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3. Conscientious Objection to Unjust War

From Augustine to John Paul II

Roger Bergman, Creighton University

Abstract

This paper examines the development of the Catholic tradition on selective conscientious objection (SCO), the right to refuse to participate in a war judged to be unjust, from Augustine through Aquinas, Vitoria, Suárez, and Grotius to Vatican II, the statements of the U.S. bishops, and the *Compendium of the Social Doctrine of the Church*. It has been argued that support for what we now call selective conscientious objection has for centuries been a minority position – over against the majority position that argues that soldiers have no responsibility to make judgments about the justice of the war in which they are called to fight. The soldier’s only responsibility is to fight justly, obeying legal orders but disobeying illegal ones, such as targeting innocent civilians. But is it possible to fight an unjust war justly? The minority tradition has become official, as represented by support for SCO in the *Compendium*.

Keywords: selective conscientious objection, just/unjust war, Catholic tradition, *jus ad bellum*, *just in bello*

Introduction: The Case of Franz Jägerstätter

Strictly on grounds of moral argument, the right conscientiously to object to participation in a particular war is incontestable. I shall not argue the issue. The practical question before all of us is how to get the moral validity of this right understood and how to get the right itself legally recognized, declared in statutory law (Murray 1968: 25).

As far as I am aware, Franz Jägerstätter (Bergman) is the only officially recognized martyr of the just war tradition, beatified in 2007 by Pope Benedict XVI. That is, the Austrian peasant was not a pacifist in the manner of Martin of Tours in the fourth century, who famously proclaimed, while a Roman soldier but after a religious conversion, “I am a soldier of Christ and it is not lawful for me to fight.” Even Jägerstätter’s pacifist biographer Gordon Zahn (130-31) acknowledged that he was not a pacifist, not someone who understood his Christian faith to preclude participation in all war. Rather, Jägerstätter’s refusal to accept induction into the German army in 1943 was selective conscientious objection – conscientious objection to a particular war, Hitler’s war, which he understood to be unjust, and in which he therefore could not participate.

This paper will examine the Catholic tradition from Augustine (5th century CE) through Aquinas (thirteenth century), Vitoria, Suarez (both sixteenth century), and Grotius (seventeenth century),¹ to Pope John XXIII’s *Pacem in Terris* (1963), Vatican II’s *Gaudium et Spes* (1965), the U.S. bishops in multiple documents (1966-2002), and the *Compendium of the Social Doctrine of the Church* (2004), for evidence of justification for Jägerstätter’s witness. That is, however solitary his witness was and is, should it be understood to be within the normative tradition of the Church? It has been argued (Walters) that support for what we now call selective conscientious objection has been a minority position – over against the majority position that argues that soldiers have no responsibility to make judgments about the justice of the war in which they are called to fight. The soldier’s only responsibility, according to this position, is to fight justly, obeying legal orders but disobeying illegal ones, such as targeting innocent civilians. *But is it possible to fight an unjust war justly?* That is the question before us, a question that has been posed by Catholic thinkers since at least Augustine in the fifth century.

A pope prior to Vatican II would not have beatified someone like Jägerstätter. Yet, despite the fact that Pope Pius XII in 1956 stated that “a Catholic citizen cannot invoke his own conscience in order to refuse to serve and fulfill those [military] duties the law imposes” (225)² since 1968 the U.S. bishops have been repeatedly on record in support of selective conscientious objection. Pope John XXIII and the Second Vatican Council intervened between 1956 and 1968. Did *Gaudium et spes* make the beatification of Franz Jägerstätter

¹ The Dutch jurist and theologian Hugo Grotius (1583-1645) was not himself a Catholic but stood within the Catholic tradition of reflection on the morality of war.

² The preceding sentence qualifies this prohibition thus: “If therefore, a body representative of the people and a government – both having been chosen by free elections – in a moment of extreme danger decides, by legitimate instruments of internal and external policy, *on defensive precautions*, and carries out the plans which they consider necessary, it does not act immorally” (225, emphasis added). The phrase I have italicized would seem to suggest that Jägerstätter’s refusal was morally justified – unless one judges Hitler’s war to be defensive and therefore morally licit.

possible, even logically necessary? And is he a hero to be admired, or a model to be emulated? Might he become the first of many Catholic conscientious objectors to unjust war?

