

PUTTING THE RECENT DEBATE ON CONSCIENTIOUS OBJECTION INTO PERSPECTIVE

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1. A heated debate on conscientious objection has been conducted in the press and in parliament during the past few months. The debate has been triggered off by the introduction of the new Defence Amendment Bill which deals mainly with new provisions for dealing with conscientious objectors to military service.

To many South Africans this well-publicized debate has provided their first introduction to the rather complicated problem of conscientious objection. No doubt, quite a few of them, for lack of the necessary background knowledge, do not fully grasp the intricate and subtle arguments used in this debate. What I would like to do in this article is to give at least some information that can contribute to a better understanding of the debate on conscientious objection within the South African context. In the first part of the article attention will be given to some of the historical developments that have led to the introduction of the new Defence Bill and the present debate. In the second part of the article the arguments given in support of the proposed legislature will be enumerated and discussed critically.

2. HISTORICAL DEVELOPMENTS

2.1 The beginnings of the present debate on conscientious objection can be found in the very old pacifist tradition of the Christian church. Very little has been established about the attitude of the Christian church towards warfare and military service during the first century A.D. There is, however, considerable evidence that at least from the year 173 to 314 the chief principle of early Christians in this regard had indeed been a pacifist one. From the writings of early church fathers like Tertullian (± 160 - 220) and Origen (± 185 - 254) and some church ordinances it can be concluded that the early Christians held the view that only heathens, but not Christians should do military service. This view was based not only on their condemnation of idolatrous malpractices in the Roman army but also on their conviction that Christians should strictly obey Biblical prohibitions against bloodshed.

After the conversion of the emperor Constantine to Christianity in 312 a rather drastic change took place in the attitude of the church towards warfare and military service. Where the Christians had previously only been a minority group in the Roman empire, constantly submitted to the threat of persecution, they now became the majority group that had to shoulder a substantial burden in the responsibility of ruling and defending the Roman empire. In this situation the viewpoint soon gained influence that there could be wars that were justified and in which Christians might do military service.

The Chief proponent of the "just war" theory, as it was called, was the theologian Augustine (354 - 430). He insisted that warfare might not automatically be labelled as murder. As long as the following three conditions were fulfilled a war could be called just:

1. The war had to be declared by a legitimate authority.
2. The cause had to be just.
3. The goals had to be just.

The "just war" theory was further developed by scholars like Thomas Aquinas (1225 - 1274) and Francisco de Vitoria (1480 - 1546). As a result of their work and the work of others three more conditions were eventually added to those proposed by Augustine. They were:

4. The means employed had to be just. This related both to the immunity from direct and intended attack on innocents and non-combatants, and to the proportion between the means and the goals.
5. War had to be undertaken as a last resort, after all other means had failed.
6. There had to be a reasonable chance of success, that is, of winning the war and of attaining the goals set in (3).

Just like pacifists, proponents of the "just war" theory try to base their viewpoint on scripture. They criticize pacifists' total rejection of violence by pointing to texts such as Luke 22:35 - 38, where Jesus Christ *prima facie* instructs his disciples to purchase swords and John 2:12 - 22 where he cleanses the temple, as well as his sympathetic use of military symbols in parables, and the whole Old Testament tradition of just wars.

The "just war" theory became the official viewpoint of the Roman Catholic Church and later also of most of the churches that developed out of the Reformation. For centuries the pacifist viewpoint was held only by small minority groups that operated in opposition to the main churches. In the Middle Ages the Waldensic sect that sprang up in the 12th century and the Mennonite sect after the Reformation were examples of such groups.

If one takes into account that in the name of the official "just war" viewpoint of the church, many a war, if not most of the wars in the history of Europe, had been undertaken with the blessing of official churches, one may ask if this theory did not in practice open the door to unrestricted and unopposed warfare. At the same time however, one should remember that the original intention of the authors of the "just war" theory was quite the opposite. In his "De Civitate Dei" Augustine for example stated that war always remain something to be lamented. It is nothing but a tragic necessity, something that unfortunately cannot always be restricted if total chaos in society is to be avoided and order and peace are to be restored. It may in any case only be waged if the conditions stipulated for a just war are fulfilled. Francisco de Vitoria even stated explicitly that a subject should refuse to take part in a war that he judges to be unjust, even if the government summons him to do so. He, in other words, foresaw the possibility of conscientious objection to military service and confirmed the conduct of the bona fide conscientious objector.

