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Justifications of Conscientious Objection: An Israeli Case Study

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Introduction

In a seminal article on conscientious objection, published in 1970, Michael Walzer noted the difficulty of 20th century legislators to exempt conscientious objectors from military service, since conscience is no longer associated with distinct religious groups. Walzer wrote that although conscientious objection is hard to accommodate in any democratic state, for democracy implies a commitment to share the burdens of political life in some equitable fashion, in the past personal religious convictions were taken to justify the exemption of their holders from fighting for the state. He explained this by the Protestant belief in private conscience as signalling an individual's touch with the divine, as well as by the little danger posed to the state by religious conscience. 18th century legislators did not have to worry about the infinite extension of claims, as these claims moved within a limited Protestant historical tradition with which they were entirely familiar, involved no political judgement on the state, were made by a small number of people, and were conventional and easy to discern.

Once the claims by conscientious objectors are no longer grounded in religion, however, it becomes much harder for legislators to justify the exemption of conscientious individuals from the duties of the democratic state. The 'secularization of conscience' in the 20th century makes it almost impossible to distinguish between genuine and phoney claims for

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exemption or between claims based on moral convictions and those intended to make a political statement. Walzer provided a partial solution to these problems by focusing on conscientious objectors whose claims are not merely personal but based on shared group principles and mutual engagements:

> I do not mean to suggest that the principles to which groups of men commit themselves are necessarily or even probably better than the principles to which individuals commit themselves. I do think, however, that conscientious objection has and probably ought to have greater weight in the eyes of the larger community when it has as its basis a smaller community, within which some degree of responsibility, mutuality, and social discipline is likely to exist (Walzer 1970: 131).

Limiting the discussion to objectors' groups, or to individuals belonging to such groups, allowed Walzer to justify conscientious objection by claiming that it is inconceivable to demand of political groups in pluralist democracies to behave contrary to their most intense commitments. This justification is not easy to apply, however, because political groups are not as distinct and easy to identify as religious groups were in the past. Walzer realized this difficulty but did not see it as insurmountable, believing that the secular conscience may undergo a development similar to that of religious conscience and become stable and stereotyped. To him, political objection, like religious objection in the past, may raise reasons that are "typical in form, if not stereotyped, the men clearly marked, and their actions (within limits) predictable" (Walzer 1970: 142).

But what if they are not? What if conscientious objectors continue to rebut predictable patterns of group behavior and inflict continuing surprises on societies, and their conscription boards and tribunals, by conscientious objection that is anything but clear and stereotyped? What if the claims are not "typical in form" but idosyncratic and confused? What if conscientious objection is the result not of shared group experiences but of personal development before or during military service? In her study of conscientious objection in England, the U.S.A., West Germany and Japan, Moorhead has shown the enormous difficulties political authorities in those countries faced in trying to define conscientious objectors, classify them by groups, or sort out and make sense of their arguments. These difficulties were apparent not only when the authorities were hostile but also when they could be found in their more typical mood: polite, disbelieving, a little bored (Moorhead 1987). Nor have conscientious objectors reflecting upon their own experiences been successful to place their ideas within distinct philosophical traditions or the norms of specific political groups (see Weber 1978: ch. VI). As Sibly & Jacob have noted, non-religious objectors tend "to atomize — to split into miniscule

segments having no particular ties with other groups save their common war objection" (Sibly & Jacob 1952: 38).

The case study discussed here of A.Z., an 18-year-old who refused to carry weapons while serving in the Israeli army in the early years of statehood, is illuminating to legal and political thought not because A.Z. was an articulate, consistent thinker belonging to a distinct philosophical tradition or political group but because he was not. "A.Z." stands for Amnon Zichroni, a prominent Israeli attorney known for his defence of civil rights. I prefer, however, to use the abbreviation A.Z. in order not to confuse the prominent attorney with the youngster he was in 1954. This article is written as part of Zichroni's biography, but the usefulness of the biographical genre stems from the fact that individuals are observed not in the image we have of them as fully developed human beings, belonging to well-defined social roles, but in the transformations they undergo in their lives. What allows us to refine conceptual categories on conscientious objection are not the court speeches made by the prominent attorney today, but the confused statements he made while facing the authorities many years ago, in Israel's first significant case of war resistance.

