

Review - When Soldiers Say No

Written by Andreas Yiannaros

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ANDREAS YIANNAROS, AUG 28 2014

When Soldiers Say No: Selective Conscientious Objection in the Modern Military

Edited by: Andrea Ellner, Paul Robinson and David Whetham

Ashgate, 2014

'When Soldiers Say No' is a collection of essays featuring arguments for and against selective conscientious objection from a wide range of contributors with expertise in war studies and military issues, ethics, international affairs, law and philosophy. This volume will appeal to those with a special interest in these disciplines, particularly due to the topicality of the subject matter. It is a critical publication that allows the reader to appreciate the complexities of selective conscientious objection and to formulate an opinion on whether or not a right to selective conscientious objection actually exists, and if so to what extent it can be legally protected.

The introductory chapter explains the concept of selective conscientious objection and makes a distinction between the two most widely known types of conscientious objection, i.e. absolute and selective. It further outlines the political, social and cultural factors that lead certain individuals to refuse participation in war-like activities in their entirety, or allow their partial contribution to military action.

Part I forms a backdrop to the publication and allows the reader to understand the contours of the notion of selective conscientious objection, by providing a well-balanced account of arguments for and against selective conscientious objection as a legally protected right. Part I benefits from a variety of thought-provoking arguments. David Fisher focuses, *inter alia*, on the need to train those involved with war to behave justly, rather than allowing members of the armed forces to pass judgment on the conduct of a military operation. On the other hand, Brian Imiola in his chapter suggests that any soldier is under a responsibility to exercise moral diligence and ascertain the justness of a war, arguing that in case of an unjust war, there is a moral obligation to become a selective conscientious objector.

Emmanuel Goffi combines different theoretical perspectives to argue that there is no real moral obligation to obey orders and soldiers should be permitted to refuse participation in particular conflicts to which they do not morally agree. Melissa Bergeron's discussion on selective conscientious objection as a violation of the social contract touches on the social contract theory and its similarity to the bifurcation found in the just war tradition. By distinguishing between universal and selective conscientious objection, the author emphasises the legally binding nature of the agreement to which an individual combatant enters upon voluntarily joining the armed forces, but more importantly it suggests that the solution in the US would be to enable the executive branch of the government to regain its powers and prevent deploying the military into unjust conflicts that may be in violation of US obligations under international law.

Michael Sherker's discussion on combatant equality and his argument that selective conscientious objection is not tenable if moral equality is obtained across all lawful combatants fighting on behalf of the state could benefit from a less philosophical analysis of Rawls's theory on civil disobedience that the author perceives in the same light as selective conscientious objection. Dan Zupan argues that a just society should allow a soldier to claim selective conscientious objection status without fear of legal sanctions. Zupan's distinction of *jus in bello* (primarily the responsibility of a soldier who is developing a conscientious objection) and *jus ad bellum* (primarily a political responsibility that concerns the government's strategic justification of a war) aims to forge a distinguishable moral

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criterion by which society can be said to have a responsibility to accept selective conscientious objection as a moral requirement.

Part II sets out to explore case studies on a country by country basis that spans across four continents. The selection of these case studies is well-thought and provides the opportunity for a comparative analysis of the situation with regard to selective conscientious objection in countries with significantly diverse political and strategic interests (Australia, Britain, Israel, Canada and Germany). Stephen and Nikki Coleman give a historical perspective of selective conscientious objection in Australian law from WWI and WWII to the Vietnam and Gulf war, noting how the National Service Act was amended during these events. They also note the increase of conscientious and selective conscientious objectors with different moral and ideological backgrounds. The authors criticise the Australian government's approach which allows conscientious objection to conscripts but not to volunteer members of the military, concluding that it is morally objectionable that those who have volunteered to serve should have less rights than those who are compelled into the same service.