2.2 Conscientious objection to military service only becomes a serious problem in a society when conscription is introduced as a way of recruiting soldiers. As long as a country manages with a volunteer or a professional army, conscientious objectors need not involuntarily do military service and do not come into conflict with military officials.

Conscription was for the first time introduced in France after the French Revolution in 1793. It was closely bound up with the idea of the sovereignty of the people. The rationale was that the introduction of universal suffrage, allotting every citizen the right to take part in the government of the state, should be complemented by general conscription, making every citizen responsible for the military defence of his country.

Conscientious objection only became an issue in South Africa after conscription had been introduced in 1966. The event that really initiated the current debate however was a controversial resolution adopted at the Annual Conference of the South African Council of Churches at St Peter's Seminary, Hammanskraal in 1974.

The resolution was propounded by the Rev Douglas Bax and Dr Beyers Naude. In its preamble the resolution acknowledged that God who "delivered the people of Israel from their bondage in Egypt" would "set at liberty those who were oppressed" (Luke 4:18). It stressed ultimate obedience to God. Therefore "we must obey God rather than men in those areas where the government fails to fulfil its calling to be God's servant for good rather than for evil and oppression" (Acts 5:29, Romans 13:4). Secondly, the preamble argued that the Republic of South Africa "is at present a fundamentally unjust and discriminatory society" and thus the real threat to peace. Thirdly, it questioned the Christian consistency of remaining silent on institutional violence of the state, and condemning only revolutionary violence.

The motion questioned whether it was the duty of those who followed Christ, the Prince of Peace, to engage in violence and war when the state demanded it. It argued that the only possible case for this demand, if any, was in the case of a just war, which could not be in defence of an unjust society. It resolved, inter alia, to deplore violence as a means of solving problems and to call on its member churches to consider whether Christ's call to take up the cross and follow Him in identifying with the oppressed, involved becoming a conscientious objector.

This resolution met with fierce opposition from the government, some of the churches and a large section of the public. It prompted the government to pass the Defence Further Amendment Bill in parliament. This legislation provided, inter alia, for a fine of up to R5000 and imprisonment up to six years for anyone who "uses any language or does any act or thing with intent to recommend to, encourage, aid, incite, instigate, suggest to or cause any other person or group of persons in general to refuse, to fail to render their national service".

The response of the churches to the S A C C resolution was

mixed. The white Afrikaans-speaking churches rejected it outright. The Dutch Reformed Church, for example, declared at the general synod meeting in October 1974 that it was in conflict with Romans 13. The Baptist Union of South Africa also dissociated itself from the resolution although all the other mainline English-speaking churches supported it in varying degrees. The Baptist Union, however, joined the other English churches in stressing the supremacy of the individual Christian conscience and in regarding conscientious objection as a legitimate Christian option which should be provided for by alternative forms of national service.

2.3 Although quite a considerable number of Jehovah Witnesses have been conscientious objectors as a result of the official pacifist viewpoint of their organization, only a small number of bona fide conscientious objectors came from the mainline churches. The trials of the latter however received much more press publicity and as a result drew much more reaction from the government, the churches and the public. The first two public conscientious objectors were Peter Moll (November 1979) and Richard Steele (February 1980). Both are members of the Baptist Church and graduates of the University of Cape Town. Moll had been given two previous suspended sentences (in 1977 and 1979) before he was sentenced to a year in detention barracks for his refusal to report for a twelve-day military camp. Steele likewise received a twelve month sentence in detention barracks. Both of them spent repeated periods in solitary confinement (Moll 126 days and Steele 52 days) for refusing to wear the soldier's brown overalls.

Moll and Steele were followed by Charles Yeats, an Anglican and graduate from the Natal University, in May 1981, Mike Vivieros, a Baptist and graduate from the University of Cape Town in March 1982, Neil Mitchell, the first Catholic to object and graduate from the University of the Witwatersrand in July 1982 and Bill Paddock, a former ordinand to the Anglican ministry and graduate of the University of Natal later in 1982.

