his conscience does not accept them. The individual must follow his conscience, but I think conscience reflects values seen, and I am offering certain values for consideration.

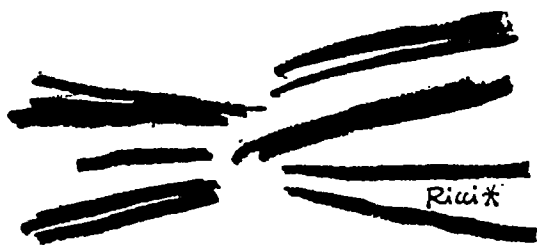
We can note at the outset an area of general agreement: that, particularly in a democracy and in a personalist age, the justice of war is a necessary concern not only for those officials formally charged with making national policy but for all citizens. We want policy-makers to be concerned with the justice of war, and we hope their decisions are governed by such a concern. But we know also that these men are alert to their public, and to the judgments harbored by the public on the efficacy of a policy such as war. In that sense, the citizen judging the justice of war is immediately related to the policy process itself.

Furthermore, we realize that, even if all parties are well-intentioned, the individual's judgment may be diametrically opposed to the judgment of his government. Both may accept implicitly the Just War rules for deciding whether and how to war, and yet differ violently as to their application in a given case. And in this violent difference, they both may be subjectively right. This is the problem: what ought to be said of it? What should it mean to the individual, and what should it mean to society?

According to *Commonweal*, *America*, and *Christianity and Crisis*, among others, the logic of Just War theory in this situation means among other things that the United States should adopt a selective conscientious objection provision for its draft procedures. Their reasoning is remarkably alike, and may be summarized as follows: a given war is either just or unjust; the individual may judge it to be unjust, in opposition to his government; but the individual must,

of course, follow his conscience; therefore, society must give him a non-war service option, rather than confront him with the unhappy alternatives of jail or violating his conscience.

There are several problems with this formulation, the greatest of which is that it is a non-political argument for a political policy. That is, it correctly identifies a value—the individual should be encouraged to follow his conscience—but incorrectly proceeds to *deduce* a policy from this one value. Specifically, it fails to consider seriously the value of social cohesion and integrity, and the impact a selective conscientious objection provision would have on it. I agree entirely with the abstract desirability of selective objection; but whether it is a desirable policy depends on how it can be harmonized with other values in tension with it. In a rather lengthy analysis of this issue elsewhere, I have noted several other problems with most advocacy of selective objection, particularly its implicit claim that war uniquely among political problems causes moral anguish and pangs of conscience. And perhaps it should be noted that I advocate a selective conscientious objection policy, under the conditions cited above.



For those like himself who believe Vietnam is a woefully unjust war, Jay Neugeboren in *Commonweal* (June 16, 1967) offers another meaning or implication of Just War theory: "Disobedience Now!" Neugeboren approvingly quotes a statement circulating among Stanford faculty: "The anti-war movement is now large enough and broad enough that one part of it can step out in front and say: *We do not want to protest the war any longer; we want to stop it. We are prepared, through massive civil disobedience, to say NO to our government.*" (Emphasis in original.) And Neugeboren notes that this statement had a cover letter which said that the disobedience "will be in the spirit of the non-violent acts undertaken by Martin Luther King in the civil rights movement—except that our action will be on a much larger scale. (We are considering such actions as the blocking and immobilizing of major army induction centers and manufacturing plants, encouraging draft resistance, and sitting in at government offices. . . .)"

To this one must say again, follow your conscience

—and if that comes out to mean disobedience now, so be it. No one can say a government should never be disobeyed or never overthrown. One only hopes that you have bothered to inform this conscience you must follow. One hopes, for example, that you know the political difference between dissent and disobedience; that you know that if society through its legitimate decision mechanisms is unwilling to conform its policies to your discontent, it has no obligation to accommodate you; that you know that through disobedience, unlike dissent, you are attacking the political system and social fabric; that you know that to do this rationally presupposes not just that the policy in question is wrong but that the system itself is corrupted; that you know, since anarchy is no option, that even if the system is corrupt you had better have in mind a superior alternative and a method for achieving it; that you know that Martin Luther King's disobedience in the South is a questionable analogy because he was appealing to the highest part of the political system to amend a lower part which was out of harmony with the rest; that you know the power of example which your disobedience may offer to other persons with other grievances; that you know finally that for anyone not sharing your convictions you are only offering another political judgment which has about it no distinctive claim to moral authority.