Born to a middle class family, A.Z. was a serious high school student and a loner, who spent long afternoon hours at the library. When drafted to the army in July 1953, he did not refuse the draft, admitting later that all-out pacifism seemed to him too utopian at the time. He was sent to an infantry battalion but shortly after arrival declared himself a conscientious objector and refused to carry weapons. As a consequence, he was posted in service roles within the battalion and, when sent on night-guard, carried a stick rather than a rifle. He deserted the camp for 3 days, during which he contacted members of the Israeli branch of the War Resisters International (WRI), refused orders upon his return, and was finally placed in military detention where he began a hunger strike. He was sent to a psychiatric hospital, was found perfectly healthy, and was consequently tried by a court-martial which, unimpressed by his claim of conscientious objection, sentenced him to 7 months in prison. His prolonged hunger strike, which lasted 23 days and brought him close to death, called attention world-wide. The hunger strike ended when A.Z. was pardoned by Minister of Defense Pinhas Lavon.

The A.Z. story is about a stubborn young man confronting a stunned, disbelieving establishment at a time in which the mobilization of Israeli society to perform collective tasks necessitated by threats to its security was at its height. This affair thus allows us to examine justifications of conscientious objection in the non-idealized setting in which objectors most frequently find themselves — one of negotiations between lonely individuals, however embraced by political groups, and perplexed authorities.

To be sure, cases of conscientious objection always involve negotiations. Let me define conscientious objection, after Raz, as "a breach of law for the reason that the agent is morally prohibited to obey it" (Raz 1979: 263). Since the law hardly ever provides a satisfactory answer to the question when it ought to be breached, and since there exist no satisfactory solutions to conflicts between legal and moral claims, the parties involved — the objector, support groups, and the authorities — inevitably resort to negotiations. These negotiations are often tough because they touch upon the very essence of the community, the social order and the social contract, but they are not necessarily intended to change the nature of the community, reform the social order or redefine the social contract. This is where conscientious objection is distinguished from civil disobedience, defined by Raz as "a politically motivated breach of law designed either to contribute directly to a change of law or to express one's protest against, and dissociation from, a law or public policy" (Raz 1979: 263).

In real-world negotiations, however, the analytical distinction between the two terms is often blurred. The conscientious objector may be accused for challenging the foundations of the social order, and the question of when an act constitutes conscientious objection or civil disobedience may itself become an issue in the negotiations. A.Z., facing his sergeant-major in the camp's detention center, was quite unaware of the distinction between conscientious objection and civil disobedience. Nor had he, or for that matter his sergeant-major, been familiar with the full range of arguments justifying conscientious objection in the legal literature. And yet, an observation of the negotiations between the various actors in the affair — the objector, his support group (composed mainly of WRI members), and officials in the Ministry of Defense — reveals a set of arguments which seem quite viable in the political context in which they were raised.

I study the arguments raised in this political context in an attempt to provide a conceptual framework for the analysis of conscientious objection in a variety of political contexts. The framework consists of three ideal types prevailing in the literature on conscientious objection, which may be referred to respectively as the "Thoreau argument", justifying refusal to obey the law under certain circumstances by reference to a higher law, the "Dworkin argument", justifying it by reference to inherent rights, and the "Rawls argument", justifying it by reference to the social contract.

The arguments are derived from the writings of Henry David Thoreau, Ronald Dworkin and John Rawls, whose theories on conscientious objection have become classics for objectors and scholars alike (see Alton 1992). While each of the three writers attempted to provide a universal justification of conscientious objection, it may be shown that real-world negotiations are context-bound. Different actors use different types of arguments, make strategic shifts from one type to another, and adjust

elements contained in all three ideal types to changing circumstances. In what follows, I elaborate on the three ideal types, demonstrate how the justifications contained in them were negotiated between the actors in the A.Z. affair, and point at the direction for an analysis of conscientious objection in varying political contexts.

