

BOOK REVIEW:
**Conscientious Objection to Military Service in
International Human Rights Law**

By Özgür Heval Çinar

David J. Hotelling¹

Individuals with powerful ethical, moral, or religious beliefs can cause a quandary for political systems that seek to both protect individual consciousness and protect the State. The conscientious objector may hold a conviction or principle so strong that it causes the objector to evade military drafts, even if the State attempts to coerce the believer into fighting for the State. Even though the key function of the State is, arguably, to provide security for its citizens (as Hobbes asserts), certain legal systems have recognized the individual right of a conscientious objector to forgo the travesty of war.

Enter Özgür Heval Çinar,² who sets out to write how the right to conscientious objection is recognized in international human rights systems. In his introduction, Çinar provides a succinct and tempered definition of the problem, writing that “[c]onscientious objection in the military context . . . is a fundamental part of an individual’s relationship with the State: it calls into question the obligation to defend the nation, which is considered to be one of the most important duties of the citizen.”³ The introduction is followed by material that one may think belongs to an opinion authored by Justice Scalia: the origins and dictionary definition of the word “conscience.”⁴ Dissatisfied with a mere dictionary definition, Çinar dives into a rich discussion of conscience, focusing on the historical (but Western) background of the objection. While the author tries to describe many world religions, Christianity dominates the chapter and other religions are given a cursory mention.⁵ Thereafter, in detangling consciousness and conscientious objection from its religious background, the

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³ ÖZGÜR HEVAL ÇINAR, CONSCIENTIOUS OBJECTION TO MILITARY SERVICE IN INTERNATIONAL HUMAN RIGHTS LAW 1 (2013).

⁴ Compare *id.* at 7 (citing to the Longman Contemporary English Dictionary), with *California v. Hodari D.*, 499 U.S. 621, 624 (1991) (“From the time of the founding to the present, the word ‘seizure’ has meant a ‘taking possession.’”).

⁵ See ÇINAR, *supra* note 3, at 20–21.

author convincingly holds that consciousness can derive from nonreligious belief, such as morality, ethics, and humanitarianism.⁶ The discussion of nonreligious exceptions to military service culminates in a reference to the United States Supreme Court's recognition of a nonreligious objection to military service.⁷

Continuing his transition from the most general to the more specific, Çinar eloquently describes the categories of objections delineated by other experts. There are four: total absolutist, alternativist, noncombatant, and selective conscientious.⁸ He carefully demarcates each category, from the strongest objectors (total absolutists), to the more mid-range objectors (alternativist and noncombatant), to the least strong (selective conscientious).

The next part shifts from a descriptive analysis of the conscientious objection to the international legal analysis. Çinar provides a detailed, in-depth, and historical examination of the role of and the right to conscientious objection in international law. Starting with essential United Nations' material, he analyzes the framing and drafting of the Universal Declaration of Human Rights as well as the text itself. Despite the tension between the freedom of thought and the duty individuals owe to their community, the author believes that the right to conscientious objection can be derived from both of these principles, even though the drafters did not discuss it.⁹ Similarly, the author analyzes the International Covenant on Civil and Political Rights and concludes that the right to conscientious objection is not foreclosed by a provision stating that conscientious objection does not constitute forced labour.¹⁰ Here — and throughout the book — the author relies on the assumption that the Declaration and human rights treaties are living documents that have a symbiotic relationship with their environment.

Moving to United Nations bodies, Çinar discusses the Commission on Human Rights, the Human Rights Committee, the Human Rights Council, working groups, and Special Rapporteurs. For the author, they play a significant role in recognizing conscientious objection as an important, if not fundamental, human right.¹¹ He then sketches an interesting and hopeful picture for the role of the objection as a basis for refugee status, especially in cases where the objector opposes a particularly egregious conflict.¹²

⁶ *Id.* at 25.

⁷ *Id.* at 25 (citing *Welsh v. United States*, 398 U.S. 333 (1970)).

⁸ *Id.* at 28.

⁹ *Id.* at 50.

¹⁰ *Id.* at 61.

¹¹ *Id.* at 61–86.

¹² *Id.* at 87.

Çinar's last substantive chapter follows a similar track to the United Nations chapter, but the author relies upon substantially more cases. He culminates part of the section with a case from the European Court of Human Rights, which held that the conscientious objection is a right under the European Convention.¹³ The analysis in this section is particularly commendable as it highlights the development of human rights law over time and describes the function of human rights instruments as living documents. Concluding with a section on the Inter-American system, he finds the system lacking in its recognition of conscientious objection as a right, and calls for the acknowledgement of such a right.¹⁴ In his conclusion, the author lists principles that he believes need to be recognized and adhered to as part of the right.¹⁵

Regardless of its focus on consciousness in the West, this book will prove an excellent tool for conscientious objectors and their advocates. Coupled with its historical and in-depth commentary on both the conscientious objection and the United Nations, European, and Inter-American human rights systems, this book is a must have for advocates or scholars discussing conscientious objections.

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275 pp. Palgrave Macmillan. 2013.

¹³ *Id.* at 127–28.

¹⁴ *Id.* at 156.

¹⁵ *Id.* at 159.