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Conscientious Objection in the U.S., Australia and France

Margaret Levi and Stephen DeTray

Administration, Compliance and Governability Program
Working Paper No. 4
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ADMINISTRATION, COMPLIANCE & GOVERNABILITY PROGRAM

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SERIES EDITOR
Penelope Hanley

Administration, Compliance & Governability Program
Research School of Social Sciences
Australian National University
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Penelope Hanley

A Weapon Against War:
Conscientious Objection in the U.S., Australia, and France[1]

Conscientious objection is a weapon of protest. It is not, however, a collective protest. It is an individual, but socially informed, act of resistance. It requires no organisation, no mobilisation of others, no group process. It is an action undertaken by single individuals. Conscientious objection bears an obvious family resemblance to civil disobedience. Where it differs is that it has become a legal act of resistance. It was not always, so, however. Historically the term referred to opposition to war and conscription on grounds of conscience whether one consequently received a legal exemption from military service or whether one resisted the law by refusing to be conscripted. Conscientious objection and civil disobedience share another quality: rarely is the decision to engage in either act done in the absence of a social or political context that raises questions about the government's actions and policies. In this sense, both conscientious objection and civil disobedience tend to be socially informed as well as individual protest.

Applicants for conscientious objector status may, in fact, incorporate several quite distinct sets of individuals. First are those who have such a strong moral position that they refuse to participate in the military under any conditions. This group includes those who belong to traditional peace churches, such as the Quakers, and to religions that prohibit certain forms of service to the state, such as Jehovah's Witnesses. Second are opportunists, those who attempt to use conscientious objection primarily as a way to avoid military service. Finally are those whose decision to apply is contingent upon their normative evaluation of a particular war, on the one hand, and the costs of applying for c.o. status, on the other. It is this third group in which we are particularly interested. It is they who are engaging in "contingent dissent".

Contingent dissent refers to non-compliance and other acts of withholding contributions that are distinct from free-riding or

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opportunism. Individuals who are contingently dissenting are paying a price, rather than avoiding a cost. It is an act that is informed by both social values and instrumental motivations. Such dissent requires that at least one of the following contingencies be present: (1) a negative appraisal of the proposed collective good; (2) distrust of the government's promise-keeping ability or fairness; and (3) a perception that other citizens are also behaviourally dissenting. Social values inform the evaluation of the justifications and fairness of the government policy; they also affect the individual's view of what "doing the right thing" entails. Instrumental motivations inform the strategic calculations of whether the price to be paid for dissent is too high.

Contingent conscientious objection reveals critical elements of the relationship between citizens and the state. Military service is one of the obligations constitutive of citizenship. In democracies, however, this citizen obligation carries with it a corresponding obligation of government towards its citizens. Military service can only be demanded, conscription can only be required, when the war is "just".[2] What makes a war just is neither clear cut nor self-evident. It is, however, incumbent upon democratic governments to somehow persuade their citizenry that the undertaking serves the interests of the nation as a whole. The existence of a general interest is most clear when the country is under attack. The "justness" of the war becomes more problematic when the threat is far away or when it is a war of intervention. Variation in requests for conscientious objector status is one indicator, albeit a rough indicator, of the perceived legitimacy of the war.

The decision to become a contingent conscientious objector is affected by normative evaluations not only of the war itself but also of the fairness of the conscription policy and the trustworthiness of the government to carry out its word. While the perceived legitimacy of the war effort and of government practice influences the search for weapons of protest, which weapons are chosen is largely determined by the costs of the option under consideration and the availability of other, less costly, options. Our claim is that the major determinant of an increase in the reliance on conscientious objection as contingent dissent is the institutional resolution of potential conflicts between normative opposition to the war and instrumental considerations.

2. Walzer (1977) explores the moral arguments for and against wars. We, in contrast, are exploring only the aspects he labels "the limit of consent" (25-9).

Institutional arrangements regulate behaviour through rules, bureaucratic mechanisms, and enforcement procedures that affect the costs and benefits of choices and the provision of information. Rules and enforcement procedures can act as negative incentives when they take the form of monitoring, sanctions and coercion, or they can act as positive incentives in the form of salary or benefits. Information concerning what government is actually doing, what other citizens are doing, and what strategies of action are actually available (Knight 1991) further influence choices.

Institutional arrangements can resolve problems caused by the duality of normative and instrumental motivations. They create situations where one motivation is dominant or where the two motivations lead to the same behavioural choice. For example, conscription makes instrumental rationality dominant. Confronted with state coercion to enlist, it is in one's self-interest to comply. Norms are dominant only for those who discount costs. For others, norms may become dominant in those situations where the institutional costs of expressing one's ideological position are low, such as in the voting booth (Brennan and Lomasky 1989; also see North 1990, 44).