The Ideal Types

The Thoreau argument

One of the main justifications of conscientious objection has been offered by Henry D. Thoreau, America's 19th century master writer. In his famous lecture of 1848 "On the relation of the individual to the state", published a year later under the title "Resistance to Civil Government" and retitled after his death "Civil Disobedience" (Thoreau 1969), Thoreau justified his refusal to pay taxes in the State of Massachusetts by the immoral conduct it tolerated in the matters of slavery, the Mexican war and the treatment of Indians. In light of the fact that Thoreau himself did not use the term 'civil disobedience', and in view of the debates over whether his tax refusals, for which he spent one night in jail, were really an act of civil disobedience (Bedau 1969), it seems justified to consider the essay mainly in the context of conscientious objection.

This is particularly justified in light of Thoreau's basic questions:

> Can there not be a government in which majorities do not virtually decide right and wrong, but conscience? — in which majorities decide only those questions to which the rule of expediency is applicable? Must the citizen ever for a moment, or in the last degree, reign his conscience to the legislator? Why has every man a conscience, then? (Thoreau 1969: 28).

To Thoreau, the government must be just and majority rule by itself is not identical with justice. Right and wrong are not the products of decisions by majorities but of human conscience, which should be given greater weight than the law: "It is not desirable to cultivate a respect for the law, so much as for the right. The only obligation which I have a right to assume, is to do at any time what I think right" (Thoreau 1969: 28). Not only does Thoreau subordinate the law to one's conception of right and wrong but believes that sheer respect for the law makes those adhering to it agents of injustice:

> A common and natural result of an undue respect of law is, that you may see a file of soldiers, colonel, captain, corporal, privates, powder-monkeys, and all, marching in admirable order over hill and dale to

> the wars, against their wills, ay, against their common sense and consciences, which makes it very steep marching indeed, and produces a palpitation of the heart (Thoreau 1969: 28–29).

No wonder Thoreau's straight-forward statements have served as justifications of conscientious objectors since the mid-19th century. Soldiers marching to war despite their awareness that it is a "damnable business" (Thoreau 1969: 29), whether because they object to war in general or because they object to the aims of a specific war, are reduced to subhuman status. Thoreau doubts whether they are humans at all or rather "small movable forts and magazines" (Thoreau 1969: 29). This is not only true of soldiers but of all individuals serving the unjust state as its jailers and constables, legislators and office-holders. By not making moral distinctions, Thoreau says, these functionaries serve the Devil.

The Dworkin argument

The second justification of conscientious objection may be derived from philosopher of law Ronald Dworkin's work, especially his two articles "Taking Rights Seriously" and "Civil Disobedience". The articles, first appearing in the New York Review of Books, were written as part of the controversy over draft evasion in the U.S.A. during the Vietnam war. Dworkin attempts to prove that society has a responsibility toward those who disobey the draft laws out of conscience and that the government may not be required to prosecute them but rather to accommodate them.

The argument is based on a distinction between two meanings of the term 'right'. Dworkin distinguishes between one's right to do something in the sense that it would be wrong to interfere with his or her doing it, and in the sense of it being the right thing for him or her to do. For example, he writes, we may tell a gambler he has the right (in the first sense) to spend his money gambling though we may feel it is not right (in the second sense) to do so.

The distinction between the two meanings of 'right' allows Dworkin to treat the issue of the right to break the law in a politically significant way. The common rhetoric claiming that people have the right to break the law while the government has, at the same time, the right to punish them for it is replaced by the question whether there exists a right to break the law without the government having the right to punish. Dworkin's answer:

> The claim that citizens have a right to free speech must imply that it would be wrong for the Government to stop them from speaking, even when the Government believes that what they will say will cause more harm than good. The claim cannot mean … only that citizens do no

> wrong in speaking their minds, though the Government reserves the right to prevent them from doing it (Dworkin 1977: 190–191).

