

# Federalism and the Question of Conscientious Objection

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On June 15th, a decision was handed down by the Supreme Court in the case of Elliott Ashton Welsh, II, which radically extends the exemption from military service of conscientious objectors. I wish to enter into something of a discussion of the principles involved in this case. Excerpts from the law and the decision are to be found in *U.S. News* for June 29th. Let us refer to this material.

Section 6 (j) of the Military Selective [Service] Act of 1967 provides:  
Nothing contained in this title shall be construed to require any person to be subject to combat training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form.

As used in this subsection, the term “religious training and belief” does not include essentially political, sociological, or philosophical views, or a merely personal moral code.

In the opinion a majority of five held one view and a dissenting portion a contrary view. Quoting from the majority opinion we have the following:

That section [6 (j) of the Military Selective Service Act] exempts from military service all those whose consciences, spurred by deeply held moral, ethical, or religious beliefs, would give them no rest or peace if they allowed themselves to become a part of an instrument of war . . . .

If an individual deeply and sincerely holds beliefs which are purely ethical or moral in source and content but which nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual “a place parallel to that filled by . . . God” in traditionally religious persons. Because his beliefs function as a religion in his life, such an individual is as much entitled to a “religious” conscientious-objector exemption under section 6 (j) as is someone who derives his conscientious opposition to war from traditional religious convictions . . . .

We certainly do not think that section 6 (j)’s exclusion of those persons with “essentially political, sociological, or philosophical views or a merely personal moral code” should be read to exclude those who hold strong beliefs about our domestic and foreign affairs or even those whose conscientious objection . . . is founded to a substantial extent upon considerations of public policy.

The two groups . . . which obviously do fall within these exclusions from the exemption are those whose beliefs are not deeply held and those whose objection to war does not rest at all upon moral, ethical, or religious principle but instead rests solely upon considerations of policy, pragmatism, or expediency.

The dissenting view's position was as follows—this dissent being written by Justice Byron R. White:

I cannot join today's construction of section 6 (j) extending draft exemption to those who disclaim [all] religious objections to war and whose views about war represent a purely personal code arising not from religious training and belief as the statute requires but from readings in philosophy, history, and sociology.

There are two points that arise in this connection, from my point of view. First of all, I'm heartily in agreement with the principle that philosophical and ethical views based upon considerations other than those of traditional religion should most certainly be viewed as conscientious objectors having the same exemption as those whose position is based upon religious training in a traditional sense. Nonetheless, when one bears in mind this particular paragraph from the law, as follows: "As used in this subsection, the term 'religious training and belief' does not include essentially political, sociological, or philosophical views, or a merely personal moral code," it would seem that the majority opinion strains the meaning of Congress here; and in that sense, from a purely judicial view, I am forced to the conclusion that this is an example of strained construction, something of which the majority in the so-called Warren Court has been guilty so often in the past. I do not think that this is a sound judicial interpretation and rather approve of the dissenting opinion in this purely technical sense. Yet, nonetheless, the law should exempt an objection to war that's based upon something other than mere traditional religious training; only that exemption should be provided by the legislative body of government rather than by the judicial portion of the government.

There are two things which I wish to discuss here: the question that's implied in the division of powers of government in this country; and, second, the question of conscientious objection and the basis of it—on what should be the basis of it.

The policy of dividing the powers, namely, the administrative and executive, the legislative, and the judicial, appears when one reads the history of times to be based upon a real distrust of government, political government, on the part of the founders of this country. If we trace it back, we find that the orientation is based upon the political philosophy of John Locke rather than the political philosophy of Aristotle—these two representing the most important divisions in the interpretation of political institutions and power. John Locke, as has been pointed out by Northrop in his volume *The Meeting of East and West*, viewed political institutions and powers as a "necessary evil"; that the tendency of such institutions was to invade the life and the freedoms of human beings; that they, nonetheless, fulfill an unavoidable office because human beings at their present stage of evolution are not sufficiently advanced to live free from the existence of such political institutions; that, therefore, we should make concessions to such institutions in

the sense of a necessary evil so long as humanity is not so far advanced as to be able to dispense with them. There are those who are entirely negative in their attitude, potential thieves and killers, violators of any moral code, that cannot be allowed to function freely; therefore, coercion must come into the picture as a tolerable evil. Therefore, the approach to government is that of holding the ideal that the less government we can have and live reasonably well, the better, that is government in the coercive sense. A statement has been attributed to Thomas Jefferson to the effect that that government governs best which governs least. In other words, the presumption stands against any act of government so that the burden of proof must lie upon any proposed governmental action. That there should be such governmental action at present, it is quite clear that such is the case, but the extending of governmental power should be to the minimum degree necessary.

