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Published in:
Secular Studies

DOI:
[10.1163/25892525-00101010](https://doi.org/10.1163/25892525-00101010)

IMPORTANT NOTE: You are advised to consult the publisher's version (publisher's PDF) if you wish to cite from it. Please check the document version below.

Document Version
Early version, also known as pre-print

Publication date:
2019

[Link to publication in University of Groningen/UMCG research database](#)

Citation for published version (APA):

Rouméas, E. (2019). Conscientious Objection to Military Service and Laborde's Exemption Test. *Secular Studies*, 1(1), 142-152. <https://doi.org/10.1163/25892525-00101010>

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Conscientious objection to military service and Laborde's exemption test

Abstract. This paper applies Laborde's theory of the justice of exemptions to what has become a relatively uncontroversial case, the exemption to military service. It assesses how the exemption test designed by Laborde can guide decision-making relative to a specific historical case, focusing on the French example. The exercise sheds light on how contextual considerations – the legal status quo, the geopolitical context, the number of objectors –, decisively influence our normative reasoning about the justifiability of exemptions.

Keywords. Laborde – Liberalism's Religion – Conscientious objection – Legal exemption – Military Service

This paper examines the French controversy over compulsory military service in light of Cécile Laborde's theory of the justice of exemptions. Principled refusal to bear arms is but one form of conscientious objection. Other examples include health professionals refusing to practice abortion, pharmacists refusing to provide an emergency contraception pill, parents objecting to the compulsory vaccination of their children, or public officials declining to officiate at same-sex marriage ceremonies.

Each of these cases of objection raises distinct normative challenges. For example, objecting to officiate at a same-sex marriage ceremony raises the questions of discrimination on grounds of sexual orientation. Objecting to the vaccination of children raises questions of parental autonomy and children's interests. The military service exemplifies a clash between the norm of equality before the law and freedom of conscience. The stakes are very high, as military service can cost the loss of young lives. It has now become an old-fashioned case that has been widely settled on behalf of a right to conscientious objection in the Western world.¹

This paper engages in a counter-factual exercise to gauge how the military service case would have passed Laborde's test of the justifiability of exemptions. I assess how such a test can guide decision-making relative to a specific historical case. To this end, I examine the case of the legal recognition of conscientious objection to military service in France, which occurred in

¹ With a few exceptions, such as Switzerland, Austria, Greece, and Israel.

the early 1960s, in the wake of the Algerian War. France was late in granting a legal exemption to objectors, and the controversy was fierce, involving demonstrations, a hunger strike, and many imprisonments.² This case study illuminates the relevance of Laborde's theory for actual decision-making. In particular, I show how contextual considerations decisively influence our judgment of the justifiability of exemptions.

I begin with situating the topic of conscientious objection within the book *Liberalism's Religion*. I then show that objections to military service in the French context resemble what Laborde calls "integrity-protected commitments". The two last sections examine the extent to which the military service case corresponds to a scenario of disproportionate burden that warrants a legal exemption.

1. Conscientious objection in *Liberalism's Religion*

In *Liberalism's Religion*, conscientious objection appears as one instance of the "exemptions puzzle" (Laborde 2017, 42). Simply put, the question is whether legal exemptions on grounds of convictions are justified, and whether such exemptions are supported by reasons of justice, "not merely expediency" (Laborde 2017, 43). In other words, Laborde seeks to articulate a theory of the justice of exemptions, and conscientious objection to military service is one promising candidate for exemption in such theory.

Religions do not have a monopoly on conscience. Grounding exemptions on "conscientious duties" has the advantage of resonating with both religious and nonreligious convictions, as exemplified by the work of Jocelyn Maclure and Charles Taylor (Laborde 2017, 61-68, Maclure and Taylor 2011). Conscientious duties can arise from secular commitments as well. Although she acknowledges the "ecumenical value" of appealing to conscience (Laborde 2017, 64), Laborde worries that such approach might be "too narrow" after all; many religious

² There has been an historical contrast between a relative leniency towards objectors observed in Britain and the United States, by contrast with a harsher treatment in continental Europe (Martin 1993, 12). During World War I, Germany placed conscientious objectors in mental institutions, whilst France was sending them to martial courts. Meanwhile, Britain and the U.S. accommodated some religious pacifists. A similar contrast appeared during World War II, but the Western trend to recognizing and expanding a right to conscientious objection was reinforced in its aftermath. In Germany, it was presented as a protection against a reemergence of Nazism and introduced in the Constitution of 1949. In the United States, a large increase in the numbers of objectors was permitted by two key Supreme Court decisions which expanded to secular motives, namely *United States v. Seeger* (1965) and *Welsh v. United States* (1970).

practices that are quite fundamental to religious life with integrity do not amount to following one's conscience. Hence the need for a broader concept that captures what legal exemptions ought to protect, namely individual integrity.