But perhaps I should not assume that we are all considering a case like that of Jägerstätter in the same light, from the same perspective. As a way of laying out the basic parameters of the issue, let me suggest possible responses to this particular historical example of selective conscientious objection (SCO):

1. Jägerstätter was wrong because Hitler's wars were right and just; he was mistaken.
2. He was wrong even though Hitler's wars were unjust, because a citizen must serve his country right or wrong; he was unpatriotic.
3. He was wrong because it is wrong to disobey lawful authority (Romans 13); he was disobedient.
4. He was wrong because he had no authority or expertise to make such a decision; he was incompetent.
5. He was wrong because he betrayed his fellow citizens, especially those who accepted induction and risked their lives as soldiers on his behalf; he was a shirker.
6. He was wrong because he could have accepted induction and *then* avoided killing; he was imprudent.
7. He was wrong because he could have accepted induction as an unarmed medic; he was a purist.
8. He was wrong because he left his wife without a husband, his three young daughters without a father, his widowed mother without a son, and all of them without a provider; he was selfish.
9. He was wrong even if he was right because his solitary witness would make no difference; he was a loser; he wasted his life.

On the other hand, one might take the position that:

10. Jägerstätter was right because he acted upon a sincere and well-formed conscience; he was true to himself.
11. He was right because Hitler's wars were wrong, and his church, his country, and his village were wrong in supporting Hitler's wars; he was courageous.
12. He was right because it is better to suffer injustice than to inflict it; he was noble.
13. He was right because it is wrong to swear unconditional obedience to any political authority, especially a tyrant; he was astute.
14. He was right because it is better to obey God than men (Acts 5:29); his soul was at stake.

This paper takes the perspective that positions 10–14 supply the best response to the example of Franz Jägerstätter, and I take it that something like that perspective explains the

Church's recent beatification of him as a martyr of the Catholic faith. To be proclaimed a martyr means that Jägerstätter is one verified miracle away from sainthood, since martyrdom itself is considered to be the first of the two miracles required for canonization.

A Brief History of Catholic Thinking about Selective Conscientious Objection

Augustine

Is this endorsement of SCO in the example of Franz Jägerstätter something entirely new in the Catholic tradition? What follows is an overview of that tradition, especially as regards what might be called the minority report. Let us begin with Augustine, bishop of Hippo, who is often referred to as the father or founder of Christian just war ethics. Although Augustine wrote no systematic treatise on the ethics of war, and his occasional writings on the subject run to only twenty pages or so in most anthologies on the topic (Holmes; Reichberg, Syse, and Begby), his influence has been enormous. For Thomas Aquinas, Augustine is far and away the most cited and authoritative source on this question. So what does the bishop of Hippo say about a soldier's obedience in war? In *Contra Faustum* (22.75), Augustine writes:

A just man, even if he fights under a sacrilegious king, can lawfully fight when the king commands it – as serving the order of peace – if it is certain that what he is commanded to do is not opposed to the precept of God or if it is not certain whether or not it is opposed to divine precept. *Thus the iniquity of the one commanding makes the king guilty, but the order of serving makes the soldier innocent* (quoted in Walters: 204, emphasis added; for an alternative translation, see Swift: 139).³

There are at least six observations to make about this seminal statement. The first is the acknowledgment that a king may be “sacrilegious” or “ungodly” (Swift: 39) but still requires obedience unless, second, the soldier judges with *certainly* that the command directed at him by his king is morally illicit. Notice that the judgment is put in the negative: if the command is certainly *not* opposed to the law of God, the soldier may obey. But, third, if there is doubt about the licitness of the command, the benefit of that doubt goes even to an ungodly king, and perhaps by this we can infer that Augustine has in mind a king engaged in an unjust war. Fourth, I take it that the phrase “as serving the order of peace” may refer to the internal peace of the kingdom, which is preserved by obedience to lawful authority, and not to the external peace, the preferred international order, that the king is presumed to pursue through war.⁴

What is not addressed in this text is just as significant as what is said. Our fifth observation is that Augustine does not address explicitly the situation of the soldier who

³ It is often pointed out that this Augustinian position can be found outside of properly ecclesial contexts, as in Shakespeare's *Henry V* (Act 4, Scene 1), when an English soldier proclaims, before the battle of Agincourt: “for we know enough, if we know we are the king's subjects: if his cause be wrong, our obedience to the king wipes the crime of it out of us.”