In contrast to this position, that formulated by Aristotle was in the form that political action was a basic good. It will be remembered that Aristotle was the teacher of Alexander the Great and that the political movements of Alexander the Great were very largely the result of this teaching. This, in other words, raises the principle of compulsion to the level of something essentially good.

On this point I must take a very strong stand, namely, that all compulsion, in the sense of physical force or psychological force, is an evil. I do not mean that we can do without this at the present stage in our evolution, but use of it should be recognized as essentially an evil and at best only a lesser evil than the condition of chaos and anarchy, which would exist if there were no compulsion whatever. Humanity is not civilized. That is the big fact. Some portions of humanity have developed a superior intellectual capacity and have been able to develop a profoundly impressive science and technology, but on the moral side, this humanity is very backward in the collective sense. There are, to be sure, individual exceptions to which this indictment does not apply. What we have in this world is a barbarism, and at its best an intellectual barbarism, not a civilization. When humanity becomes civilized, coercive government will be a thing of the past. There will be the problems of organization of the energies of society, directions, but no coercion in a civilized society. And that means that in a civilized society there is no place for Caesar—Caesar representing political and military coercion. But being an intellectual barbarism we cannot yet dispense with the principle of coercion.

I would like to draw your attention to the symbol represented by the Passion of Jesus Christ. You remember the opposition he aroused in the established priestcraft of that day. But the priestcraft had no power to coerce him, to will his death and execute him. They, therefore, had to present him to the judicial power represented by the governor of Israel, namely, Pontius Pilot. As the story goes, he was brought before Pontius Pilot and examined. Pontius Pilot was convinced from his examination that there was no wrong in this man. But meanwhile, under the guidance apparently of the priesthood of that day, a mob had been organized and directed to call for his execution, that is, the execution of the Christ. Pontius Pilot offered to release Jesus, but he saw the turmoil that might be aroused in the province which he was governing. This might call for more soldiers than he had to quell the disturbance, and therefore he found it expedient to execute one whom he regarded as an innocent man rather than to face the possible turmoil that would arise from failure to execute this man. Therefore, he ordered the Christ scourged and crucified. The Christ was turned over to the soldiers and mocked and then

later executed by the military. Pontius Pilot represents political power. The word Caesar has come to represent the combination of political and military power. Therefore in this symbol of the Passion the issue lies between that symbolized by the Christ and that symbolized by Caesar. Caesar condemned the Christ not because of any criminality or wrong found in the Christ, but because it was politically expedient to have him destroyed. And the military carried out the execution. This means that Caesar symbolizes antichrist, and completely justifies the dictum of Jacob Boehme that no individual can be a true follower of the Christ and a soldier at the same time.

Since the moral teachings of Christ have become stylized as a body of religious discipline, and since there have been denominations in the Christian group that have definitely established non-violence or non-killing under any circumstances as a fundamental religious code based upon the teachings of the Christ—namely, the Golden Rule: do unto others that which thou wouldst have others do unto you; and to resist not evil; and to love thy neighbor as thyself—because of this teaching they have formulated as a principle of religious training non-killing under any circumstances including war, such persons under the law do get exemption because of conscientious objection. But, would Christ himself get exemption for conscientious objection? Not under the law; and that is the very important and essential point. Christ's position was not based upon previous religious training. It was based upon original insight. The same point would apply to the Buddha who taught also the Golden Rule but in a different form as follows: do not unto others that which thou wouldst not have others do unto you; and also taught the moral code of non-killing, non-lying, non-stealing, non-concupiscence, and non-intoxication—not based upon previous religious training, but his own original moral and spiritual insight. He too would not get the exemption from military service by claiming conscientious objection on the basis of the law as it now exists. The same would apply to Jacob Boehme, to George Fox, the founder of the Quaker Church, to David Thoreau, the first formulator of the principle of *Satyagraha*, or Gandhi, or Aurobindo at the time of his initiation of the freedom movement in India before Gandhi.

Let us look at the proposed application of this principle as given in the rules following the Court decision of June 29th. These are given by the Draft Director, Mr. Tarr, that the instructions should be as follows: "The man's belief must be sincere." Obviously that is true. "The man must be opposed to war in all forms." Equally, obviously true. Now, the third point is this: "It must be something more than a personal moral code. He needs to have taken into account the thoughts of other wise men; he needs to have consulted some system of belief." This brings up questions that I have pointed out previously, that so interpreted, neither Christ nor Buddha would be exempted because they were founders of the moral position not simply individuals trained to hold or exemplify such a position. The fourth point particularly bears upon this: "His belief needs to be the result of some rigorous kind of training." This presents an issue of premier importance in clear cut form. One under such instructions gets exemption from military activity because he has been trained or conditioned, not because he has an advanced moral awakening. I cannot too emphatically assert that this is all wrong. A conscientious objection that's based upon mere training or conditioning is not really moral. It's not really spiritual. It's not really fundamentally religious. That which is fundamentally moral or religious or spiritual is that which wells up from the depths of a deeper insight and is most authentic when it is original without a tradition to support it.