But there is another larger problem with both these suggested implications of Just War theory. It is a problem not concerning their intrinsic rationality, but rather the inadequacy of their political results. If your concern is the promotion of justice in American policy including war, rather than the achievement of some self-administered catharsis, then you are likely to agree that the greatest weakness of these and comparable uses of Just War theory is simply that they are of secondary social and political importance, even though they may be of great concern to some individuals. To understand this, it will be worthwhile to probe the impact such actions can and should have on the rest of society and on the government.

Many analysts have noted the problem of bringing Just War theory to bear on a conflict in being. William O'Brien, for example, has stated that "Critics of Just-War theory who charge that their exponents never seem to find anything that their [own] state is doing unjust are, generally speaking, quite justified." (*world-view*, March, 1967, p. 10.) Gordon Zahn asserts that ". . . it has always been the case that those who are most devoted to the development and dissemination of Just War theories in the abstract have usually been lamentably reticent about applying their fine theories

to actual wars-in-progress." (*worldview*, December, 1965, p. 11.)

And John C. Bennett offers a widely-shared judgment about the causality behind such seemingly craven behavior. We can understand this behavior if we have "a realistic understanding of the temptations to which nations are especially vulnerable." Drawing on Reinhold Niebuhr's *Moral Man and Immoral Society*, Bennett says that "'patriotism transmutes individual selfishness into national egoism.' This enables good men to become the instruments of the pride and ambition and greed of nations."

I am not much inclined to dispute what these men put forth as fact: that few Just War theorists are likely to convict their own nations. But I am quite uncomfortable with the causal explanation offered. There is truth, I am sure, in the contention that national egoism is a danger. Indeed, one sees this danger manifested regularly. But I think it is an insufficient truth for explaining why in fact most men, including most Just Warriors, tend to follow their government in war. There are other reasons, perhaps even more compelling.

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I would ask you to consider the following. How does one conscientiously form an opinion about a war contrary to that of the government or an alternative, opposition government? How precisely is the citizen to make a prudential, rational judgment that his government is wrong and irrevocably wrong? What, in short, is the likelihood of many men making such a judgment on the basis of any principle which could remotely be called Just War theory? Many men, of course, may come to oppose participation in a war, and may punish a government for being involved in it—but the reasons are not likely to be so impressive as to be called Just War reasons. A government is not likely to be rebuked for defying the principles of Just War. Why?

We have already noted that for none save the pacifist is a given war seen *directly* as wrong from the single perspective of religious belief. And it is crucial to note that for the pacifist, this direct categorization of the war as wrong is not necessarily a critique of *this* war, but only a fallout from the larger rejection of war as such. In other words, it is not necessary for the pacifist to judge the particular war, such as Vietnam, in its own terms. Logically, rationally, he does not need to *know* this war to condemn it. But what about those of us who reject pacifism?

Anyone of us, of course, may declare a war such as Vietnam to be wrong on any number of grounds. But we must do it judgmentally. That is, we must do

it on the basis of certain theoretical principles of politics we hold to be true—principles, for instance, about the role of power, the role of the nation-state in the international order, and so on. And we must judge further on the basis of certain presumed truths about facts—facts peculiar to the conflict we are trying to judge, such as who is the adversary and what are his aims, what are the values involved in fighting or not fighting, what are the likely human costs of action or inaction. On such bases, explicit or implicit in his mind, the individual judges this war—he forms an opinion about its justice or injustice.

What are the implications for most men of this rather simple fact? I suggest that most men unaided by institutionalized political leadership do not have either the rational or factual truths needed for circumspect decision about most matters of national import, including war, and further that we would not expect them to if we thought much about it. Most men are too preoccupied with their own legitimate concerns to spend much time on such headache-generating matters as what Hannah Arendt calls *rational* truths of politics—truths of a theoretical kind—and such time-consuming matters as *factual* truths about this or that policy, even this or that war.