⁴ Augustine observes that all wars, even wars of unjust aggression, seek peace, a peace more favorable to the war-making ruler than that which otherwise prevails (*The City of God* 19.12-27, cited in Holmes: 71-72).

judges certainly that his king's order *is* opposed to the precept of God. However, as Louis J. Swift (371) observes, the right or even obligation to disobey an unlawful command would seem to be inferred, since otherwise there really is no moral judgment to be made by the individual soldier. If there are no times when he may or must disobey, there is no time when a judgment about obedience can be an issue, and for Augustine there clearly is. Sixth, Augustine seems to assume that the only judgment appropriate to the soldier is whether to obey an order on the battlefield, not whether he should go to *this* war in the first place, as if that initial command of the king could not be questioned. In other words, Augustine limits the soldier's moral responsibility to what later came to be called *jus in bello*, the law of the conduct of war, and this responsibility does not extend to *jus ad bellum*, the law governing the entry into war. This is the classic position on conscientious objection to war and essentially the counsel given by the Bishop of Linz to Franz Jägerstätter (Zahn: 58).⁵

Swift also offers an alternative interpretation of Augustine on obedience to authority. When the emperor Julian (known as the Apostate) ordered his troops into battle, they obeyed, but when he ordered them to sacrifice to pagan deities, they refused. According to Swift, this is an example used by Augustine to illustrate his dictum that "any man who refuses to obey imperial laws that are enacted contrary to God's truth receives a great reward" (Swift: 372). The disobedience here praised by Augustine is not in reference to a command in warfare, but Swift suggests that the principle might by inference be applied to that context. But this speculative inference cannot be definitive. As Augustine plainly asserted, "the iniquity of the one commanding makes the king guilty, but the order of serving makes the soldier innocent"; the soldier's obedience to lawful authority is the norm. Had Jägerstätter fought in Hitler's wars, believing that it was not certain that these wars were unjust, as did nearly all his German and Austrian counterparts – and as did, apparently, all the German and Austrian bishops (Zahn 1969) – his soul would not have been in jeopardy, as his bishop, as if channeling Augustine, informed him. In the Augustinian tradition, it is possible for a soldier to fight an unjust war justly and not be culpable. We can only speculate on what Augustine would have thought of selective conscientious refusal like that of Jägerstätter.

Aquinas

Thomas Aquinas, eight centuries later, drawing heavily on Augustine, provides the classic formulation of the Christian just war tradition, although his writings on the topic are even more scant than his predecessor's: only six articles in the *Summa Theologica* (about ten pages in modern anthologies as found in Holmes; Reichberg, Syse, and Begby) are addressed directly to the ethics of war, although other writings are related indirectly. As LeRoy Walters points out, although Aquinas did not address obedience in warfare, he did address an

⁵ Jim Forest observes that the bishop's advice "was, in fact, an answer any Catholic might have heard from any bishop in any country at the time: if not found in any catechism, it was widely believed that any sins you commit under obedience to your government are not your personal sins but are regarded by God as the sins of those who lead the state. God would judge the leader, not those who obeyed his orders. But for Franz, it seemed obvious that, if God gives each of us free will and a conscience, each of us is responsible for what we do and fail to do, all the more so if we are consciously aware we have allowed ourselves to become servants of evil masters" (xx).

analogous issue, and his discussion was cited frequently by subsequent just-war theorists. What should an executioner do if he is ordered to kill an innocent man? According to the *Summa*,

He that carries out the sentence of the judge who has condemned an innocent man, if the sentence contains an inexcusable error, he should not obey, else there would be an excuse for the executions of martyrs; if however it contains no manifest injustice, he does not sin by carrying out the sentence, because he has no right to discuss the judgment of his superior; *nor is it he who slays the innocent man, but the judge whose minister he is* (quoted in Walters: 204, emphasis added).