This argument provides a fresh perspective on conscientious objection. The Thoreau argument, directing us to look for a person's morality in determining that person's justification to break the law, is replaced by a search for one's right not to be interfered with whatever the moral position he or she holds. The state of a person's conscience, says Dworkin, may be decisive, or central, when the issue is whether that person does something morally wrong in breaking the law, but it need not be decisive or even central when the issue is whether that person has a right, in the strong sense of the term, to do so.

Dworkin thus demands that the government not treat those who act on a reasonable judgement that a law is invalid as common criminals, only because 'the law is the law', but that prosecutors take a more lenient view. He then equips us with the policy questions which ought to be asked in each case as a means to apply leniency:

> What means can be found for allowing the greatest possible tolerance of conscientious dissent while minimizing its impact on policy? How strong is the government's responsibility for leniency in this case — how deeply is conscience involved, and how strong is the case that the law is invalid after all? How important is the policy in question — is interference with that policy too great a price to pay? (Dworkin 1977: 220).

This pragmatic approach opens up a new line of argument in its demand to weight acts of law-breaking out of conscience, whether or not they are perceived to be 'right' in the weak sense discussed before, against the actual rather than hypothetical consequences they may entail.

The Rawls argument

John Rawls's theory of justice as fairness derives rules of conduct for the near-just society from the choices of rational individuals in a hypothetical condition of equal liberty. The near-just society is one whose behavior approximates the outcome of choices made by individuals unaware of their initial advantages and disadvantages *vis-à-vis* each other. Individuals placed behind such a 'veil of ignorance' would choose, according to the theory, two main principles: equal liberty and equal opportunity.

In our search for social justice, this theory leads us to the realm of the "social contract". The evaluation of the near-just society is based on calculations of the outcome of choices that rational individuals would make in the initial contracting position. The justification of any social

behavior, such as civil disobedience and conscientious objection, would thus require attention to what those individuals would agree or disagree to.

Civil disobedience and conscientious objection are important building blocks of the theory of justice as fairness because they touch upon the essence of the social contract. Rawls defines civil disobedience as "a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government" (Rawls 1973: 364). By acting in this way, he says, one addresses the sense of justice of the majority of the community and declares that in one's considered opinion the principles of social cooperation among free and equal men are not being respected. He distinguishes civil disobedience from "conscientious refusal", defined as "the noncompliance with a more or less direct legal injunction or administrative order" (Rawls 1973: 368), and notes that the latter is not a form of address appealing to the sense of justice of the majority but mostly a private act.

Rawls takes a rather conservative approach to justifying civil disobedience. He restricts it to serious infringements on the two principles of justice, the principle of equal liberty, and the principle of equal opportunity. He also adds the condition that normal appeals to the political majority must already have been made in good faith (and failed) before civil disobedience can be tried. Being concerned with the breakdown of respect for the law if too many instances of civil disobedience occur, Rawls notes the need to coordinate among them. Having placed justified civil disobedience under these restrictions, he still worries about the possibility that civil disobedience, however rightful, may lead to harsh retaliation by the majority. The action should thus be "properly designed to make an effective appeal to the wider community" (Rawls 1973: 376).

The justification of conscientious refusal is slightly less conservative. It is derived from an application of the general model of justice as fairness to the relations between states. Justice between states is determined by the principles that would be chosen in the original position by states behind a veil of ignorance, hiding their historical biases and contingencies. Rawls believes that the principles chosen under these conditions are those familiar from the law of nations, i.e. equality, self-determination, respect for treaties, etc. These principles define when a nation has a just cause to go to war and regulate the means that may be justly used in war. The representatives of a state in the original position would recognize that their national interest is best served by acknowledging certain limits on the conduct of war. In that position, a nation has a rational interest in maintaining its just institutions and the conditions that make them possible rather than, say, pursue a quest for world power, national glory, economic

gains or the acquisition of territory. These ends are contrary to Rawls's conception of justice, however prevalent they have been in reality, because behind the veil of ignorance no nation knows whether it is the oppressor or the oppressed.