Of these six conscientious objectors Richard Steele, Neil Mitchell and Mike Vivieros describe themselves as "universal pacifist objectors". They object to participation in all wars, anywhere and at any time. Peter Moll appeals to the "just war" tradition in the Christian church. He judges that

the South African society is "shot through" with injustice, so that the present border war in defence of such a society is actually an unjust war. For that reason he does not see his way open to do military service in this particular war. Paddock argues in much the same way, while Yeats takes an intermediate position between the total pacifist and "just war" viewpoints.

2.4 Various classifications of conscientious objectors are possible. We have already noticed the distinction between conscientious objectors that are opposed to all wars (the so-called "total pacifists") on the one hand, and conscientious objectors that are opposed only to those wars that they regard as unjust (the so-called "selective pacifists"), on the other hand. They can however also be classified according to the type of military or alternative service they are willing to do. Seen from this perspective three main categories of conscientious objectors can be distinguished:

1. conscientious non-combatants: people who have conscientious objections to doing their military service in a *combat* capacity only;
2. conscientious non-militarists: people who have conscientious objections to doing all *military* forms of national service;
3. conscientious non-conscriptists: people who have conscientious objections to being *conscripted* for national service.

Prior to the introduction of the new Defence Amendment Bill the non-combatant option (1) was recognised as conscientious objection and provided for, although only after combat training during the three-month "basics". The non-militarist option (2) was recognised only insofar as men who "bona fide belong to and adhere to a recognised religious denomination by the tenets whereof its members may not participate in war" were sentenced to three years in military detention. (In terms of Section 126A (1a) of the Defence Act.) In the South African situation this in effect only applied to Jehovah Witnesses. Any other conscientious objector was not recognised as such and in terms of subsection (1b) of the above Act, "shall ... be liable on conviction to a fine not exceeding two thousand rands or to imprisonment for a

period of not exceeding two years, or both". This penalty could theoretically recur on call-ups, until the person is 65 years of age.

As a result of the criticism of the Defence Act and the treatment of the above named conscientious objectors, the Naude committee was appointed by the South African Defence Force in 1980 to investigate the whole matter of conscientious objection to military service. The proposals of this committee form the basis of the new Defence Amendment Bill.

In this bill provision is made for a board for religious objectors appointed by the minister of Manpower to judge the validity of each case of religious objection and to categorize applicants in one of three categories. The chairman of the board would be a judge or retired judge and the other members would be three theologians and two members of the SADF of which one would be a chaplain. During the debate in parliament it was added that one of the three appointed theologians would have to be from the same denomination as the applicant. The initial provision that the meetings of the board would be in camera was also changed. Meetings of the board would now be open to the public.

The three categories of religious objectors that are provided for in the bill, are:

1. bona fide religious objectors with whose religious convictions it is not in conflict to render service in a non-combatant capacity in an armed force. They would have to perform service in the SADF in uniform, but in a non-combatant capacity, for the same duration as non-objectors.
2. bona fide religious objectors with whose religious convictions it is not in conflict to perform prescribed maintenance tasks in military forces in a prescribed non-military dress. The length of their service would be one and a half times the length of the current military service, together with camps. This would amount to three years initial service and three years of service in camps afterwards.
3. bona fide religious objectors with whose religious convictions it is in conflict to render any service in any

armed force. Initially it was stipulated that they would be required to do an alternative form of national service in other government departments for an uninterrupted period of eight years. During the debate in parliament this was changed to an uninterrupted period of six years of alternative service.

By "bona fide religious objectors" are meant only total pacifists who, for purely religious (not necessarily Christian) reasons, object to direct participation in violence. Selective pacifists, who object to participation in a particular war that is regarded by them as unjust on religious, moral or political grounds, are not recognised as bona fide religious objectors. Nor is in their case any provision made for alternative national service.

3. THE FUNDAMENTAL ISSUE

3.1 Various aspects of the new Defence Amendment Bill have been criticised in the recent public debate on conscientious objection, for example the stipulated length of the alternative service, the composition of the board appointed by the minister of Manpower, and the initial provision that the meetings of the board would be in camera. I do not however wish to weigh the arguments in favour of or against all the various stipulations of the bill. I will concentrate instead on what can be called the fundamental issue in the debate on the Defense Amendment Bill, namely the fact that it does not recognise selective pacifists as bona fide religious or conscientious objectors and grant alternative service to them.