Laborde frames her own view in terms of "Integrity-Protecting Commitments" (IPC) rather than duties of conscience. An IPC is defined as "a commitment, manifested in a practice, ritual, or action (or refusal to act), that allows an individual to live in accordance with how she thinks she ought to live" (Laborde 2017, 203-204). In Laborde's view, IPCs are *pro tanto* candidates for exemptions, with a number of qualifications. IPCs need to be sincerely held (*thick sincerity test*). They need not reflect communal authenticity, i.e. the congruence between individual and communal beliefs. They should not be morally abhorrent (*thin acceptability test*), but may be "morally ambivalent", i.e. subject to reasonable disagreement among liberals.

Finally, Laborde designs a two-step exemption test (chap. 6), which revolves around the following two questions:

1. Does the practice exhibit an integrity-protecting commitment (IPC)?
2. Should the practice be accommodated?

Can conscientious objection to military service pass this test? The following section examines the first question and argues that the claims of French objectors resemble IPCs.

2. Conscientious objection to military service as IPC

Many liberals perceive conscientious objection to war as a paradigmatic case of IPC (Laborde 2017, 214). The idea is compelling, and I draw on some historical examples to further substantiate it.

First, conscientious objection is indeed a commitment manifested by a *refusal to act* – to participate in military service, to bear arms, to go to war. A conscientious objection can be defined as "a principled refusal to follow an injunction, directive or law on grounds of personal conviction (Brownlee 2012, 532)". The definition itself includes an assessment of the motives. Refusing to perform an abortion because it is a banal medical act does not qualify as conscientious objection because the underlying motive does not belong to the domain of conscience. In contrast, there is a "laudatory connotation" (Brownlee 2012, 232) to the term of conscientious objector, a recognition of a certain loftiness of their motivations. Conscientious objectors have the courage of their convictions and the willingness to bear the legal consequences of their action. This is because they experience their commitment as obligatory.

Many of them believe that the demands of conscience are categorical. During his trial in 1957, Catholic objector Christian Desmazière publicly declared:

I have understood that Christian faith should absolutely condemn war. And today I categorically refuse to bear arms. Why would I kill a German or an Algerian? I consider that all men are brothers.³

This statement illustrates what Laborde calls “an obligation-IPC”, a precept experienced as obligatory for those who hold it.

Second, conscientious objection is by and large expressed as an individual commitment rather than a collective mobilization. In this respect, conscientious objection crucially differs from civil disobedience (Brownlee 2012). Conscientious objection is paradigmatically individual and directed at preserving personal integrity, whereas civil disobedience tends to be collective and aims at denouncing and changing the law. Primarily, objectors seek to live in accordance with their convictions. As a matter of fact, conscientious objection in France cut across communities of faith, and need not be religious. On Christmas 1956, Pope Pius VII condemned conscientious objectors, declaring that Catholic citizens should not appeal to their conscience to escape their legal duty in a democratic government.⁴ Catholic objectors were dissenters within the Church. Likewise, Protestants were divided on the issue, and a portion of objectors were anarchists. In 1958, 90 conscientious objectors were imprisoned in French prisons, including two Protestants, two Catholics, two atheists, while all the others were Jehovah's Witnesses (Lecoin 1965, 239). The landscape of conscientious objection resembled more a fragmented phenomenon than an organized one. As such, it is adequately captured by the subjective notion of IPC.

Finally, conscientious objection relates to individual integrity. This is well illustrated by the words of Pacifist Edmond Schaguené, imprisoned 10 years for conscientious objection and released in 1958. Upon his release, Schaguené declared:

You know, I will not accept to compromise myself even a bit, and I prefer to be imprisoned again in a year rather than renouncing what constitutes my reason for living and the testimony of my faith (Lecoin 1965, 248).

³ This quote and the following ones are my translation. *Le Monde*. “M. Desmazières condamné une nouvelle fois pour objection de conscience”, 30 January 1958.

