

JUST WAR, PACIFISM AND THE ETHICS OF PROTECTION

Craig M. Watts

Minister, Royal Palm Christian Church (Disciples of Christ), Coral Springs, Florida

From the dawn of the Just War Tradition (JWT) its defenders have depicted the Christian's participation in warfare as an expression of love. This is not simply because an inward disposition devoid of hatred is required of Christians even in war. Rather it is also because a war that is just is a war that protects the innocent from the unjust violence of aggressors. So it is not the participation in war, but the failure to extend the needed protection to the innocent that is unloving. In view of this advocates of the JWT have contended that pacifists can be rightly faulted for lacking love toward the blameless and defenseless who are in harm's way. In contrast, it is my contention that ethical dilemmas faced by pacifists in regard to the protection of the innocent are shared by those who align themselves with the JWT. What separates pacifists from just warriors is not that the former will not protect the innocent while the latter will do so. Rather, the two are distinguished by how each of them negotiates the dilemmas involved in protecting the innocent.

War and Love

Among the earliest proponents of the use of force by Christians to defend the innocent was Ambrose, who in the fourth century wrote, "The law of courage [is] in driving away all harm."¹ The failure to offer needed protection was for him a failure of faith and love.

¹ *On the Duties of the Clergy* 1.179 in *The Nicene and Post-Nicene Fathers*, Second Series Vol. 10, ed. Philip Schaff (New York: Charles Scribner's Sons, 1887), 30.

Likewise for his student Augustine. The use of deadly force for the sake of the neighbor was viewed by him, not as a contradiction of the love commanded by Christ, but an expression of it. Indeed, it was Augustine's view that those who are capable of protecting the innocent are morally obligated to do so. Consequently, he could insist, "Many things must be done with a certain benevolent harshness."² In his letter to Boniface he addressed the issue of war as an extension of the obligation to love one's neighbor.³ Centuries later Aquinas placed his reflections on war in his discussion of the virtue of charity.⁴

If love of one's neighbor demands violence and war when the life or well-being of the neighbor is threatened then the pacifist is guilty of lovelessness. John Calvin was not at all subtle when he wrote that the refusal to use violence for a just cause leads one to "become guilty of the greatest impiety."⁵ He held that unless a Christian seeks to provide for his neighbor's safety as ability and opportunity affords, that Christian violates God's law with "heinousness."

While in the name of love a Christian may choose not to defend him or herself, just war advocates insist that love demands that the innocent be protected even if deadly force must be used. In the words of Paul Ramsey, "While Jesus taught that a disciple in his own case should turn the other cheek, he did not enjoin that his disciples should lift up the face of another oppressed man for him to be struck again on his other cheek." Love does not sit idly by while the vulnerable are abused. Rather love endeavors to aid those who suffer, putting an end to the cause of their suffering. "When choice must be made between the perpetrator of injustice and the victims of it, the latter may and should be preferred – even if effectively to do so

² Letter to Marcellinus, Epistle 138 in *The Nicene and Post-Nicene Fathers*, First Series Vol. 1, ed. Philip Schaff (New York: Charles Scribner's Sons, 1886), 485.

³ Epistle 189. *ibid.*, 552f.

⁴ *Summa Theologia* 2-2.40, Blackfriars ed pp 80-85.

⁵ John Calvin, *Institutes of the Christian Religion*, ed., John McNeill (Philadelphia: Westminster, 1960), 1498. IV 20.10.

would require the use of armed force against some evil power," wrote Ramsey.⁶

Adherents to the JWT often maintain that those who refuse to do all they can to protect the innocent are complicit with evil. Those who refuse to bear arms in order to aid the vulnerable end up aiding the aggressors through their inaction. They make the way easy for others who would do harm. And so, some insist that the true test of pacifist morality is "the willingness to protect others in need."⁷ Given that pacifists will not use deadly force in any circumstance, presumably they have failed the test. Guenter Lewy asserts, "[Pacifists have] every right to avoid the moral dilemmas posed by the world of statesmanship and statecraft and seek individual salvation through ethical absolutism and purity, but they have no right to sacrifice others for this end."⁸

Dilemmas in Common

It is a misrepresentation of the Christian pacifist position to claim personal purity and individual salvation are the main concerns. The Christian pacifist is not primarily focused on the problem of having "dirty hands" or with insuring a place for him or herself in heaven. At stake is something else: the embodied presentation of the truth of the gospel before a watching world. Pacifists understand the repudiation of violence as necessary for those who faithfully bear a corporate witness to the gospel of the nonviolently loving Christ. The love that is essential for Christian witness is the love that is shaped by the way Jesus loved. The core mandate of the church to go into the world and make disciples is undermined when Christians go into the world killing and maiming on behalf of nations and causes,

⁶ Paul Ramsey, *War and Christian Conscience* (Durham: Duke University Press, 1961), 143.

⁷ J. Daryl Charles *Pacifism & Jihad : Just War and the Christian Tradition* (Dowers Grove: InterVarsity Press, 2005), 128.

⁸ Guenter Lewy, "The Moral Crisis of American Pacifism," in *Peace Betrayed: Essays on Pacifism and Politics*, ed. Michael Cromartie (Washington, D.C.: Ethics and Public Policy Center, 1990), 35.

particularly when this behavior is condoned by the church. War and the witness the church is called by God to bear are incompatible.

Pacifists reject war but not the protection of the innocent. Pacifists, no less than JWT supporters, hold that the innocent should be protected. Pacifists have neither closed their eyes to nor turned their backs on those threatened by violence. Rather on numerous occasions and in considerable numbers they have made concerted efforts to rescue those in danger of injury and death at the hands of aggressors. Pacifists have suffered, died, and risked the security of their families in order to aid and shelter people who would otherwise face grievous harm. In suggesting that pacifists shirk responsibility for the vulnerable who are endangered, their detractors ignore or discount numerous documented examples of benevolent, life saving intervention by those committed to nonviolence. The issue for Christian pacifists has never been the lack of willingness to sacrifice themselves in order to help their endangered neighbors.