Rawls's justification of conscientious refusal consists of an appeal to the principles emerging in the original position:

> …if a soldier is ordered to engage in certain illicit acts of war, he may refuse if he reasonably and conscientiously believes that the principles applying to the conduct of war are plainly violated. He can maintain that, all things considered, his natural duty not to be made the agent of grave injustice and evil to another outweighs his duty to obey (Rawls 1973: 380).

In contrast to Thoreau, Rawls does not leave it to one's individual conscience to determine what constitutes the principles whose violation justifies objection. To him, the essential point is that the justification must cite political principles that can be accounted for by the contract doctrine.

Argumentation in the Case Study

An examination of the argumentation in the A.Z. affair reveals that, although the various actors sometimes used similar arguments contained in the three ideal types (which, themselves, overlap somewhat), they mostly spoke across each other, with A.Z. adhering mainly to Rawls, the support group to Dworkin, and the Ministry of Defense — somewhat paradoxically — to Thoreau.

A.Z. referred to the social contract in an instinctive application of the Rawlsian argument. This can be noticed in the first written statement he made upon his arrest:

> I consider my arrest an absolute denial of my human and civil rights. I am not a soldier, I cannot be a soldier because I did not take the oath of the Israeli Defense Forces. Hence I decided to conduct a hunger strike.

Being held in his battalion's detention centre, he was hardly in a position to elaborate a Rawlsian theory of justice but in this statement, A.Z. clearly dissociated himself from the community which sanctioned him. This argument was not ignored; after news about the arrest was published in one newspaper, *Yediot Aharonot*, which claimed that A.Z. did not take the oath, a search was ordered for the form on which he signed the oath, and the form was found. Moreover, the army insisted that A.Z. held weapons in

his hands during basic training. In other words, the army tried to prove that he was no consistent pacifist but a sheer defector.

But A.Z. did not even try to present himself as a consistent pacifist. His line of argument was all along one of denial of the legitimacy of the system prosecuting him, as he could not consider himself part of it. In his court-martial, when asked whether he objected to the personal composition of the court, he stated explicitly he had no objection to the *personal* composition of the court. When asked whether he did or did not admit his guilt, he answered he did not consider himself guilty, refraining from using the common legal terminology. His arguments in that court raised enormous fury with the 'judges' (a major, a captain and a private), one of whom used rather derogatory language, largely because A.Z. presented his appearance before a military court as paradoxical. He said he objected to the very existence of the army, complained he was not treated in accordance with principles of 'absolute justice', and said he considered himself the prosecutor rather than the defendant. He insisted he did not take the oath, told the court that he filed a request to be released from the army which had been denied, and explained his 3-day desertion by an incident of unjust attack by the army on a Syrian village, which made him realize he could never be a soldier. He did not escape from the barracks, he added, because, by definition, a pacifist never 'escapes', just leaves the barracks.

The lawyer hired by A.Z.'s parents to defend him in the court-martial was Mordechai Stein whose son and daughter had also refused the draft, and who had close contacts with the Israeli branch of WRI. In his argumentation, Stein made an effort, resembling Dworkin's and Walzer's defence of draft evaders during the Vietnam war, to place his client within a larger group of Israeli conscientious objectors. Stein asked the court that members of the Israeli branch of the WRI be called to the witness stand in order to demonstrate that the defendant's behavior was consistent with their position which had already been recognized as legitimate. Although the request was denied by the short-tempered court, he brought the point up again in his summary. He claimed that the defendant was not the only war resister in the country, referring to a small group of persons, mostly Tolstoyan thinkers far above conscription age, who formed the Israeli branch of WRI (see Bing 1990). He submitted a document indicating that a pacifist had been released in the past with 'pacifism' given as the official reason for his release, and pleaded that even if A.Z. is found guilty, he be recommended for pardon because whatever he did stemmed from deep conviction.