Here we have presented the problem of the distinction between purely conventional morality, and reflective morality, and, third, spiritual morality. Traditional morality is a result of mere conditioning. It's a result of the kind of training that we apply essentially to animals. Our domestic animals that we use are trained by more or less mechanical conditioning to behave in a certain way. There's nothing moral about such behavior on the part of the animal. There's nothing moral in the deeper sense about the behavior of human beings when they behave in a given acceptable way merely as the result of training. Actually, human sense of morality that is no more than that implies that the human being is essentially little if any more than a mere animal—a rather contemptible object. To be human in the true sense means to be able to think and value originally. Conditioned or trained codes of conduct are infrarational. Now, it may well be that the vast majority of human beings are only infrarationals, a sort of superior kind of animal, but the thing that counts most is the truly human human and, beyond that, the spiritual human. I don't think that the problem of conscientious objection has a valid place with the merely animal human. They're so low in the scale of evolution that they still need the lash of suffering, of anguish, before they'll make any growth. The problem of conscientious objection arises at the level of reflective, and most supremely, at the level of spiritual man.

Reflective morality lies on the mental level and is best exemplified by the contributions of Immanuel Kant to the problem of coming to moral decisions. He laid down this principle: so act that the maxim of thy volition may be willed as law universal. This means that one's self-governance is by principle rather than by desire. If I claim any prerogative for myself, I can do so only if I can will that prerogative as a universal law, not as a special case for myself. Governance by desire does not operate that way. It means seeking for myself and getting what I can regardless of the interests of any other creatures. And, no doubt, most of humanity still is under the governance of desire, and for that reason is inferior. They do not deserve exemption from military service.

But beyond governance of reflective morality, there is a still higher principle, something we have a great deal of difficulty to formulate. It is the spiritual guidance. Again, we're dealing with terms that we cannot completely define. If we completely define these terms, we make them only mental. They have to be used as pointers to something that lies beyond the range of conceptuality *per se*. The nearest we can arrive in an understanding of this principle of guidance is that it is an innate movement in terms of spontaneity; not a matter of doing as I please, because there is here not a sense of "I" as an ego distinct from other selves, but rather, we might say, an orientation to Truth *per se*; not now truth in the restricted sense of a correspondence of an idea to its object, but rather Truth in the sense of being in harmony with the underlying law or principle of all being. It is a state where the distinction between my self and other self is entirely irrelevant. Here, then, you have a principle of governance that cannot be reduced to formula, therefore cannot be reduced to conceptually organized law.

Now, I submit that it is from this level that the principles laid down by entities such as Buddha, Shankara, and Christ were derived. The principle of morality here is not a result of training, conditioning. It is not simply a result of rational reflection, but of a precipitation into the outer consciousness in formulated form of a rule or mode of conduct grounded in the very essence of being itself. Now, it is from this that the

principle of conscientious objection to killing, whether in war or otherwise, arises. This, I submit, is the most supreme basis for it and not that of mere training or conditioning. Not the person trained by a conventional religion, but the originator from which that religion came is the one who has most right to recognition in terms of conscientious objection. Our rules, both in the law and in the administrative policy laid down by Mr. Tarr, are therefore 100 percent wrong when it makes the keynote a matter of training rather than of moral reflection or spiritual insight.

But having said this, I must recognize the problem faced by these people. How are you going to identify true conscientious objection. There are those who would pretend to conscientious objection who merely are covering up cowardice, and this poses a real problem for the boards. There probably can be no adequate solution so long as the principle of conscription applies to the military establishment. On a volunteer system, this problem would not arise, for presumptively, no conscientious objector would volunteer.