But more than just the willingness to help the innocent is shared by pacifists and those who adhere to the JWT. The moral struggles and practical dilemmas of pacifists and those of just warriors are not utterly dissimilar. This is not to say that there are no serious differences between pacifists and supporters of the JWT, but I believe it is important to recognize the frequently unacknowledged problems that they share and not just concentrate on the more obvious points of conflict between them. A number of the accusations aimed at pacifist by JWT advocates are a result of ignoring that there are ethical dilemmas that are common to adherents of both positions.

Consider the following: First, as I already noted, the difference between those who act within the JWT and pacifists is *not* that the former are willing to protect the innocent and the latter disavow any responsibility to do so. Both desire to protect the innocent and will do so in ways they believe they ought, though they do not always agree on who all should be regarded as innocent. Second, both pacifists and JWT adherents can on occasion be accused of neglecting to protect the innocent simply because they must decide *which* among the innocent should be their focus. There is a wide range of situations in which there are innocent people in danger. Not just the choice of methods but the allocation of resources will leave unprotected some

who are vulnerable. Third, not only pacifists but just warriors as well must be committed to doing *less than* "everything possible" to save the innocent if they are to be true to their stated convictions. Fourth, not only pacifists but adherents to the JWT, as well, can be accused of causing the innocent to die. Both pacifists and just warriors believe their behavior – despite unwanted consequences – serves a cause that is greater than the casualties of their convictions. Each take risks with the lives of others for the sake of their respective causes. Neither can claim to be disconnected from tragedy that arises in some fashion from their own behavior. Fifth, neither those who employ deadly force nor those who reject using it can reliably know the outcome of their actions. It is *not* the case that the use of deadly force for the benefit of the innocent leads to a positive and predictable outcome while the refusal to use violent means guarantees unfortunate consequences for the innocent. I will elaborate on these points in the remainder of this essay.

Defining the Innocent

We must begin by asking the question, "Who are 'the innocent'?" There has been a considerable amount of discussion around this question by JWT theorists. Obviously, "innocence" and "the innocent" in this context have nothing to do with a moral purity. In discussions of the ethics of protecting the innocent, sometimes it is assumed that the difference between those who are innocent and those who are not is clear. Certainly in some cases the situation is fairly straightforward, as when a vicious adult beats and abuses a helpless child. In other situations the distinction between the innocent and the guilty is not so easy to come by. This is certainly true in the context of war. Even in instances where one party in the conflict is overwhelmingly responsible for the hostilities, as was the case with the Serbians in the former Yugoslavia, most of those caught in the violent contest are innocent. They neither initiated the conflict nor understood it.

Among classical just war theorists the innocent include children, women, the elderly, the infirmed, resident aliens and clergy. Men, who have the ability to bear arms, even if they are not in the military,

were often regarded as legitimate targets.⁹ More recently the distinction has not so often been described as being between the innocent and those who are not but as being between combatants and non-combatants or between military and non-military targets. But these distinctions have not been easy to maintain. There is no dark and definitive line between the legitimate targets of war and the innocent illegitimate targets. For instance, there are cooks, physicians and attorneys in the military who perform their duties no differently in wartime than they do in times of peace. Functionally, they are noncombatants, yet they are members of the military.

On the other hand, there are munitions plant operators who provide essential material assistance and technicians who service equipment necessary for the advancement of an effective war and politicians who promote aggressive policies, to say nothing of an electorate who vote them into office. Technically all of these are civilians but in times of conflict their status as noncombatants may be questioned by their enemies. War is made possible not only by those who wear a uniform. In addition there is the matter of what has been called infrastructure targets. Damaging systems of communication, transportation and energy supplies and the personnel who service them can certainly contribute to a quicker victory. Presumably, the more quickly a victory can be achieved the more innocent people will be rescued from harm.

The line between combatant and noncombatant is further blurred in insurgency wars. Those who do not present a threat look no different from violent antagonists. Even children can be regarded as threats. Concealment and surprise are essential in such wars. Hence, virtually all of a population can end up being viewed as potential hostiles by soldiers of an opposing army. Insurgents avoid being easily identified, making discrimination nearly impossible. When those who fight against them fail to be discriminate, thereby

⁹ For instance, Francisco Suarez, "Three Theological Virtues," *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought*, ed. Oliver O'Donovan and Joan O'Donovan (Grand Rapids: Eerdmans, 1999), 740.

increasing the number of noncombatants who die, sympathy for the insurgency increases and the number of insurgents are likely to grow.

Yet despite the fact that the distinction between the guilty and the innocent or the combatants and the noncombatants is sometimes difficult to define, this does not mean that the attempt to discriminate is an entirely futile endeavor. Sufficiently clear is the difference between a bombardier in his aircraft or infantryman bearing an automatic weapon, on the one hand, and school children on a playground or a nurse in a hospital, on the other. Insofar as the JWT is concerned the guilty are soldiers and those directly involved in providing necessary material support of the sort peculiar to the needs of the military. Even though the production of food, the manufacture of medicine and the creation of clothing are essential to soldiers, these activities are not peculiar to the needs of those in the military but are simply human needs and so those who work in these areas cannot be rightly regarded as among the guilty. Their work contributes to life, not war. The innocent are civilians who do not provide material support to the business of fighting, regardless of whether they are personally supportive of the policies of their government. Though these people are among the enemy population, they are not legitimate targets. Regardless of the difficulties of definition and the uncertain cases, a distinction between the innocent and the guilty must be maintained. As political ethicist Oliver O'Donovan wrote, "To lose the will to discriminate is to lose the will to justice."¹⁰ Since war is justified on the basis of protecting the innocent, it cannot be justly fought if effort is not made to avoid harming the innocent.

According to the principle of discrimination, in war the "innocent persons, as such, may absolutely not be killed."¹¹ Or as Vitoria wrote, "[A]n innocent person has done you no harm....therefore it is not permissible to kill the innocent members of the enemy population for

¹⁰ Oliver O'Donovan, *The Just War Revisited* (Cambridge: Cambridge University Press, 2003), 47.