Philosophers, educators, poets, columnists and others who commented on the A.Z. affair in letters to state officials or in the press took a somewhat similar line of argument when A.Z.'s hunger strike began to endanger his

life. While expressing their disagreement with A.Z.'s views, they insisted on a person's right in a democracy to follow personal convictions without suffering the death penalty. They claimed that the right to think differently, even the right to err, ought to be recognized in an enlightened democratic state. Consider the following letter to Prime Minister Moshe Sharett by three noted intellectuals, theologian Martin Buber, philosopher Hugo Bergman and educator Ernst Simon. The letter followed closely the pragmatic line of argument associated before with Dworkin. The three intellectuals opened the letter by noting that their approach was not politically motivated and clarified they did not belong to any group of war resisters. Despite their sincere wish for peace, they wrote, the tragic nature of human history must be recognized. Even nations reluctant to fight were not spared the engagement in bloody struggles. At the same time, we must recognize the right of others to think differently and condemn every war, including a war which is perceived as just.

The three intellectuals assured the Prime Minister that in light of present attitudes in Israel and the world, there is no chance that the pacifist mood would spread and endanger Israel's or any other country's security. Conscientious objectors will remain a very small minority everywhere. Moreover, conscientious objectors are fully distinguishable from sheer defectors. Hence, the prime minister ought to find an 'honorable solution' to the dead-end road in which both the young objector and the authorities found themselves. The letter ended with yet another pragmatic argument, hinting that if A.Z.'s hunger strike results in his death, the state's reputation will be jeopardized (Buber, Bergman & Simon 1954).

Finally, officials in the Ministry of Defense, in search of solutions to the embarrassing affair, were holding firm to the traditional notion of conscientious objection, familiar from Thoreau's writings, as related to an external moral source. They were willing to excuse conscientious objection as long as it concerned a manageable number of individuals pursuing unique, esoteric convictions (preferably stemming from religious sources), while refusing to open up the foundations of the social contract, or for that matter the right to refuse in principle, to public debate.

This point came up again and again in the internal and external communications of the Ministry of Defense. Officials argued that A.Z.'s behavior was not based on a consistent normative system allowing for his inclusion in the category of conscientious objectors in the common sense of the term. He did not refuse entry into military service, signed the oath, committed common disciplinary misdemeanors and refused to cooperate when offered alternative forms of service. The search for normative consistency was crucial to the Ministry of Defense because it allowed it to confine conscientious objection to the handful of individuals who were truly committed to that cause, and handle their cases on an individual basis

(as they continued to do until 1980), without threatening military discipline. Normative consistency also assured that conscientious objection remain a marginal phenomenon which may be tolerated with no great cost. If a few individuals consistently espouse esoteric views, their exemption from combat endangers neither the security of the state, nor its ideological foundations.

The Political Context

In order to understand the objector's resort to a Rawlsian argument rather than to the common one proposed by Thoreau, one must realize the nature of Israeli society in 1954. Israel of the early 1950s may be portrayed as a collectivist society with a patronizing political system and a contractual culture. Let me clarify these terms by a simple typology contrasting them with their opposites, which are more familiar to observers of modern industrial democracies, including today's Israel.

The typology classifies societies by three variables. (1) Collectivist societies vs. civil societies, that is, societies in which all spheres of activity are more or less filtered through the political body vs. societies which allow room for the operation of a plurality of non-political groups. (2) Patronizing societies vs. client societies. This variable differentiates between societies by the degree to which their governing bodies engage in the determination of norms or mainly in the distribution of material resources. (3) Contractual societies vs. utilitarian societies — the distinction based on the degree to which there exists a sense of common bond in society, which serves as a source of legitimacy of the governing bodies, or rather a perception of incidental ties maintained because of their expected utility.