⁴ *La Croix*. “À propos d'un appel à l'insoumission : Morale et désobéissance civique”, by Antoine Wenger, 24 September 1960.

This portrait of French objectors prior to the legal recognition largely fits Laborde's concept of IPC. Interestingly, the bone of contention did not revolve around religious versus secular objection, or mere preference versus conscientious commitment. Instead, it was the distinction between universal versus selective conscientious objection that captured the attention. A universal objector opposes war in general, whereas a selective objector only opposes some wars. During the Algerian War, some French draftees endorsed the idea of the right of people to self-determination and refused to combat. Selective objectors appeared much more threatening because their refusal would be perceived as directly targeting the legitimacy of the government conducting the war.

This resistance to include political motives is reflected in the legal development of a right to conscientious objection in the West, which occurred in three stages (Martin 1993, 6-8). It began in the early modern period with the recognition of conscientious objectors from minority pacifist churches stemming from the Protestant Reformation, such as the Mennonites, the Brethren or the Quakers, and was later extended, in the 20th century, to Jehovah's Witnesses and Seventh-Day Adventists. The second stage involved the extension of exemptions to objectors from mainstream religions, Catholics and Protestant denominations. Finally, in a third stage, exemptions came to encompass secular motives, such as anti-militarism and concerns about human rights. Political convictions were seen as hard cases.

Yet, both universal and selective objections can qualify as IPCs. Political convictions can also be lived as categorical demands of conscience, central to one's sense of self. And the frontier between the two is not always clear-cut. In his second trial in 1960, Henri Cheyrouze thus declared:

Initially, there was the war in Algeria, the atrocities committed there. I thought again and I told myself that if I refused this war I had to refuse all wars.⁵

Cheyrouze's defence failed to convince. He was sentenced to imprisonment, sharing his fate with hundreds of young men committed to their convictions.

3. Grounds for legal exemption

⁵ *Le Monde*. "Pour son second refus d'obéissance » Henri Cheyrouze est condamné à deux ans de prison maximum de la peine", by Jean-Marc Théolleyre, 28 July 1960.

Let us now turn to the second question: should the practice be accommodated? Should conscientious objectors be exempted from military service? This question has been settled by most Western democracies. But one can wonder how Laborde's test would have guided decision-makers when they legislated.

Laborde's preferred theory of the justice of exemptions revolves around two scenarios of unfairness that can justify granting exemptions, namely disproportionate burden and majority bias. I focus here on the first, as the military service example seems remote from a majority bias case, where a minority is denied access from opportunities enjoyed by the historical majority, such as education or work.

A scenario of disproportionate burden occurs when there is "a *disproportion* between the aims pursued by the law and the burdens it inflicts on the claimants (Laborde 2017, 220)". Consider the case of a provision that severely undermines the freedom of conscience of some citizens, by preventing them to fulfill commitments that they perceive as obligatory. As it turns out, the provision is not required by justice, and it would not be too costly for the state to simply grant an exemption to those affected. In such scenario, there is a compelling case for exempting individuals holding obligation-IPCs.

Did the military service example display a scenario of disproportionate burden? Laborde's reasoning involves a balancing exercise between four criteria, the directness and severity of the burden incurred by affected individuals, the proportionality of the aim of the law, and the extent to which an exemption would induce some cost-shifting. Let us see how these criteria were fulfilled in the military service example.

- (a) *Directness*. Compulsory military service was directly burdensome. It was applicable to all young men of a certain age group. The refusal to participate led to immediate sanctions, typically imprisonment. Many objectors faced new trials after successive refusals. Their steadfastness resulted in long years in prison. The cost of objecting was therefore very high.
- (b) *Severity*. Laborde writes: "The more an IPC is perceived as an obligation, the more severe the burden is (Laborde 2017, 225)." As shown in the previous section, the testimonies of objectors before the adoption of a legal status exhibited a strong sense of obligation. This is not unrelated to the directness of the burden: those who object must be willing to face prison sentences. The directness of the burden is likely to dissuade opportunistic draft dodgers, or simply those who condemn war but do not perceive objection as a categorical obligation. What distinguished the objector from the draft dodger was precisely the

willingness to bear the legal consequences of breaching the law. While draft dodgers escaped to Switzerland, objectors bore the burdens of faith. They refused to obey one particular law, but claimed that they did not place themselves above the law.