This is nearly identical to the position of Augustine. Only if the command is certainly unjust is it to be disobeyed. Otherwise, the executioner himself has no moral responsibility to make a judgment; he is guiltless if in fact he kills an innocent man. Aquinas' influential argument for the primacy of conscience, trumping even the order of a religious superior, does not seem to add anything to his account of the executioner's dilemma. If one is confident in conscience that a command contains a manifest injustice, one must disobey it. One may infer that this primacy of conscience would extend to the command to participate in war, and to refuse to participate in an unjust war, but Aquinas does not make this position explicit. He does make the argument that rebellion against a tyrant, who is in sedition against the common good, is justified (Holmes: 116-17). As Martin Luther King, Jr. famously pointed out in "Letter from Birmingham Jail," citing Aquinas, "An unjust law is no law at all" and so must be resisted (Washington: 293). Again, perhaps we can infer that such resistance could be extended to the command to participate in unjust war, but Aquinas himself does not make this argument. Nonetheless, Vincent Genovesi argues that Aquinas' general arguments about primacy of conscience are sufficient to establish "the individual's right and duty to refuse involvement in [an unjust] war" (511).

Vitoria, Suárez, Grotius

The majority or mainstream tradition we have traced from Augustine and Aquinas finds fullest expression in the more systematic treatments of the ethics of war in two sixteenth-century Spanish theologians, Francisco de Vitoria and Francisco Suárez, often referred to as neo-scholastics, so firmly are they in the tradition of Aquinas. In the summary statement of LeRoy Walters, both "argued that the subject had no moral obligation to investigate the cause of a war; rather, he could participate in good conscience provided that the war was not clearly unjust" (204). Similarly, "both theorists agreed that as long as the justice of the war was in doubt, the subject was morally obligated to participate" (205). However, "the case is different when the war is manifestly unjust. . . . In such a case, they may refuse to serve, for to serve would endanger their souls more than refusing to obey their rightful sovereign" (Johnson: 182). The implications of this position are significant because the Spaniards are explicitly addressing the *jus ad bellum* question, not only questions of *jus in bello*. According to James Turner Johnson, Vitoria and Suárez "offer a *clear justification for individual conscientious objection to particular wars*. . . . It is emphatically the subject's responsibility to dispel any doubt that may confront him regarding the war in which he is commanded to take part, and if doing so results in certainty on his part that the war is unjust, he must in conscience refuse

to abide by his prince's call" (183; emphasis added). A war judged to be unjust may not be fought justly by the soldier making that judgment. Neither Vitoria nor Suárez spell out how such refusal should be carried out by the subject or treated by the prince.

Within the Christian just war tradition, "the most systematic spokesman for [the] minority strain" (Walters: 205) regarding selective conscientious objection, over against the majority position of Augustine and Aquinas and its further development in Vitoria and Suárez, was the seventeenth-century Dutch jurist and Protestant theologian, Hugo Grotius, who is often referred to as the father or founder of international law. He challenged the majority tradition in three ways. First, referring to the analogy of the soldier to the executioner first offered by Aquinas, Grotius argued "it is probable that even the executioner, who is going to put a condemned man to death, should know the merits of the case, either through assisting at the inquiry and the trial or from a confession of the crime, in such a degree that it is sufficiently clear to him that the criminal deserves death" (quoted in Walters: 205). The presumption is no longer preponderantly in favor of the authority of the judge but in favor of the responsibility of the executioner to exercise his conscience. Second, Grotius differed not only with Augustine and Aquinas but also with Vitoria and Suárez in insisting that the just causes of war must be "clear and open," that such causes may not remain secret to the prince lest "skeptical soldiers lack enthusiasm for the war-effort" (Walters: 206). Third, in what Walters calls "his boldest departure from tradition, Grotius launched a frontal assault on the majority view concerning doubtful causes" (206). Whereas Vitoria and Suárez argue that the benefit of the doubt should be given to the prince, Grotius wrote that "*disobedience* in things of this kind, by its very nature, is a lesser evil than *manslaughter*, especially than the slaughter of many innocent men" (quoted in Walters: 206, his italics). As Walters observes, this does indeed stand the tradition on its head: the greater threat to a subject's soul, or as we would be more likely to say today, to a citizen-soldier's moral integrity or professional honor, is not disobedience to rightful authority but the killing of innocent men – or murder, to speak plainly – in unjust war. Jägerstätter (with his 8th grade education in a one-room village schoolhouse) must have read Grotius!