In Israel of the early 1950s, a strong political leadership, rooted in socialist traditions, left almost no room for autonomous social activity, exercizing control not only over the distribution of material resources but also over the educational and cultural spheres. It could operate in this manner for an extended period, since long before the formation of the state, due to a sense of 'togetherness' it introduced (Eisenstadt 1985). Under these circumstances of a collectivist — patronizing — contractual society, conscientious objection in the classical sense was quite hopeless. Although this case study occurred during a short period in which Israel's towering prime minister David Ben-Gurion, who had great impact on the normative discourse in the state, had not been in office, the political body was still hegemoneous and very active in determining social values. There was no effective way to challenge collective values in the name of individual conscience or group norms. It cannot be assumed that actors in negotiations always resort to the most functional and effective argument

available to them, but the reference to the social contract, with its procedural rather than substantive overtones, seems to have been the only viable strategy. In raising this argument, one is challenging neither the leadership's political hegemony, nor its monopoly over the determination of norms.

It is not incidental that Israel's intellectuals also did not use the Thoreau argument. In order for an argument based on individual conscience to be effective, a civil society must exist in which the normative claims of autonomous groups are acknowledged. With this condition unfulfilled in 1954, the intellectuals could do little but demand leniency in the application of social norms. The 1950s in Israel were indeed marked by a struggle between Ben-Gurion and many of the country's intellectuals over the degree to which social norms ought to be monopolized by the government. It took another decade before this struggle ended in the partial transformation of Israel from a patronizing to a client society (Keren 1983).

The only ones who were making reference to conscientious objection in the classical sense were Ministry of Defense officials, and for a good reason. They could not be expected to engage in extensive debates over natural rights or natural law because this would be politically unwise under all circumstances. The Dworkin argument demands of governments not only to make decisions about war and peace but to grade them by degrees of importance and legislate exceptions to them. The Rawls argument, although cautiously stated, demands of government officials no less than engagement in disputes over political obligation, just and unjust wars etc. which they are not trained to do. The Thoreau argument, on the other hand, puts the burden of proof on the objector who must demonstrate moral consistency and sincerity.

The pattern of negotiations identified in this case study was thus rather context-bound. It had indeed changed with the change of historical circumstances. After the Six Day War of 1967, and the deep cleavage evolving in Israel as a result of its consequences, no political force could patronize any more the normative system. Although the civil society was slow to develop, and there still existed little distinction between social and political discourse, the latter began to be marked by deep disagreements, especially over the fate of the territories occupied by Israel in 1967. This new context gave rise to a different line of argumentation; refusals to serve in the occupied territories came close to civil disobedience (Blatt, Davis & Kleinbaum 1975; Hergren 1993; Peri 1993). Like A.Z., the objectors — Giora Neuman, Gadi Elgazi and others — were very much on their own *vis à vis* a collectivist society having little concern with individual conscience. They were now much more willing, however, to stand for their inherent right not to serve in an "army of occupation" (Blatt, Davis & Kleinbaum

1975: 112). Moreover, in response to their denotation as traitors, they stressed their adherence to the social contract, asserting time and again their willingness to serve in the army but not in missions related to the occupation.

This led the government and military authorities to reconsider their stand. They rightly sensed that the attempt to establish, along the lines set by Dworkin, a selective right not to serve in the occupied territories involved fundamental principles of statehood. As legal scholar Yoram Shachar has shown, the army's policy until 1980 was to comply with personal *bona fide* requests to be exempted from service in the occupied territories. This was done so long as the issue was conceived as one involving predominantly individual appeals. However, in 1980 the army began to define refusals to serve in the occupied territories as organized group protest, threatening both the ideological neutrality of the army and its discipline (Shachar 1982).

The establishment of 'Yesh Gevul', a group supporting conscientious objectors during the Lebanon War of 1982, marked another change (Linn 1996). Since 1982, conscientious objection, however objected to by large segments of society, has become part of mainstream political discourse. This occurred side by side with a broader trend in Israeli society: the development of pluralism. Israel of the 1980s and 1990 has transformed into a Western-like society marked by pluralist groups competing over the allocation of resources in a rather utilitarian fashion. In such a setting, the government becomes one among several actors participating in the process of allocation. This has of course changed the nature of the discourse over conscientious objection, introducing demands for exemption from military service based on the norms to which non-government groups adhere.