¹¹ Suarez, *op. cit.*, 740.

the injury done by the wicked among them"¹² This commitment not to harm the innocent of one population in the effort to protect the innocent in another population continues in be reiterated by those working from within the JWT from classical writers to the contemporary ones. The American Catholic bishops plainly stated this position in their 1983 pastoral letter: "[T]he lives of innocent persons may never be taken directly, regardless of the purpose alleged for doing so....Just response to aggression must be discriminate; it must be directed against unjust aggressors, not innocent people caught up in a war not of their own making."¹³

For those guided by the JWT, the primary focus of their efforts is to fight on behalf of the innocent from among their own nation and the innocent of its allies. Nevertheless, the innocent among the enemy must be taken into consideration when battle plans are made and executed. But since war is not normally fought on behalf of the innocent among the enemy, the just warrior does not have the same obligation to protect them. In other words, the innocent are viewed in a partisan fashion and the protection afforded them by JWT adherents is grossly unequal. As I will discuss, the commitment to the safety of the innocent among the enemy by JWT supporters is not unqualified but is conditional.

In contrast, Christian pacifists are more likely to insist that all the innocent are equally deserving of protection, be they neighbors near or neighbors far. The obligation to help the vulnerable knows no borders. For the pacifist, simply because one shares nationality, race or ideology with a certain group among the innocent does not automatically give them precedent in relation to one's ethical responsibility to protect. Further, for pacifist the innocent are not restricted to only noncombatants. Even soldiers can be considered among the innocent. Prominent just war theorist Michael Walzer observed that "soldiers in battle and nonparticipating civilians are not

¹² "On the Laws of War," in Francisco de Vitoria, *Political Writings* ed. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991),

¹³ National Conference of Catholic Bishops, *Challenge of Peace* (Washington, D.C.: United States Catholic Conference, 1983), 33.

so different: the soldiers would almost certainly be nonparticipants if they could.”¹⁴ Insofar as the causes of war and the decision to go into war are concerned, soldiers are innocent. Often they understand little or nothing of the political reasons and precipitating events that thrust them onto the battlefield. Most have no personal animosity against those with whom they fight. In fact usually they have no desire to kill or maim anyone.

Soldiers fight because they have been commanded to do so, regardless of whether they understand or agree with the reasons for the conflict. They are provided with information that is likely to inspire them to believe that their efforts are for a worthy cause against an enemy deserving of destruction. Soldiers are propagandized in order that they might be motivated to fight.¹⁵ Rarely do soldiers have the means or the capacity to evaluate the information – or misinformation – they have been given. For these reasons, pacifists are less willing to automatically exclude soldiers from the circle of the innocent, but regard them, too, as worthy of protection. Consequently, pacifists cannot go about protecting the innocent as those who adhere to the JWT do, killing some people in the name of defending the innocent.

Which of the Innocent?

When just war advocates accuse pacifists of being unwilling to protect the innocent, they spotlight only a very select number among the endangered innocent of the world. The innocent among the population of one's own people are given preference by those committed to the JWT. While the needs of the innocent among the enemy population are not totally disregarded, these innocent are not the focus of the just warriors' efforts to protect. However, they are exempted from direct attack. Further, the innocent who are identified as needing protection are precisely those who purportedly

¹⁴ Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977), 30.

¹⁵ See Christopher S. DeRosa, *Political Indoctrination in the U.S. Army from World War II to Vietnam War* (Studies in War, Society, and the Military) (Lincoln: University of Nebraska Press, 2006).

cannot be helped apart from the use of deadly force against some enemy. This assumes that the most pressing life or death intervention is on a battlefield. The duty to protect the innocent is too often presented as the duty to protect *this* group of innocents with whom one is aligned at *this* particular time and place in *this* particular - violent - way. Since pacifists will not take their place on a battlefield, just war supporters argue that pacifists are ethically irresponsible. Pacifists are said to allow the innocent to die, something just war advocates claim is ethically equivalent to killing them.¹⁶

Despite assertions to the contrary, it is untenable to claim that if pacifists do not take a particular sort of action on behalf of a people in jeopardy their refusal to do so is the ethical equivalent of killing them. This claim assumes that there is a direct connection between one's refusal to act destructively on behalf of the innocent and an enemy's deadly action. There is in fact no direct causal connection. Perhaps just war adherents should be asked whether those who fail to give to UNICEF are guilty of the deaths of children, or that their failure to support a CROP walk is the ethical equivalent of starving hungry people, or that refusing to donate blood makes one guilty of the death of people in traumatic automobile accidents who need transfusions. There are many needs and many ways to help. It is also the case that all vulnerable people cannot be rescued by any one person or group. No person or group can do everything. Inevitably choices must be made to act in some ways and not in others, to help certain needy people and not others. War is not the *sine qua non* for protecting the vulnerable and innocent. If the refusal of pacifists to take up arms in the name of rescuing certain innocent people is the ethical equivalent of killing them, then it must be conceded that everyone who has neglected to act in a way that could conceivably save someone's life anywhere is the ethical equivalent of a killer.

It is not by our absence or presence on a battlefield alone that we *allow* the innocent to die. In a world filled with an immense number of simultaneous hazards, the question must not be simply, "Should we protect the innocent?" Rather the question should be, "Which among the innocent should I protect?" If we contend that we are

¹⁶ Charles, op.cit., 112.

always obligated to save the innocent and vulnerable, what ethical basis can be offered by JWT adherents for giving priority to military ventures on behalf of the state over other means of helping the innocent? What basis can be offered for pursuing an armed defense on behalf of the innocent when it is possible to save other innocent people – perhaps many more – in situations without any danger of inadvertently killing bystanders in the process?

