

Week 7:
The Soldier on the Battlefield
Conscientious Objectors and the U.S. Military

I. DEPARTMENT OF DEFENSE AND CONSCIENTIOUS OBJECTION:

Conscientious Objector:

- A conscientious objector is a person with “a fixed, firm, and sincere objection to participation in war in any form or the bearing of arms, by reason of religious training and/or belief.” (DoD Definition)

I.e., NO selective conscientious objection- ability to choose whether to fight *a particular war* based on whether it’s just or unjust.

What does a Soldier Have to Prove in Order to Obtain CO Status?

- That his belief is “honest, sincere, and deeply held.”
 - o Evaluation of applicant’s “thinking and living in its totality, past and present.”
 - o Timing matters to some extent (i.e., right before deployment, right after civil schooling is paid for):
 - “The sudden crystallizing of CO convictions upon call to deployment may legitimately engender suspicion.” (Lobis v. Secretary of the Air Force (1st Circuit, 1971))

Two Types of Conscientious Objectors:

Class 1-0:

One who “by reason of conscientious objection, sincerely objects to participation in military service *of any kind in war in any form.*”

- Processed out of the military with an Honorable or General discharge

Class 1-0-A:

One who “by reason of conscientious objection, sincerely objects to participation *as a combatant* in war in any form, *but* whose conviction is such as to permit military service in a non-combatant status.”

- Assigned to non-combat duty within the military

II. JUST WAR DOCTRINE AND CONSCIENTIOUS OBJECTION

A. Conscientious Objectors and Selective Conscientious Objectors, Vis-à-vis the Just War Doctrine

Conscientious Objection:

- o Pacifism

Selective Conscientious Objection:

- A just war concept
- The SCO would consider it his **duty** to apply the just war criteria at the *jus ad bellum* level to each war in order to determine whether he can participate.
- **Martin Luther:** A private citizen may refuse to serve in war if he knew the cause to be unjust and opposed to the good.

B. Military Policy in CO and Rules of Engagement Measured Under the Just War Doctrine:

What Does the Military's CO Policy Suggest About Jus ad Bellum and the Soldier?

- It is up to the sovereign to determine when to go to war
- Once the sovereign has made that decision, the individual soldier must not question it.

- Consistent with **Augustine** and **Aquinas**
 - o Neither specifically address conscientious objection
 - o **BUT:**
 - Both state that the “putting up of thy sword” refers to the clergy, not to laity.
 - Both believed that sometimes one had a *duty* to fight.

What do the Rules of Engagement Suggest About Jus in Bello and the Soldier?

- It is up to the individual Soldier to determine whether an order is lawful.
- If a soldier obeys an unlawful order and commits a war crime, he can be tried as a criminal in a court-martial.

In Other Words:

- 1) A soldier has no right to determine whether a war is just.
- 2) But once IN the war, he has the duty to disobey an order is unlawful (thus, to make a determination as to whether an order is unjust)

Recall Augustine on This Topic:

Duty to Obey

- o “A righteous man may do the duty belonging to his position in the State by fighting on the order of his sovereign-
 - “In some cases it is plainly the will of God that he should fight,
 - “And in others, where this is not so plain, it may be an **unrighteous command** on the part of the king, [but] the soldier is innocent, b/c his position makes *obedience a duty*.” (Against Faustus)

- o Regardless of the order, the soldier in obeying remains innocent:
 - The responsibility for determining when the sword may be used rests with the competent authority
 - The common soldier must leave the decision to his lord and obey even an infidel emperor

- *To what is he referring? Seems to have no boundaries between jus ad bellum and jus in bello?*

Questions:

- 1) Is it inconsistent to say that a soldier doesn't have the right to determine which war to fight, yet that a soldier has a moral duty to weigh the orders of his commander to determine if they are right? Why or why not?
- 2) For the just war proponent- What are the problems with this approach? What are the benefits?
- 3) Should a soldier be required to disobey orders that they believe are immoral, and criminally held accountable if he obeys an unlawful order? Why or why not?
- 4) Should a soldier be allowed to refuse to participate in a war he believes is immoral ("selective conscientious objection")? Why or why not?
 - *E.g.- 1LT Ebrun Watada*

The Soldier on the Battlefield: Rules of Engagement *What Have the Just War Shapers Said?*

Plato:

- Plato's *Republic*:
 - Conduct Toward Enemy Soldiers*
 - Soldiers should spare their enemies, recognizing that to **make friends** with the enemy and **bring them into the state** is better than to annihilate them and hence turn them against the state
 - *Always fight with an **eye toward reconciliation**- peace as the object of war*
 - Don't rob corpses, don't spoil the dead or hinder their burial
 - Conduct Toward the Innocent*
 - Don't burn homes or destroy enemy territory
 - Only take the harvest crop, if soldiers need it
 - "And as they are Hellenes themselves they will not devastate Hellas, nor will they burn houses, nor even suppose that the whole population of a city- men, women, and children- are equally their enemies, for they know that the guilt of war is always confined to a few persons and that the many are their friends. And for these reasons they will be unwilling to waste their lands and raze their houses; their enmity will only give them to last until the many innocent sufferers have compelled the guilty few to give satisfaction."
 - *LIMITED VIOLENCE (Proportionality/Military Necessity)*

- *Idea that indiscriminate destruction would harm the innocent b/c in any conflict the whole population, consisting of men, women, children, should never be regarded as an enemy.*
- *Here Plato verges on the distinction between combatants and non-combatants, but uses terms instead of guilty and innocent and does not suggest that they can be segregated during the course of the conflict*

Cicero:

- “We must also ensure protection to those who lay down their arms and throw themselves upon the mercy of our generals, even though the battering ram has hammered at their walls.”
 - *Jus in bello- PROPORTIONALITY*
 - *Soldiers who cease from hostile actions should be afforded good treatment and not killed*

St. Augustine:

- Taking of lives (even enemy soldier lives!) must be minimized to the greatest extent possible:
 - “For he whose aim is to kill is not careful how he wounds, but he whose aim it is to *cure* is cautious with his lancet; for the one seeks to destroy what is sound, the other that *which is decaying*.”
 - *PROPORTIONALITY/DEESCALATION*
 - *How does this play out in battle? Can it? How does it effect targeting decisions, etc.?*
 - *What other criteria of just war do we see here? What do we learn about Augustine’s view of the state (particularly of Rome)? What does this remind you of from Scripture?*

St. Thomas Aquinas:

- If a person takes due care, he is not liable for another’s accidental death
 - “A penalty is inflicted on those who cause death unintentionally, through doing something unlawful or failing to take *sufficient care*.”
 - *ROE in some ways is the military’s interpretation “sufficient care” standard when dealing with those whose status is unknown (e.g., the car driving fast toward the checkpoint).*