Walters sums up the post-Aquinas classic just-war tradition on selective conscientious objection as threefold. First, "there was general agreement . . . that no citizen was obliged to participate in a war that was clearly unjust." Second, "Vitoria and Grotius . . . asserted unequivocally that the subject had a moral duty *not* to take part in a clearly unjust war." And third, such an obligatory judgment was a matter of conscience, "a citizen's sincere conviction that a particular war was unjust" (209). Perhaps the most significant development was Grotius's reversal of what constituted the greater threat to a soldier's soul: not disobedience to lawful authority but the killing of innocent people in obedience to authority. Walters adds a final note: "the question of legal provision for SCO was largely ignored by the classic just-war tradition [of Vitoria and Suárez]. Grotius, however, recommended the establishment of administrative machinery to accommodate the moral convictions of the selective objector" (Walters: 210). This is essentially the position the United States Catholic bishops have consistently and repeatedly articulated beginning in 1968, and as now appears in the *Compendium*, as I will presently demonstrate. But this leads us to ask: how did the minority tradition become the official teaching of the Catholic Church? Let us remember that as late as 1956, Pope Pius XII stated that "a Catholic citizen cannot invoke his own conscience in

order to refuse to serve and fulfill those [military] duties the law imposes.” And this, of course, takes us to Pope John XXIII’s *Pacem in terris* and the Second Vatican Council’s *Gaudium et spes*. What do these famous documents say about conscience and war?

Pacem in Terris, Gaudium et Spes, and the U.S. Bishops

In *Pacem in Terris*, John XXIII did not address the question of war and conscience directly, but he did write forcefully of the general principles that would seem to govern the more particular question we are considering. According to the pope, “since the right to command is required by the moral order and has its source in God, it follows that, if civil authorities pass laws or command anything opposed to the moral order and consequently contrary to the will of God, neither the laws made nor the authorizations granted can be binding on the consciences of citizens, since [quoting the Acts of the Apostles] ‘God has more right to be obeyed than men’” (51). In this encyclical of 1963, the same year as Dr. King’s famous letter, John XXIII also cites Aquinas on the non-binding character of unjust laws which, in fact, are a “kind of violence” (51, in O’Brien and Shannon).

This prepares the way for the Second Vatican Council’s well-known description of moral conscience in *Gaudium et spes*, “The Pastoral Constitution of the Church in the Modern World,” as “the most secret core and sanctuary of a man [sic]. There he is alone with God, whose voice echoes in his depths.” So sacred is a sincere conscience that even when it “errs from invincible ignorance” it does not lose its dignity (16, in O’Brien and Shannon). Given this inviolable dignity of personal conscience, the Council fathers “cannot fail to praise those who renounce the use of violence in the vindication of their rights and who resort to methods of defense which are otherwise available to weaker parties too, provided that this can be done without injury to the rights and duties of others or of the community itself” (78, in O’Brien and Shannon). This endorsement of the individual’s right to embrace nonviolence and pacifism leads to a call for “laws that make humane provisions for the case of those who for reasons of conscience refuse to bear arms, provided, however, that they accept some other form of service to the human community” (79, in O’Brien and Shannon). A clearer repudiation of the position of Pope Pius XII less than a decade earlier could hardly be imagined.

While this discussion in *Gaudium et spes* seems directed specifically at pacifists, the U.S. Catholic bishops extend the argument for conscientious objection to those who refuse to participate not in all wars but in a particular war, and they do so, at least implicitly, for the first time in 1966, by referencing *Gaudium et spes*, promulgated one year earlier. As if responding to Augustine’s influential dictum, in a “Statement of the American Bishops on Peace November, 1966” (Drinan: Appendix D), the U.S. prelates write that “No one is free to evade his personal responsibility by leaving it entirely to others to make moral judgments. In this connection, the Vatican Council warns that ‘men [sic] should heed not to entrust themselves only to the efforts of others, while remaining careless about their own attitudes. For government officials, who must simultaneously guarantee the good of their own people and promote the universal good, depend on public opinion and feeling to the greatest extent possible” (Drinan: 191). In matters of war and peace, citizens in a democracy have responsibilities not just of obedience but of independent moral judgment (see Duffey).