Pacifists question, not merely whether the use of deadly force is ethical and compatible with the Christian calling as revealed in Jesus Christ, but whether military defense is the most important and effective way to protect most of the vulnerable of the world. The vast numbers of people whose lives are in imminent danger are not threatened by an armed enemy. Rather their adversaries are in the form of the lack of clean water, insufficient food, inadequate shelter and the absence of basic vaccinations against disease. When JWT advocates suggest that pacifists allow the innocent to die by not taking up arms and serving in the military, they speak from a limited perspective. They neglect the great host of innocent sufferers who can be and are being served by those who use no violence, and they discount efforts that are made far from the battlefield on behalf of those who are endangered. In fact an even greater number of people who are in jeopardy could be helped if funds in military budgets and resources and personnel in armed forces were redirected to fight the nonmilitary threats to the innocent.

Indeed, many of the innocent are left vulnerable because the vast resources that could have been used to help them are diverted into the military. It is not unusual for hundreds of millions of dollars to be spent on an aircraft carrier or a recently designed weapons system when those funds could have been used for immunizations for children in impoverished nations thereby saving millions of lives. If more attention would be given to protecting the innocent in situations where armed violence is *not* an ongoing problem, perhaps the goodwill inspired by the benevolent service would lessen the likelihood of social unrest or international hostility. Likely fewer people would end up being threatened by armed violence. However, by funneling equipment and trained personnel toward armed conflicts in the name of protecting the innocent, many more of the

innocent are *allowed to die*. Pacifists must concede that their refusal to use deadly force on behalf those threatened by violence may indirectly result in the deaths of some who are innocent in certain places. But all others – soldiers included – in some fashion let the innocent die.

Ethical Limits of Protection

Pacifists have been faulted by JWT supporters for not being willing to do “everything necessary” to rescue the innocent. Implied – if not explicably stated – in the accusation is that pacifists are neglectful of the needs of the vulnerable due to fearfulness for their own personal safety or from a desire to remain uncontaminated by spilling blood or due to naivety about likely outcome of not using violence. Whatever the reason, because pacifists refuse to use deadly force they are viewed by their critics as being not genuinely serious about extending protection to those in need of it. In the view of JWT adherents the urgency of the threat faced by the vulnerable legitimates actions that otherwise would be regarded as wrong, specifically, the maiming or killing of others. Pacifists disagree. There are ethical and theological considerations that transcend whatever might be the immediate crisis and these considerations cannot simply be disregarded just because they might inhibit effectiveness in achieving an indisputably good end. There are obligations that cannot be trumped by urgent and rightful needs.

Despite the criticisms they aim at pacifists, the JWT adherents must likewise recognize that doing “everything necessary” to protect the innocent cannot be condoned. Expediency and effectiveness are not the supreme guiding principles for either pacifists or just warriors. Those who think otherwise – and there certainly are Christians who do so – are not truly supportive of the JWT; they are believers in what John Howard Yoder has labeled the “blank check.”¹⁷ Believers in the “blank check” hold that if a cause is just – as determined by the state – every action needed to insure victory is

¹⁷ John Howard Yoder, *Christian Attitudes to War, Peace and Revolution*, eds. Theodore J. Koontz and Andy Alexis-Baker (Grand Rapids: Brazos Press, 2009), 28ff.

justified. While the constraints pacifists recognize are not the same as those that guide people working from within the JWT, still for both there are recognized limits regarding what can be done on behalf of the innocent in need of protection. In the JWT this is given expression in the *just in bello* principles. Consequently, in keeping with the principle of proportionality massive retaliation in response to minor aggression on the part of an enemy is ethically impermissible. This is particularly the case when harm might be brought upon noncombatants, whether or not they are intentionally targeted.¹⁸

The principle of proportion does not just apply to noncombatants but to enemy combatants as well. There are limits to destruction of life and property even of an armed enemy that should not be exceeded. Vast devastation inflicted on enemy military personnel cannot be justified in order to save relatively few innocents since to do so would be disproportionate to the good likely to be achieved. Such a cost would be contrary to the sort of prudential considerations demanded by the principle of proportion. Further, there are consequential considerations. Even if costly efforts succeed in their immediate aim of protecting certain innocent people, the scale of the destruction could hinder establishing a sustainable peace, which is the final goal in every war.

Those committed to just war seek to protect the innocent by violent means that the pacifist will not use, yet there are many actions which are not permitted by the principle of discrimination. Aggressors must not be combated by means of raping or threatening to rape people from among their population. Prisoners of war cannot be summarily executed. Neither combatants nor civilians leaders can be tortured. Water sources cannot be poisoned. Children cannot be kidnapped. Numerous other possible responses cannot be enacted by those committed to the JWT who seek to protect the innocent. In other words, "there can be no justification for attacking some innocents in order to protect others."¹⁹ Thus there are circumstances

¹⁸ James Turner Johnson, *Morality and Contemporary Warfare* (New Haven: Yale University Press, 1999), 128, 130f; O'Donovan, *op.cit.*, 44f.

¹⁹ Johnson, *op.cit.* 129.

in which the innocent must be “allowed” to die rather than to do “everything possible” to protect them.

Those who insist that victory should be pursued as quickly and as aggressively as possible without bothering with ethical constraints will protest that their military is “fighting with one arm tied behind its back” if its ruthlessness is tempered by standards of just war. They believe that if the power is available to accomplish a victorious end, that power should be used against an enemy. To do otherwise is to give the enemy greater advantage and further jeopardize the innocent - *their people* who are innocent- whom ought to be protected. On the other hand, those who embrace the JWT - no less than pacifists - recognize that the need to protect the innocent does not in itself legitimate every means possible to insure that adequate protection is given. There are risks that must be accepted, not just risks to the protectors but also risks to those to be protected who must *not* be protected at all costs.