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Given this, the next point is clear enough: when the crisis arises, most men will look to someone else for authoritative judgment—and they should. And if, as almost surely will be the case, there are many conflicting judgments abounding in society, most men will look to and follow the government, or the political opposition trying to become the government. And they will follow this political leadership not just because men are weak and sinful—though I agree we are—but they will follow it because that is what political leadership exists for—and nothing else can make that claim. In a representative system, this is what most men elect the government for—and nothing else can make that claim either. This has nothing to do with any notion that government will always be right, or that it is right in a particular instance. Governments can err, of course, they can deceive—they can and they do. But this does not distinguish them from anyone else. Walter Lippmann, Cardinal Spellman, U Thant—who among them is guaranteed error-free in their grasp of theory or fact? What distinguishes governments is simply that they exist to decide what should be done. And we should not be surprised nor scandalized when we see most men making their judgments of war's justice or injustice simply by affirming one or another of the alternatives offered them by one or another political leadership.

Thus if you want to say that the justice of war should be judged by all citizens as well as by magistrates, well and good, and I agree. But this does not destroy political reality. It does not destroy the central fact of politics: that men need the state, and needing it tend to follow it. To universalize the scene of Just War deliberation is a worthy objective. It seems simply another way of seeking an enlightened and responsible citizenry, and it would undoubtedly heighten the possibility of Just War principles operating in the political sphere. But it does not make each Just War practitioner his own government.

Considering these things, one can better see why using Just War theory as a basis for selective conscientious objection or "Disobedience Now!" is unlikely to accomplish much more than some kind of individual fulfillment. This may be good in itself, but it will not bring justice to war. Simply put, not many men will take the kind of action those two programs imply. And, I think it can be said, as long as men are as we know them, not many should take that kind of action, for not many have grounds for following anyone but their government or an alternative leadership.

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What does all this mean for the utility of Just War theory in contemporary society? Negatively, it means that as long as Just War theory is thought of as a kind of Moral Rescue Squad which, after the catastrophe has happened, is rushed to the scene to salvage whatever is salvageable, it has little utility at all. Positively, however, it suggests how Just War theory may have a limited but crucial utility: if its principles, and its attitudes and concerns can be transformed into a political constant, a permeative element of the political order itself. The first and best hope for war being chosen (or avoided) justly and being conducted justly is that the decision structure *before* the fact has a cognizance of and respect for the principles of a Just War.

I do not have a How-to-Permeate-the-Government-with-a-Sense-of-Justice Kit. But I will offer some broad principles about how this might be done, with the forewarning that my prescriptions call for work that is slow to bear fruit if it ever does. First, make a political system that is genuinely representative of and responsible to society. You must see whether the present one is and if it is not, use its own devices to make it so. Most important in this regard, perhaps, you need a system in which leadership can be confronted regularly by another political force which it cannot ignore. Such an opposing force, which must itself be the alternative leadership, enhances the possibility of political discourse being complete, being

honest, and being restrained. In turn, such discourse heightens the opportunity for citizens to make rational judgments about events—and the likelihood of such judgments is a great spur to responsible and rational action on the part of the political leadership.

I have here asked that part of the concern for justice be a concern for political institutions. And I would ask the following questions: How many of you, in concert with thousands of other vocal persons across the country, have in the last two years criticized Lyndon Johnson on the grounds that he was not straightforward about Vietnam in the campaign of 1964? And how many of you have gone the next step to examine the process of Presidential campaigns, to see if as a rule, or *ever*, they are conducive to straightforwardness, coherence, and responsibility?

Next, learn to use politics as you use your car or your home: all the time. A specific decision such as involvement in Vietnam is a reflection of hundreds of prior decisions and judgments made over many years: decisions and judgments about the nature of international politics, the character of communism, the role of national power, the capabilities of American power and the like. If you want to influence *the* decision, you had better have had some relation to the myriad ones that came before and which, indeed, may have made *the* decision seem like a self-evident one to the decision-maker.

You need to learn to make judgments on all political matters. Government specifies values for society, but in a representative government the values that will be chosen seldom exist *a priori*. Government itself awaits specification from social forces acting as political influences. If the judgments you make are opposed to the government's position, work to change the policy by influencing the government, or the alternative government, or getting inside the party structure. Just remember that when you have gone down this route, you are acting as a political force.

Finally, make sure this representative system represents a society worth representing. This seems particularly a role for preachers and teachers, for those preachers and teachers, at any rate, who do not think the identification and enunciation of normative principles a totally unworthy task. If the political system is truly representative, it will reflect those values—principles, if you wish—which are immanent in society. Someone needs to teach that international justice is a proper concern for all, and someone needs to teach that national interest may include more than Morgenthauian power and Niebuhrian ego.

If we do such things as these, we may have a chance, if only a chance, that our wars, if they must be at all, may be just.