- (c) *Aim of the law.* The primary aim of military service was national defence. It was the protection of the nation that warranted that young men were trained to bear arms and risk their lives in combat. Arguably, national defence is pivotal to egalitarian justice, as it protects the sovereignty of the state and the rule of law against external threat. The integrity of the state is a basic condition of egalitarian justice. What's more, the necessity of defence was intertwined with an egalitarian requirement. As a matter of fairness, the costs had to be equally shared among young men. Military service has been referred to as "the blood tax" (*l'impôt du sang*) – a tax for which evasion should not be left unpunished. As André Moynet claimed in the National Assembly: "the first equality is about serving one's country when needed".⁶ In addition to the question of fair distribution of costs, military service was deemed to have egalitarian virtues. All men were equal in their uniform, irrespective of class belongings or local ties.⁷

It is debatable whether military service was demanded by justice and whether the purpose it served could have been achieved otherwise. After all, a few decades after the controversy, military service was no longer considered necessary to the goal of protecting the nation. Yet, in the aftermath of the Algerian War, military service was widely perceived as requiring universal (male) compliance as a matter of egalitarian justice.

- (d) *Cost-shifting.* The last aspect to be examined is to what extent granting exemptions to objectors shift the burden onto others. Cost-shifting can pose practical issues. What if the existence of objectors implies a shortage of staff? If the number of objectors proliferate, a smaller army might be more at risk. In addition, cost-shifting relates to the considerations of fairness mentioned above: why would some risk their young lives for the collective, while others get away with it? The hardship of serving one's country should be distributed equally.

⁶ President of the national defence and armed forces commission. *Journal officiel de la République Française*. Compte rendu intégral des séances à l'Assemblée nationale. 1st session, 24 July 1963.

⁷ The question of the exclusion of women did not appear in the debates.

Careful examination of the four criteria indicates the following: (a) the law is directly burdensome; (b) the burden is severe; (c) the aim of the law could be presented as pivotal to egalitarian justice; and (d) cost-shifting is significant. Balancing these considerations does not decisively point to one answer or another. On the one hand, the directness and the severity of the burden strengthen the case for exemptions. On the other, even if the aim of the law could still be achieved with a few objectors, the breach of equality leads to an unfair distribution of costs.

4. Solving the puzzle

How should policy-makers decide? How should we solve this puzzle? Recall, Laborde's theory of exemptions is concerned with justice, not mere "expediency" (Laborde 2017, 43). She is seeking for principled reasons to grounds exemptions, not pragmatic ones. Yet, contextual considerations and pragmatic concerns influence the reasoning. In what follows, I highlight some external factors that are ultimately decisive in shifting the balancing exercise in favour of granting exemptions.

First, the legal status quo shapes the robustness of exemption claims. Before the legal recognition, objectors had to be willing to bear the consequences of their commitment, and potentially endure lengthy prison sentences. The perspective of years behind bars is a cruel, yet effective, test of sincerity. As the writer François Mauriac put it, objectors' "consent to suffering" is to be taken as evidence of their good faith.⁸ The legal status quo necessarily affects our judgment about the severity of the burden.

Decades after the adoption of a status in 1963, motives for objection have shifted. What initially concerned a minority of steadfast believers has grown into a mass phenomenon of men who are reluctant to partake in military service. Not only has there been a "secularization of conscience (Chambers and Moskos 1993, 6)", but also some form of trivialization of motives underlying objections. Sociological research has shown that individuals benefitting from the legal status of conscientious objectors declared a diversity of motives which have little to do with conscientious duty, such as their aversion for hierarchy or their desire to remain disengaged from communal activities, at the margin of society (Jacquin 1990). My point here

⁸ *Le Figaro*. "L'objecteur de conscience", by François Mauriac, 19 October 1948.

is not to lament the trivialization of motives, but to show that the legal context matters in shaping the nature of demands.

Second, geopolitical context matters. When the likelihood of an armed conflict reduces, the importance of military service decreases. National defence is paramount to preserve “egalitarian justice” in the face of imminent conflict. During the Algerian War, the government was concerned that objectors, especially selective objectors, would proliferate and endanger the effort of war. After the war, it was less of a pressing concern. An alternative civil service could fulfill the egalitarian requisite of the law without endangering the primary aim of national protection. The philosopher and journalist Étienne Borne presented legal exemption as a small concession granted by the state to objectors because the danger is so derisory.⁹ The aim of the law could now be achieved through other means – thus strengthening the case for an exemption.