Inevitability of Innocent Deaths

The decisions of both pacifists and JWT adherents can put the lives of the innocent at risk. Though the protection of the innocent is the most basic and enduring justification for war, it is the innocent who are the most frequent victims of war, dying even at the hands of the supposed protectors. Prior to his disavowal of pacifism, Reinhold Niebuhr wrote that it is practically impossible to justify war on any moral grounds. Among the reasons he offered was “the destruction of the lives of the many who have had no share in the dispute and who are innocent of the evils that a war may be designed to eliminate.”²⁰ While the principle of discrimination demands that the innocent not be targeted, to insist that all killing of the innocent be absolutely forbidden would exclude the possibility of war altogether.

The heaviest burden of war falls, not on those engaged in fighting it, but upon those who are innocent insofar as the cause and execution of war is concerned. The large majority of deaths and injuries occur among noncombatants and these are caused by

²⁰ Reinhold Niebuhr, *Love and Justice* (Philadelphia: Westminster, 1957), 248f.

democratic force as much as they are by non-democratic forces.²¹ Noncombatants are the ones whose property is destroyed in battles or confiscated for military purposes. They are the ones who get displaced. More of them endure grief due to the loss of loved ones. They are more likely to suffer from hunger and a lack of healthcare than are soldiers. They are the ones who most directly provide care for the physically maimed or psychologically damaged family members. They are the ones who are taxed to finance war. They are the ones who do most of the work of rebuilding their ravaged country after war. Despite the just warrior's stated intention to protect the innocent, where the war rages, the destruction falls hard on the innocent. Consequently, if pacifists can be accused of being complicit in the suffering of the innocent due to their unwillingness to take to the battlefield, the just warriors are complicit in the suffering of the innocent because of their actions in fighting. Indeed, the deaths of the innocent in war are in absolute terms inevitable and unavoidable even when efforts are made to minimize noncombatant casualties.

As discussed earlier, noncombatant immunity or discrimination is the recognition of responsibility to protect – or at least not to harm – those who are innocent insofar as materially supporting the war efforts of the enemy. The principle of discrimination was not intended to suggest that noncombatants could be utterly protected from inadvertent harm or that they could be, as Paul Ramsey put it, “roped off like ladies at a medieval tournament.”²² As this criterion has developed, noncombatant immunity has become a restraint against *targeting* civilians, not against *killing* them. The advocates of the JWT acknowledge the inevitability of the civilian casualties in war, what in military parlance is called, “collateral damage.” Consequently, if important military installations are found near civilian population centers, concern for the safety of the innocent

²¹ See Alexander B. Downes, “Restraint or Propellant? Democracy and Civilian Fatalities in Interstate Wars,” *Journal of Conflict Resolution* 51 (December 2007), 872-904.

²² *The Just War: Force and Political Responsibility* (New York: Scribners, 1968), 145.

becomes, not entirely irrelevant, but a secondary consideration. Military "necessity" takes priority, a necessity that lead to some desirable end but in the process creates undesired victims.

Just war theorists make a distinction between the foreseen but unintended killing of the innocent, on the one hand, and the intentional targeting of the innocent on the other. The former entails no blameworthiness while the latter results in moral culpability. The innocent may be killed inadvertently but they may not be killed either as an end or as a means to an end. If taking the lives of the innocent directly contributes to the success of a military action then those who bring about the deaths are morally blameworthy. The American Catholic bishops reiterated this traditional position in their 1983 pastoral letter: "[T]he lives of innocent persons may never be taken directly, regardless of the purpose alleged for doing so.... Just response to aggression must be discriminate; it must be directed against unjust aggressors, not innocent people caught up in a war not of their own making."²³

Accidentally killing the innocent is not in itself considered unjust, however unfortunate it might be, if the aim of the agent is good, according to the doctrine of double-effect. The doctrine of double-effect has done much to provide moral cover for those engaged in battle. The roots of the doctrine are in the thought of Thomas Aquinas. His words do not directly address the question of culpability for the deaths of the innocent in war. Rather he spoke to the question of whether a person who kills another in self-defense is morally liable. His theological heirs extended his thought to address the issue of the inadvertent killings of the innocent in wartime. Aquinas wrote,

Nothing hinders one act from having two effects, only one of which is intended, while the other is beside the intention. Now moral acts take their species according to what is intended, and not according to what is beside the intent, since this is accidental. Accordingly, the act of self-defense may have two effects, one is saving one's life, and the other

²³ National Conference of Catholic Bishops, *Challenge of Peace*, 33.

is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life, is not unlawful....And yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end. Wherefore if a man, in self-defense, uses more than necessary violence, it will be unlawful: whereas if he repel force with moderation his defense will be lawful.... But as it is unlawful to take a man's life except for a public authority acting for the common good....it is not lawful for a man to intend killing a man in self-defense except for such as have public authority, who while intending to kill a man in self-defense refer this to the public good, as in the case of a soldier fighting against the foe..."²⁴

Like Augustine, Aquinas refused to sanction the deliberate taking of the life of another in self-defense. He did not acknowledge any intrinsic right to kill in defense. Love forbids only the direct killing of someone who attacks. However, if one's intention is simply to save one's own life and one inadvertently kills the attacker in the process, Aquinas deems this action morally justifiable. A person should not be considered morally liable for such an unintended effect. It was only when killing was done under "public authority" for the sake of a "public good" that he found an exception. Only when protecting the public good in an official capacity did Aquinas see direct killing as "lawful."

Ethicists since Aquinas have appealed to the idea of double-effect, not usually to address the problem of killing an unjust aggressor in the course of self-defense, but to speak to the issue of killing the innocent in war. However, more than simply not intending to harm the innocent in war is necessary for one who would justly fight. As the U.S. Catholic bishops have more recently declared, "Civilians may not be the object of direct attack, and military personnel must

²⁴ *Summa Theologiae*, II II, Q. 64, art 7.

take due care to avoid and minimize indirect harm to civilians."²⁵ In elaborating on the principle of double-effect contemporary just war theorists have laid out four necessary conditions that must be fulfilled if an agent is not to be regarded as morally liable for the destructive consequences of his or her action.²⁶ (1) The action must be good or neutral in its nature and aim. (2) The intended effect must be good, not evil. (3) The good effect must not come about by means of the evil effect but must be a consequence of a good or morally neutral action and both good and destructive effects must be simultaneous. (4) The significance and magnitude of the good effect must be greater than the secondary destructive effect.