Stephen Deakin observes how conscientious objection in Britain became more widespread in times of national conscription. His chapter that benefits from a more thorough legal analysis refers to a number of selective conscientious objection cases, presenting the facts and discussing these in more detail. Deakin concludes that military courts have been unwilling to accept 'conscience' as the issue and prefer to examine the issue of selective conscientious objection on military grounds such as obedience of orders. Yossi Nehushtan provides a well-constructed argument of the evidential problem of distinguishing between selective and political objectors who are not regarded as genuine objectors under Israeli law. Nehushtan examines closely a number of important rulings of Israel's Supreme Court, leading to the conclusion that the decisions have failed to deal justly and fairly with the issue of selective conscientious objection.

Yves Le Bouthillier discusses an important, albeit often neglected issue in the legal discourse, i.e. refugee protection to selective conscientious objectors. The chapter focuses on Canada, a country that has seen – in recent years – an increase in the numbers of US soldiers refusing to participate in particular conflicts (most notably Iraq and Afghanistan) and claiming asylum in Canada, in order to avoid disciplinary proceedings under US military law. Le Bouthillier's detailed analysis of Canadian case law is excellent. This is usefully contrasted with international obligations emerging from UN standard-setting texts, leading the author to consider whether there is an absence or willingness of the Canadian State to protect selective conscientious objectors claiming refugee status in Canada.

Part II is brought to a close with Jurgen Rose's chapter on selective conscientious objection in the German armed forces. Apart from a discussion on German case law, Rose's chapter benefits from a personal account on his service as a staff officer of the German Bundeswehr and his selective conscientious objection to participation in 'Operation Enduring Freedom'. His refusal to provide logistic support for the Tornado mission in Afghanistan resulted in Lieutenant Rose's transfer to another division of his department. His discussion on cases concerning selective conscientious objection and their outcomes in the German armed forces point out that the 'new type of soldier' that refuses to obey orders on grounds of conscience may be treated as a threat in the eyes of the authorities, nevertheless he defends the soldier's individual right to obey their conscience.

Part III provides a set of conclusions by the book's editors and distinguished authors such as Carl Ficarrotta. Ficarrotta's chapter reflects the author's fears about the moral and practical consequences of implementing selective conscientious objection as a policy. These problems are dealt and outlined by the author in detail, with some suggestions in making selective conscientious objection politically feasible (See Table 12.1, p. 208). Ficarrotta concludes that policy makers need to have in place a partial or imperfect procedure for selective conscientious objection rather than having no procedure at all. Andrea Ellner focuses on the evidence provided by war resisters in the US and Britain and how these refute the introduction of a right to selective conscientious objection for members of All Volunteer Forces. Finally, the editors (Ellner, Robinson and Whetham) discuss the practice and philosophy of selective conscientious objection, bringing together the evidence presented by the authors of this volume in favour and against a right of selective conscientious objection. In summarising the arguments put forward in this challenging debate, the editors in this conclusory chapter propose the initiation by policy-makers of a more vigorous strategy of enabling the making of ethically sound decisions in challenging situations.

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'When Soldiers Say No' is a highly-recommended and well-researched piece of multidisciplinary literature providing a wealth of information to readers with an interest in the intricacies and complexities of selective conscientious objection. The overarching conclusion that emerges by reading this interesting volume is that deterrence cannot be seen as a panacea to preventing selective conscientious objection. The modernisation of the military and the entering of a new era where soldiers are treated as human beings embodied with a conscience, rather than soulless automatons, may eventually enable policy-makers to introduce effective procedures on selective conscientious objection. The book under review provides useful empirical insights based on the principled analysis of various case studies on selective conscientious objection; with the above in mind, I would recommend the book to students with an interest in international relations, war studies and jurisprudence, as it takes the normative and emancipatory power of law, philosophy and ethics seriously. Its undoubtedly stimulating findings and recommendations should encourage policy-makers to probe strategies to re-think their moral obligation to provide a greater legal option of selective conscientious objection to professional members of the armed forces.

About the author:

Dr Andreas Yiannaros is Associate Professor at The University of Law (London, Bloomsbury). He is a Senior Fellow of the Higher Education Academy and member of the Society of Legal Scholars, the British Institute of International and Comparative Law and the Human Rights Lawyers Association. Andreas acted as external expert to the Council of Europe and supported third party interventions to the European Court of Human Rights.