Third, the number of objectors matters. A large number of objectors would be troublesome because it would induce significant cost-shifting. The small number of objectors was a compelling argument for granting exemptions. Raymond Aron, political scientist and public intellectual, thus wrote: “There are not so many true followers of Christ: to force them to count themselves and save them from prison is to relieve our conscience and perhaps even to serve the state (Aron 1934, 145).” Again, a pragmatic concern – how much the phenomenon of objection would impact the contingent – weighs on the balancing exercise.

What was true when the law was adopted changed over time. There has been a dramatic increase of demands. In France, the number of objectors went from 906 in 1982 to 2951 in 1988 (Martin 1993, 90). This pattern also affected other Western countries. The number of demands dramatically increased towards the end of the Cold War – in Western Europe, the number of objections were multiplied by 7 between the mid-1960s and the late 1980s, reaching one out of four men in Northern Europe (Chambers and Moskos 1993, 3).

Contextual factors – here, the legal status quo, the geopolitical context, and the number of claimants – decisively influence the exemption test and ultimately weigh in favour of an exemption. The burden was direct and very severe, while the purpose of the law could be achieved despite the exemption. The alternative civil service, twice as long as military service, tackled the problem of free riding.

Conclusion

⁹ *L'Aube*. “Vertus et périls de l’objection de conscience”, by Étienne Borne, 7 November 1950.

The counterfactual exercise of applying Laborde's exemption test to conscientious objection to military service has shed some light on how contextual considerations decisively influence our judgment about exemptions. While at first glance the test remains inconclusive a closer look at some external factors weigh in favour of a legal exemption. Although Laborde's normative framework was not meant as an exercise of public philosophy, it proves relevant to contextual judgment.

Finally, what the case of French objectors also reveals is the unpredictable reception of a legal exemption; there is an ironical twist to the story. While the legal exemption served an increasing number of opportunistic demands, it was of no use to the majority of individuals for which it was truly a matter of integrity. The majority of objectors, namely the Jehovah's Witnesses, rejected the option of a civil service. Many of them remained imprisoned until the suspension of the military service in 1997. In their letter to the General de Gaulle dated August 1963, they wrote that they cannot possibly stay away from predication (Lecoin 1965, 139). They presented themselves as respectful of the "just laws of the state", but unable to renounce their freedom to preach. In August 1964, 152 of them were imprisoned; they were between 500 to 600 in the 1990s (Auvray 1983, 253, Blondel 1994, 60).

As a matter of fact, the legal exemption did not serve the main religious minority for which it was truly a matter of integrity, but attracted a large number of objectors whose motivations had little to do with conscience.

Acknowledgements

I would like to thank Margherita Galassini and Renaud-Philippe Garner for their helpful comments. I would also like to thank audiences at the Symposium on *Liberalism's Religion* (May 2018, Nuffield College, Oxford), and the 2018 ASPP annual conference (Rome).

References

- Aron, Raymond. 1934. "De l'objection de conscience." *Revue de Métaphysique et de Morale* 41 (1):133-145.
- Auvray, Michel. 1983. *Objecteurs, insoumis, déserteurs : histoire des réfractaires en France, Stock 2*. Paris: Stock.

- Blondel, Philippe. 1994. "L'objection de conscience et la position des témoins de Jéhovah face au service national." *Les Petites Affiches*.
- Brownlee, Kimberley. 2012. "Conscientious Objection and Civil Disobedience " In *The Routledge companion to philosophy of law*, edited by Andrei Marmor, 527-539. New York ; London: Routledge.
- Chambers, John Whiteclay, and Charles C. Moskos. 1993. *The New conscientious objection : from sacred to secular resistance*. New York ; Oxford: Oxford University Press.
- Jacquin, Daniel. 1990. "L'objection de conscience en France: figures d'acteurs." *Archives Européennes de Sociologie* 31 (2):239-260.
- Laborde, Cécile. 2017. *Liberalism's religion*. Cambridge, Massachusetts: Harvard University Press.
- Lecoin, Louis. 1965. *Le cours d'une vie*. Paris: Lecoin.
- Maclure, Jocelyn, and Charles Taylor. 2011. *Secularism and freedom of conscience*. Cambridge, Mass.: Harvard University Press.
- Martin, Michel L. 1993. "A Statute but Not Objectors." In *The new conscientious objection : from sacred to secular resistance*, edited by John Whiteclay Chambers and Charles C. Moskos, 80-97. New York ; Oxford: Oxford University Press.