These conditions make clear that more than purely subjective intention is required to exempt one from guilt for the unintended evil and destructive effects of an action. A claim of good intention apart from some determination of external good action tends to play into dubious rationalization and self-deception. Some contemporary just war theorists, while not explicitly employing the double effect doctrine, nevertheless reason in a similar way.

Arguing that soldiers fighting for a just cause cannot be held liable for the inadvertent deaths of the innocent, philosopher Jeff McMahan offers the analogy of a driver who presents a threat to the innocent who could be killed in an automobile accident.²⁷ The driver in traffic does not intend the death of the innocent. The death of the innocent does not contribute to the end sought by the driver. The death caused by the driver is not a means to end. Therefore, the driver cannot be regarded as morally liable of the death of the innocent. And so it is for the just soldier in war.

However, the analogy does not hold. First, it is rarely foreseeable or inevitable that the innocent will be killed while one is driving. This stands in contrast to the case of war where the death of the innocent is not avoidable. Second, if in any particular instance of

²⁵ National Conference of Catholic Bishops, *Harvest of Justice Is Sown in Peace* (Washington D.C.: United States Catholic Conference, 1993), 6.

²⁶ See Paul Ramsey, *War and Conscience*, 47f and Walzer, *op.cit.*, 153.

²⁷ Jeff McMahan, "Debate: Justification and Liability in War," *The Journal of Political Philosophy* 16/2 (June 2008), 230ff.

driving the driver could foresee that the venture would inevitably lead to the death of the innocent, the driver would in fact be regarded as culpable. Third, in war, unlike driving, death and destruction is at the essence of the venture and at least half of the deaths in war are those of innocent victims. Death and destruction certainly are possible while driving, but such things are contrary to the very purpose of driving, whereas for soldiers war "is the enterprise of their class."²⁸

McMahan maintains that "all drivers do in fact pose a threat of wrongful harm, both to pedestrians and to other drivers." That alone, he observes, does not make them morally culpable. McMahan holds that "the same is true of just combatants who are fighting in an area in which their action might at some point harm or kill innocent people."²⁹ In fact it is not the same. In war the issue is not just the threat of possible wrongful harm but the virtual inevitability of it. Further, drivers are not united in a cooperative endeavor called "travel" in a manner that is comparable to how soldiers are united in the venture called "war." The effort of one driver does not in any material way contribute to the effort and aim of the others. Each driver is independent of other drivers in a way soldiers cannot be. Therefore, the driver of one vehicle is not liable for the death caused by another driver. Consequently, any liability soldiers have for the death of the innocent is not analogous to the road casualty caused by a driver who is not negligent.

McMahan contends that "justification defeats liability." By this he means "while responsibility for posing a threat of wrongful harm is normally a basis of liability... it is not when the responsible agent is morally justified in doing what threatens to inflict the harm."³⁰ Just warriors supposedly have a significant moral reason for engaging in combat. But given that the most pervasive and enduring moral reason for war is to defend the innocent, it is, to say the least, an irony that the moral justification for harming the innocent is in order to defend the innocent. McMahan argues that the deaths of the innocent

²⁸ Walzer, *op.cit.*,144.

²⁹ McMahan, *op.cit.*, 230.

³⁰ *Ibid.*

caused by just warriors are not morally equivalent to the deaths of the innocent caused by unjust warriors. Only the actions of the just warriors contribute to a just cause. However, if what exempts just warriors from being morally liable for the innocent people they kill is the justness of their cause, what does this imply for terrorists who fight for a just cause? Are they, too, exempt of liability when they kill the innocent?

Obviously because terrorists kill without discrimination, the noncombatant deaths they cause certainly cannot be considered collateral. Terrorists will target noncombatants because they stand no chance of significantly impacting a militarily superior enemy if they face that enemy on the battlefield. But how substantial is the difference between, on the one hand, taking the lives of the innocent who not targeted - though their fate is both foreknown and inevitable - and, on the other hand, taking the lives of the innocent when they are targeted and their fate is foreknown and inevitable? How meaningful is it to maintain that in one case the deaths are not intentional, but in the other case that they are? Yes, it might be claimed that the just warrior must be able to conceive of his or her end being accomplished without the deaths of the innocent. These deaths must not of themselves directly contribute to the just warriors' chosen aims. Yet given so many circumstances in war, the deaths of the innocent are required, even if not desired, in order to take various actions essential to achieve victories. If the innocent were not sacrificed, the ends of just warriors could not be accomplished. Hence, it must be acknowledged that these deaths are not only foreknown and inevitable, but are necessary in the sense that without killing the innocent action could not be taken to accomplish a supposedly good end.

The difference between the deaths of the innocent being required by the just warrior so that a good end might be, on the one hand, and, on the other hand, the deaths of the innocent being required as a means to a good end for a terrorist seem not to be so great as some suggest. In both cases the end cannot be achieved without killing the innocent. In both cases the actors know with a degree of certainty that the innocent will die and must die if an operation is to be successful. The terrorist, no less than the just warrior, claim to be

fighting for the sake of the innocent. I strongly suspect that the terrorist, like the just warrior, would prefer to achieve his or her ends without killing the innocent. How can an action with foreseeable, inevitable – if regrettable – immediate results rightly be held to be “unintentional” in one case but not in the other? I believe it cannot. Still, any attempt to practice discrimination is preferable to the thoroughgoing disregard for discrimination found with terrorism. Yet I do not find persuasive the claim that “justification defeats liability.”