In their 1968 statement on “Human Life in Our Day,” issued at the height of the controversy over the Vietnam War, the bishops make their support for selective conscientious objection explicit. They observe that “for many of our youthful protesters, the motives spring honestly from a principled opposition to a given war as pointless or immoral” (144, in Benestad and Butler). Furthermore, it cannot “be said that such conscientious objection to war . . . is . . . without reference to the message of the Gospel and the teaching of the Church: quite the contrary, frequently conscientious dissent reflects the influence of principles which inform modern papal teaching, the Pastoral Constitution [*Gaudium et spes*], and a classical tradition of moral doctrine in the Church, including, in fact, the norms for the moral evaluation of a theoretically just war” (145, in Benestad and Butler). The U.S. bishops then “seek to interpret and apply to our own situation the advice of the Vatican Council on the treatment of conscientious objectors” (150, in Benestad and Butler), which we have cited above. They observe that “the present laws of our country, however, provide only for those whose reasons of conscience are grounded in total objection to the use of military force. This form of conscientious objection [pacifism] deserves the legal provisions made for it, but we consider that the time has come to urge that similar consideration be given those whose reasons of conscience are more personal and specific” (151, in Benestad and Butler). The bishops “therefore recommend a modification of the Selective Service Act [the draft] making it possible, although not easy, for so-called selective conscientious objectors to refuse – without fear of imprisonment or loss of citizenship – to serve in wars which they consider unjust or in branches of service (e.g., the strategic nuclear forces) which would subject them to the performance of actions contrary to deeply held moral convictions about indiscriminate killing” (152, in Benestad and Butler).

The U.S. bishops repeat this support for SCO in their 1969 “Statement on the Catholic Conscientious Objector”: “In applying an evolving just war theory to the contemporary world, the person who is sincerely trying to form his [sic] conscience must judge whether or not the end achieved by a particular war or all-out war is proportionate, in any degree, to the devastation wrought by that war. On the basis of this judgment, he would justify either participation in or abstention from war” (USCC 1969). In their 1971 “Declaration on Conscientious Objection and Selective Conscientious Objection,” which Rev. Bryan Hehir called their “most expansive and explicit statement” on SCO (73), the bishops affirm that “in the light of the Gospel and from an analysis of the Church’s teaching on conscience, it is clear that a Catholic can be a conscientious objector to war in general or to a particular war ‘because of religious training and belief’ (USCCB 1971, quoting a crucial phrase from a Supreme Court ruling in *U.S. v. Seeger* [1965] on qualifying for conscientious objector status). In their 1980 “Statement on Registration and Conscription for Military Service,” the bishops “affirm the Catholic teaching that the state’s decision to use force should always be morally scrutinized by citizens asked to support the decision to participate in war,” and once again they “support the right of selective conscientious objection (SCO) as a moral conclusion which can be validly derived from the classical teaching of Just-War Theory” (USCC 1980). Hehir points out that this is the most explicit evocation by the bishops of the classical just-war tradition of Vitoria and Suárez and the first time that they use the language of *jus ad bellum* and *jus in bello* in their argument for SCO (75). The bishops go on to observe that “the experience of the Vietnam war highlighted the moral and political significance of precisely

this question. We are sure of the moral validity of SCO; we would welcome dialogue with legislators, lawyers, ethicists and other religious leaders about how to transpose this moral position into effective legal language” (USCC 1980).⁶

In the 1980 document, the bishops recognize that the formation of conscience in regard to war should not be left entirely to the promptings of the Holy Spirit: “the issues of registration and conscription raise questions of the kind and quality of moral education that takes place in our educational system”; to that end, they “call upon schools and religious educators to include systematic formation of conscience on questions of war and peace in their curricula and . . . pledge the assistance of appropriate diocesan agencies in counseling any of those who face questions of military service” (USCC 1980). I would simply add that the draft may have been ended in 1973 in favor of an all-volunteer military, but the urgency of addressing questions of conscience regarding war and peace, and therefore of moral education, has not. As Hehir notes, “to argue for SCO in the civil law is to call for a heightened capability for moral assessment in the body politic” (77). But as John Courtney Murray, S.J. remarks in his classic book, *We Hold These Truths: Catholic Reflections on the American Proposition*, “my impression is that this duty in social morality is being badly neglected in America at the moment” (257). Would Murray think our situation has improved more than 50 years later? Finally, the U.S. bishops reiterate their support for SCO in their 1983 pastoral letter “The Challenge of Peace” and in its tenth anniversary document “The Harvest of Justice Is Sown in Peace.” In the latter document, the bishops observe that “Given the particular problems that arise in the context of an all-volunteer military, individual objectors must exercise their rights in a responsible way, and there must be reliable procedures to verify the validity of their claims” (NCCB 1993). This is not elaborated.