In the bill, of course, no arguments are given for the non-recognition of selective pacifists. It is however not impossible to trace the type of considerations that led to the recommendations of the Naude committee and eventually to the provisions of the Defence Amendment Bill. In an official report of the Dutch Reformed Church on conscientious objectors that was approved at the general synod October 1982 similar recommendations were made about the handling of conscientious objectors by the state. By taking account of the arguments given in this report in support of the non-recognition of selective pacifists a better opinion can be formed about the tenability of the provisions of the bill.

3.2 The statement is made in the report that selective pacifists in the present South African situation are not only against the border war because they see it as an unjust war in defence of an unjust society. "One way or another they also support the struggle of the so-called 'freedom fighters' morally and practically. In other words: in support of their pacifistic viewpoint with regard to the one party at war, they are willing to give military support to the other terrorist party at war."

Taking this argument into consideration one should admit that military support to the enemy by the selective pacifist is of course a possibility. It is not however, as the report seems to implicate, necessarily so that he supports the enemy. It is quite possible to refuse to take part in a certain war because one sees it as an unjust war in defence of an unjust society, but to denounce at the same time also the violence of the terrorists. Someone who refuses to do military service in a particular war on religious or moral grounds, is in other words not necessarily a traitor.

3.3 One of the chief arguments of the report runs as follows: "conscientious objection to military service ... is by consequence directed against the existence and orderly function of the state itself. In other words, conscientious objection as a means of objecting against the policy of a political party on religious or moral grounds goes too far. Indeed, it goes so far that no responsible government can accept, tolerate or approve it" (1. 18, iv). With this argument any justification of conscientious objection based on the assumed unjustness of the society is denounced at the outset. It does not matter how unjust the particular war or society is, conscientious objection remains morally wrong.

It can indeed be asked if this argument can be upheld. It would mean that even Christians that refuse to take part in the cruel military adventures of a communist against fellow Christians are morally wrong. This example urges one to ask if it is necessarily so that conscientious objection is "by consequence" directed against the existence and orderly function of the state. In some cases it could rather be indicated as a refusal to participate in the destruction by an unjust government of the true function of the state, namely to maintain peace and order in a just way. In such a case conscientious objection does not aim at the destruction of

the state, but rather aim at the restitution of the state and its orderly function.

It is in this regard important to take into account that in the Reformed tradition in which the Dutch Reformed Church stands, a strong position has always been taken against state absolutism. Although, in the light of Romans 13, the responsibility of the Christian to obey the state has always been strongly emphasised, it was never seen as an unqualified and servile obedience. So, for example, John Calvin reminds the readers of his *Institutes* that they should not rebel against their rulers that God has appointed, even if they treat them in a harsh manner. He however adds this important qualification: "... in the obedience which we have shown to be due to the authority of governors, it is always necessary to make one exception, and that is entitled to our first attention, - that it does not seduce us from obedience to Him, to whose will the desires of all kings ought to be subject, to whose decrees all their commands ought to yield, to whose majesty all their sceptres ought to submit." (Book IV, chapter XX, 32). In other words, the obedience of the citizen to the state has a definite limit. This limit is reached when the state asks the citizen to do something that is in conflict with the will of God. Then the citizen has the undeniable right to disobey the state.

The Christian tradition has always taken into account that there can also be wars that are against the will of God and in which Christians may not take any part. This was the case not only during the mainly pacifistic period before 314 A D but also afterwards when the "just war" theory became more influential. As we have seen, the "just war" theory clearly implies that there are indeed wars that must be indicated as unjust. We have also seen that Francisco de Vitoria, one of the authors of this theory, explicitly affirmed the duty of the Christian to refuse to do military service in such wars. The Reformer Martin Luther can be quoted as another example. He stated that the Christian should, in the case of an obviously unjust war, be more obedient to God than to men and should not then fight if he wants to have a clear conscience before God. (In his *Ob Kriegsleute auch in seligem Stande sein können* 1526, p 656.)