There are certain other considerations which I think deserve our attention. Consider Jacob Boehme's dictum that no man can be both a soldier and an exemplar of the Christ at the same time. There may be a ground on which a certain modification of this dictum would be justified. Let us consider the Golden Rule, which runs, as has been stated, do unto others that which ye would have others do to you. Most human beings value their lives, and so valuing their lives, they cannot act in conformity with this Golden Rule when they participate in the taking of other lives and destroying them. But there are some exceptions to the general rule of humanity, namely, those who seek death; who give, thus, a totally negative valuation to life. We might call these the suicidal types. In general, we may say that they wish for death. The Golden Rule, therefore, applied to them would take the form: kill others since that is what you wish to have done unto yourself. Such individuals could be soldiers without violating the Golden Rule. There are even some who are not exactly suicidal who have a point of view analogous to this. It has been formulated by individuals who are apparently sincere militarists. For instance, the Field Marshal von Hindenburg once said that the most desirable death of all was death on the battlefield. And a later Field Marshal in the Second World War said that every true warrior had not fulfilled his destiny unless he sought and realized death upon the battlefield. Such individuals, in seeking to impose death upon others, are not violating the Golden Rule, for they're seeking to impose upon others that which they would have imposed upon themselves. To this extent, then, such individuals might conceivably be in accord with the Golden Rule and not wholly out of accord with the teachings of Christ. Or consider the second dictum of the Christ: love thy neighbor as thyself. But there are those who hate themselves, and in conformity with this dictum they're virtually ordered to hate others. A negative class, therefore, and perhaps not a large enough class to supply all the soldiers that the world seems to need could be consistently military activists.

If you look at the Buddha's statement of the Golden Rule we find certain advantages in the negative statement: do not unto others that which you would not have done to yourself. There is no order, as in the positive statement, to go forth and kill if you wish to be killed yourself, but rather to refrain from the actions in nature—to refrain, rather, from interfering with the actions in nature that lead naturally to the death of creatures. Just leave nature alone and pass on, which is essentially a non-aggressive attitude. The principle of non-killing, the non-imposing upon others that which you

would not have imposed upon yourself, extends beyond the human world; and so we could paraphrase Jacob Boehme and say that no man can be the follower of the Christ, or the Buddha, who is a hunter for sport or a fisherman for sport because he is obviously imposing upon these creatures that which he would not have imposed upon himself. Since life here depends upon the taking of life, either in the animal or vegetable form, there is no one of us living here who is not guilty of a violation of the Golden Rule. This is a tragic fact and simply points up the essential darkness and evil that is in this world.

Now, while I pointed out that the followers of the Buddha or the Christ could not become killers in war or otherwise, this is not the whole truth in the field of religious morality. If we turn to the *Bhagavad Gita*, we find Krishna, who must rate as one of the great religious figures of all time, saying to Arjuna, the born *Kshatriya*: fight in the cause of the *Dharma*, else otherwise the forces of *Adharma* will take over and destroy the peoples of this world.<sup>1</sup> And also in the interpretation of this passage by Sri Aurobindo in his *Essays [Up]on the Gita* in the chapter on *Kurukshetra*, he makes the point that at least in this world at its present stage, if one takes the course of nonviolence fully and completely, then the *asuric* forces will triumph and take over the world without any struggle at all; and that therefore at this stage of evolution there must be something like a compromise with evil whereby the forces supporting the *Dharma* will take up the arms to hold back the forces of *Adharma*.<sup>2</sup> This presents a problem of the most intense importance and the great difficulties of coming to a moral decision with respect to one's action in this world. No doubt that to any man of any real sensitivity and of any real good will for mankind must agree with the ideal of the moral principles laid down by the Buddha and the Christ. Yet, in practical action dealing with the real world as it is now, there is a problem involving compromise and therefore great moral difficulty. Nonetheless, if all men by law are obligated to become killers, there would be no hope of moral advance in this humanity. There must, therefore, be a recognition of the office of those who have the sensitivity to perceive the code that should be and which will be in some future day if this humanity is not to walk the path of ultimate moral and spiritual destruction.

Let us consider for a moment some of the subtler steps that must some day be taken if we are to progress in this direction. We must aim at the elimination of moral acceptance of all conflict or of any conflict. We teach and even enforce by law the principle of competition, but the principle of competition, once we penetrate into its significance, is nothing more nor less than war in other terms. In that day when at last we shall become civilized, there will be no more competitive business, no more competitive sport, no more implementation of the adversary principle in the adjudication of courts, but a movement on another basis that involves co-acceptance of differences and a working out of those differences through a principle of harmonization. Then at last we will have become civilized. But until that day, we are no more than barbarians, and therefore morally despicable.

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<sup>1</sup> William Q. Judge, trans., *The Bhagavad Gita* (Los Angeles: The Theosophy Co., 1947), 11-17.

<sup>2</sup> Aurobindo Ghose, *Essays on the Gita*, vol. 13 of *Sri Aurobindo Birth Centennial Library* (Pondicherry: Sri Aurobindo Birth Centenary Library, 1970), 39. Also, see the audio recording "Lectures to University Students," part 5.