More recently, in their November 13, 2002, “Statement on Iraq,” in which they state that they “find it difficult to justify the resort to war against Iraq, lacking clear and adequate evidence of an imminent attack of a grave nature,” the bishops acknowledge that “ultimately, our elected leaders are responsible for decisions about national security, but [they] hope that [their] moral concerns and questions will be considered seriously by our leaders and all citizens” (USCCB 2002). While they “support those who risk their lives in the service of our nation,” they “also support those who seek to exercise their right to conscientious objection and selective conscientious objection” (USCCB 2002), as they have stated repeatedly in the past.

⁶ In one of his last writings before his death in 1967, Jesuit theologian John Courtney Murray, who had been a principal expert shaping the Second Vatican Council’s document *Dignitatis Humanae: Declaration on Religious Freedom* (1965), and who served on the President’s Advisory Commission on Selective Service (1967), observed that “Strictly on grounds of moral argument, the right conscientiously to object to participation in a particular war is incontestable. I shall not argue the issue. The practical question is how to get the moral validity of this right understood and how to get the right itself legally recognized, declared in statutory law” (1968: 25, emphasis added). It seems that the bishops’ 1980 statement is in complete agreement with Murray, perhaps directly influenced by his writing.

Compendium of the Social Doctrine of the Church

This is just one Catholic episcopal conference, so what, if anything, does the Vatican say? In 2004, the Pontifical Council for Justice and Peace published the *Compendium of the Social Doctrine of the Church*. After acknowledging that “the requirements of legitimate defense justify the existence of armed forces” (502), the *Compendium* states that “every member of the armed forces is morally obliged to resist orders that call for perpetrating crimes against the law of nations and the universal principles of this law” (503). In almost complete repudiation of Augustine’s position, it goes on to state that “military personnel remain fully responsible for the acts they commit in violation of the rights of individuals and peoples, or of the norms of international humanitarian law. Such acts cannot be justified by claiming obedience to the orders of superiors” (503), as if citing the famous Nuremberg Principle. Furthermore, “Conscientious objectors who, out of principle, refuse military service in those cases where it is obligatory because their conscience rejects any kind of recourse to the use of force or because they are opposed to the participation in a particular conflict, must be open to accepting alternative forms of service” (503, emphasis added). The *Compendium* then quotes *Gaudium et spes* (79): in support of SCO: “It seems just that laws should make humane provision for the case of conscientious objectors who refuse to carry arms, provided they accept some other form of community service” (503). Support for legal protection for conscientious objectors, presumably the referent in the Vatican document, has now been extended to selective conscientious objectors, in Catholic doctrine, if not in U.S. public policy or opinion.⁷

Summary

Given the long trajectory – sixteen centuries! – of the development in Catholic teaching on selective conscientious objection, it may be helpful to retrace briefly the major steps along the way from Augustine to the *Compendium*.

Augustine asserted that “the iniquity of the one commanding makes the king guilty, but the order of serving makes the soldier innocent.” Only if the soldier is certain that an order is unjust may he refuse it, and then only in battle, not as to the cause itself.

Aquinas iterated the Augustinian position on obedience to lawful authority in his discussion not of warfare but of criminal justice. If an executioner knows that the condemned is innocent, he should refuse to perform his task. However, if there is no such certainty, the executioner should carry out his duty, but if the condemned is in fact innocent, it is not the executioner “who slays the innocent man, but the judge whose minister he is.” Shakespeare’s soldier sums up the Augustinian-Thomistic position nicely and suggests its reach into popular culture: “if his cause be wrong, our obedience to the king wipes the crime of it out of us.”