In particular, the Israeli government in the 1990s faces demands for selective exemption by settlers in the occupied territories who claim they are banned by higher law from fulfilling orders to evacuate settlements in the land of Israel, should this be decided upon as part of an Israeli–Palestinian peace accord. Although the discourse over this issue has just begun, and has so far been mainly conducted as part of a political campaign, it seems quite different from negotiations in the past. The difference stems not only from the change in the composition of the actors — today's objectors are right wingers while in the past they were left wingers — but from the equal power displayed by the negotiating parties. Quite paradoxically, a state transforming from a collectivist, patronizing, contractual society into a pluralist, clientalist, utilitarian one faces a severe challenge by groups opposing this transformation on the ground that it impairs the fundamental nature of the Jewish state, yet skilled in the new forms of discourse it entails. The call by religious sages among the settlers

for refusal to participate in the evacuation of settlements exceeds, in fact, the boundaries of conscientious objection due to the sheer fact that these sages may hold greater power than the government. This new form of refusal no longer resembles the case of the lonely individual facing perplexed authorities; it is turning into a political struggle over the nature of the state. Whether it will be absorbed as part of the democratic process, or overthrow democracy itself, remains to be seen.

Conclusion

The relationship between social context and argumentation in the Israeli case raises the hypothesis that conscientious objection may be more context-related than has been realized by Thoreau, Dworkin and Rawls, whose reference point is a universal notion of democracy. Many more comparative studies are needed in order to relate argumentation strategies to the specific social and political contexts in which they emerge, and in which they prove to be effective, but it can be concluded from this study that, from the point of view of the conscientious objector, the effective use of the Thoreau argument requires a pluralist context, the Dworkin argument a clientalist context and the Rawls argument a contractual one.

The appeal to conscience, proposed by Thoreau, may have little impact in collectivist societies whose discourse is dominated by the political body. This is why it has been raised most effectively in societies, notably England, with a well-established tradition of catering to individual and group claims. Dworkin's pragmatic demand to establish an autonomous sphere within the collective order, in which individual and group preferences be recognized, was raised at a unique point in history in which American society had been mobilized to fight the Vietnam war on which there was no general agreement. When there is no agreement over the aims of a war, the demand to allow exemption from the collective effort seems in place. This demand could be effective because under such conditions, the government may not want the collective effort to be obstructed by objectors, who can be marginalized by their exemption. However, as I claimed before, the capacity of legislators to provide exemptions from their own laws under normal circumstances seems very low. Finally, if Rawls's appeal to the social contract is to be retrieved from the abstract level on which it has been formulated, and turned into an effective political strategy, a degree of adherence to such a contract must be apparent. In the early years of statehood, when a strong perception of common bonds existed in Israeli society, the Rawls argument was not only viable but the only one available to the conscientious objector. Today, as contractual relations are replaced by utilitarianism, this argument is inconceivable.

Many societies in today's world are developing towards greater pluralism, clientalism, and utilitarianism, which raises the question of what form conscientious objection will take in the future. The Israeli case study points at a difficulty entailed by this trend. In the constraining context of 1954, a young, frightened, confused soldier posed a major challenge to society; his arguments, relating to profound questions of social life, demanded serious consideration. Today, with the diffused nature of the public discourse, the important role of the mass media in that discourse, the little interest in ethical and philosophical arguments, and the deep cleavages between social groups, one can hardly imagine a similar commotion raised by a young man refusing to carry weapons in some remote barracks. The emerging model may thus resemble Walzer's model we started with — one of social conflict between well-organized groups competing, often fiercely, over resources, and mobilizing higher law as part of that competition. In this model, however, there remains little room for argumentation based on the individual conscience.

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