Defenders of just war exclusively focus on the intention of the warrior to the exclusion of the rights of the innocent who are harmed and killed as that intention is carried out. When just war theorists argue that “it does no necessary harm to the justice of a war when innocent people are killed,”³¹ great concern is shown for the rights of war and warriors but too little attention is given to the rights of the innocent to remain unmolested. The just war advocates seek to define the justness of the war in terms of the good intention of the warriors without sufficient regard for the unwanted destructive effects on the innocent where the war is fought. It is not at all clear that the duty to protect one group of innocents overrides the right of another group of innocents to remain unmolested. Since the innocent have done nothing that would justify harm being inflicted upon them, any harm they endure in war is unjustly endured. Unless just war advocates deny this claim, it is difficult to see how those who knowingly and inevitably cause this harm can be said to be without moral liability.

Given that love demands the protection of the innocent and – at least from a JWT perspective – war is sometimes necessary to protect some who are innocent, and given that war cannot be fought without killing others who are innocent, then, we might conclude, one is morally obligated, not just to kill the guilty aggressors, but to kill some of the innocent for the sake of others who are innocent. Otherwise war could not be fought. This would imply that it is

³¹ Alexander F. C. Webster and Darrell Cole, *The Virtue of War: Reclaiming the Classical Christian Traditions East and West* (Salisbury, MA: Regina Orthodox Press, 2004), 146.

loving to molest those who are innocent so long as one's motives are good. Further, it would imply that the right of the innocent to remain unmolested does not supersede the obligation of the protectors of the innocent to molest them in the course of attaining their good ends. There is something perverse about this reasoning and the perversity is not at all removed by insisting upon the distinction between targeting the innocent, on the one hand, and, on the other hand, killing them without intention but inevitably and with foreknowledge.

Supporters of the JWT may say to pacifists, "It is fine for you to choose to sacrifice your life by not killing your attacker. However, you do not have the same right to allow your neighbor to be killed by an attacker." In turn, the pacifist must say to the just warrior, "It is one thing for you to jeopardize your own life in fighting against an enemy who would harm the innocent. However, is another matter for you to sacrifice others who are innocent and have not consented to be sacrificed so that you might pursue your goal." Just warriors maintain that they act out of love for the innocent neighbor and that pacifists fail to be loving because of their unwillingness to kill for the neighbor. However, the just warrior is not equally committed to the right of *all* those who are innocent to be free from harm.

One JWT advocate wrote, "Love frees us to serve others. Love recognizes no natural boundaries. Love considers our obligation to our neighbor. Love seeks to express to others what God has expressed to us. Love wishes for the neighbor what one wishes for oneself."³² But none of these assertions can legitimate destroying one innocent neighbor on behalf of another innocent neighbor and then calling it an act of love. The love which would protect the one does not supersede the loving obligation not to molest the other. It is a strange sort of reasoning on the part of JWT adherents to argue that it is ethical to inadvertently – though inevitably – kill the innocent of one group to preserve others who are innocent but unethical on the part of pacifists to refuse to defend the innocent with deadly force, thereby avoiding the taking of the lives of others, the innocent along with the guilty.

³² J. Daryl Charles, *op.cit.* 107.

Calculating Outcomes

When pacifists are criticized for refusing to use deadly force to defend the innocent, several assumptions are implicit in the criticism. Among them are the following: (1) Without the use of deadly force against those who are perceived as a threat to the innocent, the innocent will surely die or be grievously harmed. (2) In the attempt to protect the innocent the defender who uses violence has greater control of the outcome of an encounter than does the aggressor. (3) The use of violence on the part of armed defenders of the innocent will not lead to even greater destruction for the innocent than would otherwise occur. (4) The innocent are in fact helpless at the hands of their attackers. (5) The responsibility to protect the innocent overrides any competing responsibility that would require the rejection of all deadly force.

These assumptions are not self-evidently true. In fact it is not possible to reliably predict the outcome of either the use of violence or the refusal of violence on behalf of the innocent. There are no predetermined results, no discernable straight lines between cause and effect. Even in relatively uncomplicated encounters between two people – asking for a date, offering an apology to a person one has offended, or verbalizing a complaint – the outcomes cannot be known in advance. Obviously war is a far more complex encounter involving two or more large groups of people in deadly conflict with each other. Each of the groups have leaders who attempt to understand their opponents motives, anticipate their opponents decisions and make counter decisions which will undermine their opponents aims.

In such a situation any notion that the outcome of a particular action or inaction can be known in advance with any degree of assurance is unjustifiable. A problem like innocent people being in jeopardy cannot be said to require a certain kind of – violent – action without which their death is a foregone conclusion. Neither can it be said with justified confidence that the employment of deadly force against an enemy will result in safety for the innocent rather than even more destruction than would otherwise have taken place.

The forecasting skills of political experts have been far less than impressive. Too often they try to impose simple models on complex situations. Countless ever-changing factors are present in international relations. These become even more complicated by the heightened suspicion and fear generated in times of war. In a study done over a period of more than twenty years over 82,000 forecasts by political leaders and experts were examined. The study involved almost 300 academics, journalists, policymakers and economists. The forecasts were then compared to actual outcomes. The result was that the experts' predictions were only slightly more accurate than the results of a random forecast generator.³³

While pacifists have been accused of naive optimism and excessive idealism, the same accusation can be aimed at those who place their confidence in war as a means to achieve justice and to provide protection to the innocent. Those in decision-making positions leading up to war have been characteristically overly confident about their assessment of the aims, motives, strengths, and weaknesses of their enemy. They have been too self-assured about their ability to contain consequences and determine outcomes of deadly engagement. Because of this optimism about the effectiveness of war - an optimism which is shared by many in the general population - hawkish politicians tend to have a psychological advantage in public debate. But in view of actual real world outcomes, this optimism is without basis. Still those who argue for greater patience, more diplomacy, and caution against resorting to armed force as a means of resolving conflict tend to lose the argument, being perceived as weak.³⁴

Most often the use of violence is more costly on a number of levels than leaders anticipate. The U.S. war in Iraq started in 2003 provides a contemporary example of this problem. Top officials in President George W. Bush's administration anticipated a "cakewalk." The prior estimates of the financial costs of the war were vastly

³³ See Philip Tetlock, *Expert Political Judgment: How Good Is It? How Do We Know?* (Princeton, NJ: Princeton University Press, 2006).