Vitoria and Suárez break from the tradition by extending the soldier’s moral responsibility from *jus in bello* to *jus ad bellum*, so that the two Spanish neo-scholastics may be

⁷ For a discussion of a Catholic who cited *Gaudium et spes* as the source of his claim to SCO in regard to the Vietnam war, see Capizzi: 355. In *Negre v. Larson* (1970), the Supreme Court ruled 8-1 (Justice William O. Douglas dissenting) “that the government has legitimate reasons to violate an individual’s religious concerns in times of war” (Capizzi: 353).

said to have articulated a position that we would now call selective conscientious objection, or the right and duty to refuse to participate in manifestly unjust wars and not only to unjust orders within war.

Grotius advanced the tradition beyond Vitoria and Suárez by shifting the benefit of the doubt regarding the justice of particular wars from the ruler to the soldier, arguing that causing the deaths of innocents was a greater threat to justice and personal salvation than disobeying the order of a lawful authority. He also proposed that administrative procedures be in place to address such situations.

Pope Pius XII, in response to the notion that Catholics could be pacifists, invoked the classic position, asserting that “a Catholic citizen cannot invoke his own conscience in order to refuse to serve and fulfill those [military] duties the law imposes.”

Pope John XXIII, in *Pacem in terris*, argued for the duty to refuse to obey unjust laws, but did not apply this argument to participation in warfare, despite his assertion that “it is contrary to reason to hold that war is now a suitable way to restore rights which have been violated” (125).⁸

Vatican Council II, in *Gaudium et spes*, extended John XXIII’s teaching on conscience to warfare, and urged the establishment of laws recognizing the right to refuse participation in all wars, for pacifist conscientious objection, thus reversing Pius XII’s teaching.

The United States Catholic bishops argued explicitly in statements published during and after the Vietnam War that legal protection should also be extended to those who conscientiously refuse to participate in particular wars they judged to be unjust.

The *Compendium of the Social Doctrine of the Church*, published in 2004 during the reign of Pope John Paul II, in effect brought the U.S. bishops’ endorsement of selective conscientious objection into the teaching of the global church. What was once a minority position, when it was an articulated position at all, has become the magisterial position of the Church. Whether it has been taught to and received by Catholics, within the U.S., much less around the world, is an entirely different question.

Conclusion

Of course, this does not mean the older majority position has disappeared entirely from episcopal teaching. Veteran Vatican journalist John Allen reports that even though Cardinal Renato Martino, then president of the Pontifical Council for Justice and Peace, observed that the opposition of the Vatican to the invasion of Iraq in 2003 was clear, he “stopped short of counseling Catholic men and women in the U.S. armed forces to refuse to cooperate in the event of war. ‘*The responsibility is not theirs, it is of those who send them,*’ he said” (335; emphasis added). Similarly, Allen writes that “The only possible reading of the record is that John Paul II was strongly opposed to the Iraq war.” However, he continues, “This does not mean that in opposing the war the Pope intended to bind the consciences of Catholics” (318).

⁸ This is the passage cited in *Gaudium et spes* (80) when famously invoking the need “to undertake an evaluation of war with an entirely new attitude.”

Perhaps Cardinal Francis Stafford's statement best summarizes the Church's current practice regarding selective conscientious objection: "Asked about whether Catholics in the Armed Forces should comply with orders to fight in the Iraq war, Stafford said: 'I can't make the decision for them. As mature, baptized Christians, each layperson has to decide if their being in Jesus Christ, whose peace extends to all persons, allows them to proceed to the destruction of some persons. Each person has to weigh what is being said by the country's leaders . . . and come to their own conclusion.' Stafford added that the Church has always supported a right to conscientious objection,⁹ and he hoped that such a right would be available this time as well if it came to armed conflict" (Allen: 336). To put it simply, a Christian's ultimate obedience should be neither to political nor military nor to ecclesial authority but rather to his or her own conscience, to what John Henry Newman called "the aboriginal Vicar of Christ" (as quoted in USCCB 1994: 1778). Only that authority is ultimately binding.

What was once the minority theological tradition – soldiers have a moral responsibility to evaluate the justice of the wars they are asked to fight and to act accordingly – has gained official ecclesial acceptance. I like to think that the solitary witness of Franz Jägerstätter had something to do with this dramatic change in Catholic moral doctrine, so obviously relevant to the formation of Catholic consciences everywhere regarding participation in unjust wars.

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⁹ As this paper has made clear, this "always" needs qualification.

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