Taking this into account one cannot agree with the report that conscientious objection by selective pacifists should

be rejected from the start because it would "by consequence" be directed against the existence and orderly function of the state. It should rather be admitted that a war can be against the will of God and that Christians should in such a case have the right to conscientious objection and to an alternative form of service. This same critique also applies to the new Defence Amendment Bill because in it no provision is made for the recognition of conscientious objection by selective pacifists and for the allocation of alternative service to them.

3.4 The report also discusses the important question whether the South African society is to such an extent an unjust society that conscientious objection is morally justified. This question is answered in the negative. The report then concludes with a few recommendations with regard to the allocation of alternative service to conscientious objectors. According to the report alternative forms of service should be considered in those cases where religious arguments are used that are based on certain pronouncements from the Bible. (Although it is not altogether clear, this recommendation seems to refer only to religious objectors who are total pacifists.) In those cases where political arguments in which differences of opinion with the ruling political party are expressed or where moral arguments that assert the unjustness of the society, are used, no alternative service should be allotted, because these arguments are not acceptable.

One cannot but conclude from these recommendations that the allocation of alternative service should be based on the acceptability of the arguments used by conscientious objectors. This seems however to be a rather problematic basis for the allocation of alternative service. In the first instance, if alternative service should only be granted to those conscientious objectors whose arguments are acceptable to the church (which church?) and the state, why does the report recommend that bona fide religious objectors (presumably total pacifists) should be granted alternative service? To the Dutch Reformed Church, for instance, the arguments of the religious objector who is a total pacifist would be no more acceptable than the argument of him who is a selective pacifist. The basis on which alternative service is recommended in respect of the total pacifist but denied the selective pacifist remains unclear, to say the least.

Secondly, to make the acceptability of the arguments of the conscientious objector the basis for the allocation of alternative service is also problematical in the sense that the state (having to decide in the last instance) could hardly be called a very objective arbiter. One could almost in advance claim that the state would never find the arguments of the conscientious objector acceptable. The state cannot afford to do so, because it would then by implication admit that it wages an unjust war.

What is unfortunately not taken into consideration, both in the report of the Dutch Reformed Church and the new Defence Amendment Bill, is the pivotal question in this regard: may someone be forced to do military service in contradiction to his fundamental religious or moral convictions? This question refers just as much to the selective pacifist that stands in the "just war" tradition as to the total pacifist.

In other words, when it comes to the recognition of conscientious objectors and the allocation of alternative service, the decisive question is not so much whether the arguments (of say), the selective pacifist (as an example) are acceptable or not. The decisive question is rather: what should the state do with that small minority of citizens that do not agree with the majority of citizens and the state that we are at present fighting a just war? Should they be forced against their own conscience to do military service? And if they refuse to do it should they be severely punished?

I cannot but believe that someone who stands in the tradition of the Reformed theology has any alternative but to answer these questions in the negative. Although the voice of conscience has in the Reformed tradition never been identified with the voice of God, the freedom of the individual's conscience has always been highly valued. So, for example, Abraham Kuyper, the well-known Reformed theologian from the Netherlands, stated that the conscience should never be submitted to man, but only to God Almighty. He added: "In order that it may be able to rule men, the government must respect this deepest ethical power of our human existence. A nation consisting of citizens, whose consciences are bruised, is itself broken in its national character." (His *Lectures on Calvinism*, at Princeton 1898, p 108).

I would like to conclude with two recommendations. The one

is that the report of the Dutch Reformed Church on conscientious objectors should be revised to make allowance for alternative service in the case not only of the total pacifist but also in the case of the selective pacifist. That would be much more in line with the Reformed tradition of allegiance to the "just war" theory and of respect for the freedom of conscience of the individual, than is the case with the present viewpoint in the report. The second recommendation is that the provisions of the new Defence Amendment Bill should also be revised. Recognition as conscientious objectors should be given not only to bona fide total pacifists but also to bona fide selective pacifists that base their viewpoint on religious or moral arguments. Alternative service should also be granted to this category of conscientious objectors. Only when this is the case, would the bill be in accordance not only with the tradition of Reformed theology, but with the theological traditions of all the mainline churches in South Africa.