³⁴ See Jonathan Renshon, *Why Leaders Choose War: the Psychology of Prevention* (Westport, CT: Praeger, 2006).

under-shot. White House economic adviser Lawrence Lindsey offered an "upper bound" estimate of \$100 billion to \$200 billion in a September 2002 interview. The White House quickly distanced itself from Lindsay, claiming his numbers were far too high. He was dismissed from his position later that year. However, current estimates of war costs – including long term care for the wounded soldiers – numbers in the trillions. The cost to the U.S. in terms of international stature and "moral authority" has been inestimably high.

The human costs have been far greater than anticipated, with thousands of Americas dead, tens of thousands wounded, hundreds of thousands of Iraqis dead and wounded, the majority of whom were noncombatants. Infrastructure and other property damages have been extensive. Long-term consequences of the war in Iraq and throughout the rest of the region are yet unknown. It is safe to say that the pre-war anticipation of outcomes on the part of the political and military leadership was wildly optimistic. Yet the war in Iraq is far from unique in this matter. Extremely rare has been the war that involved fewer complications and costs than were anticipated by leaders.

All of this is not to say that war has never resulted in protecting some of those who are among the innocent. Rather it is to point out that the outcome of war is not assured. The possibility of unanticipated and unwanted destructive consequences is high and many who are innocent will suffer as a result of the deadly conflict. Claims to the effect that without war far more of the innocent would have suffered is purely speculative. It is certainly a fact that war frequently fails in achieving even the most basic aims of political and military leaders. After all, in every war one side loses. Sometimes it is arguable that often both sides lose. Conflicts have concluded with neither party having had substantially achieved its objectives and with both parties significantly worse off than before the conflict began.

Just as it cannot be known in advance that in war a defender will defeat an aggressor, protect the innocent and not lead to greater harm than otherwise occur, so, too, it cannot be known that nonviolent attempts to protect the innocent will fail. However, in all fairness it

would be foolish to claim that nonviolent attempts to help the vulnerable can be reliably predicted to succeed. Yet pacifists who advocate nonviolent methods of intervention sometimes have been extravagantly optimistic in their anticipation of outcomes. All that can be asserted is that nonviolent actions have rescued innocent people in numerous hazardous situations, both in face to face encounters and on national and international stages.³⁵ Those who reject violence have protected the vulnerable and have effectively challenged injustice using reason, emotional appeal, distraction, misdirection, loving gestures, corporate noncooperation and creative protests of various sorts. Still, calculating outcomes is an uncertain business both for just warriors and for pacifists.

The way pacifists respond to the threat of violence is not a result of calculating consequences but it is in fact an expression of faith. It is not simply faith in nonviolence as a means to a good end, but faith in the working of God. More specifically it is a faith that God more desires to work through the loving obedience of God's people than through their violent efforts to achieve their ends, however good. It is the nature of providence that its outworking cannot be known in advance. The incalculable movement of God cannot be labeled as a strategy and given a designated place in human plans.

God's providential care cannot be controlled or manipulated. Indeed, faith in the providential care of God undermines the idea that all outcomes depend upon human plans and efforts. This contradicts the notion that no constraints must be placed upon humans as they seek to advance the good over against evil. Those who rely on the providential work of God believe that trusting, obedient faith rather than careful calculations is what is needed in order to advance good in the world. So if pacifists cannot say precisely what they would do to help the innocent, as those who are willing to use armed force

³⁵ Philip P. Hallie, *Lest Innocent Blood Be Shed* (New York: Harper, 1985); Stephen Zunes et. al , ed., *Nonviolent Social Movements: A Geographical Perspective* (Malden, MA:Blackwell,1999); Peter Ackerman and Jack Duvall, *A Force More Powerful: A Century of Nonviolent Conflict* (New York: St. Martin's Press, 2000).

might do, this is not because using violence is the only effective option. Rather it is because Christian pacifists believe God can create options that cannot be foreseen if we will faithfully and nonviolently leave room for the working of God as we endeavor to do good.

Final Thoughts

Neither the JWT adherents nor pacifists can escape ethical dilemmas in relation to the protection of the innocent. It is true, as just war theorists have asserted, that the refusal of pacifists to use deadly force is likely to leave innocent people more vulnerable to suffering and death at the hand of aggressors. Pacifists, indeed, refuse to do "everything possible" to save the innocent and, so, "allow" them to die. If this is unloving, as JWT advocates hold, then pacifists are guilty as charged. However, it is a guilt that falls upon just warriors as well. For, like pacifists, those who go to war in defense of the innocent are constrained by their own ethical commitment and do not have the liberty to simply do "everything possible." Further, even if just warriors succeed in protecting some who are innocent, inevitably as they fight in war to defeat aggressors they also harm and kill many others who are likewise innocent. Just warriors not only "allow" some who are innocent to die, they actually kill them, albeit inadvertently but still inevitably, offending against their victims' right to remain unmolested.

Proponents of the JWT maintain that when pacifists draw a line at the use of violence when helping the innocent, they are choosing to disregard the love of neighbor. They insist that deadly force can be "a valid expression of Christian charity" that is "consistent with love's demands."³⁶ Pacifists respond that any notion of love that allows for killing is a love insufficiently attached to Jesus, disregarding the testimony found in the Gospels. Hence, pacifists will not sacrifice the life of one neighbor in order to rescue another neighbor. To do so would be a rejection of the teachings and example of Jesus and undermine the church's faithful witness before the world. When Jesus taught, "Love your neighbor as yourself" (Matthew 22:39), "the neighbor," the innocent, is not only "one's

³⁶ Daryl Charles, *op.cit.* 177.

own" but "the other" as well and the neighbor is not only the innocent but the enemy as well (Matthew 5:43-48, Luke 6:27-36). So pacifists seek ways of rescue that are consistent with the sort of love and truth revealed in Christ, not knowing whether their efforts will be successful but trusting and praying that they will be used by God.