Institutional arrangements can also create situations in which normative and instrumental motivations are coincident. These are the cases most likely to produce quasi-voluntary compliance (Levi 1988). Quasi-voluntary compliance refers to normatively-motivated but strategically calculated obedience to rules in cases where violators will be punished if they disobey. Quasi-voluntary compliance is a type of contingent consent (Levi 1990). Contingent consent also includes cases where citizens choose to participate even though government does not legally require it or provides an exemption from compliance. The concept of contingent consent provides a means to understand some of what we generally consider to be normatively-motivated compliance and volunteering with government policies. Contingent consent is behaviour in which the individual makes a choice based on the calculation of the costs and benefits of alternatives. It is a choice, however, that is generally informed by dual utilities (see Margolis 1984 [1982], 1990b). Citizens are taking into account both their normative commitment to the social good and their instrumental interests.

The other side of contingent consent is contingent dissent, of which conscientious objection is a case. It too, represents a situation of dual

utilities. In this instance those considering conscientious objection believe the general good requires opposition to government policies, or they believe. Both government policy violates norms of fairness, or both. Contingent dissent is a strategic action in which norms and instrumental rationality are both part of the utility function and in which the choice one actor makes depends on the choices of other actors. Citizens must believe that either the government actions are unjust or the government actors are implementing the policy unfairly. Such an evaluation is a necessary but not sufficient condition for engaging in contingent conscientious objection, however. Also necessary is an evaluation that the costs of becoming a conscientious objector are bearable. If the costs of being a conscientious objector are high, instrumental considerations could swamp normative aims. If the costs of applying for and becoming a c.o. is low, then normative and instrumental motivations are more likely to be coincident. Opportunists lack a normative evaluation of government policy and moral absolutists are indifferent to costs. Only contingent conscientious objectors are concerned about both social values and cost.

Contingent dissent is possible only when institutional arrangements exist that create either of two situations, the dominance of normative over instrumental motivations; or a complementarity of instrumental and normative motivations. Our major concern is with those instances in which the costs of expressing one's ideology are significantly reduced or in which instrumental motivations, including fear of coercion, support or converge with normative motivations. One aim is to explore the claims of Nelson and Silberberg (1987), Brennan and Lomasky (1989), and North (1990) that "ideology matters" most when the costs of its expression are trivial. We, too, argue that the lower the cost, the more it will be expressed. However, we claim that ideology can matter even when its expression carries costs. The stronger the perception of injustice or unfairness, the more it will be expressed. A second aim is to explore the claim that under some circumstances institutional arrangements exist that make normative and instrumental motivations operate in the same direction (see Levi 1988; Margolis 1990a; Ostrom 1990, and Mansbridge 1990).

Conscientious objection offers a neat case for studying how institutional arrangements affect the conditions under which contingent dissent takes place. The choice of conscientious objection and other means for evading required military obligations may reflect a behavioural

withdrawal of consent. There is a normative element in both consent and dissent. In the one case, there is a approval of government policy and in the other disapproval. Disapproval, even strong moral doubts, are not always enough, however, to encourage rule-breaking. If the costs are too high, only those with overwhelming normative motivations will choose to pay those costs. If the costs are lowered, more of those who disapprove will opt for conscientious objection. Moral doubts are a necessary but not sufficient cause of contingent dissent. Essential to an increase in its expression are institutional arrangements that sufficiently lower the costs of normative opposition to the war through conscientious objection. Indeed, institutionally-determined costs may explain nearly all of the variance, given the existence of significant public questioning of the "justness" of the war.

In the rest of the paper we explore variation over time and among countries in the reliance on conscientious objection as a means of registering contingent dissent with a given country's declaration of war and method of conscription. In particular, we consider the history of conscientious objection in the U.S., Australia and France. We have selected these three countries because all experienced the two world wars and, subsequently, politically unpopular "little" wars involving conscripts (Cohen 1985; Silver 1989). France fought the war in Algeria and the U.S. and Australia the war in Vietnam. Moreover, they vary in regard to the major factors that we posit as affecting variation in conscientious objection as contingent dissent: the costs of using conscientious objection imposed by the institutional arrangements; the availability of alternative and less costly forms of contingent dissent; the evaluation of the government's war effort; and the evaluation of the government's conscription policy.

Variation in the Extent of Contingent Dissent

Our analysis behaviourally distinguishes among moral absolutists, contingent dissenters and opportunists by the costs each are willing to pay and by evidence of a normative stance. They lay on a continuum. Moral absolutists are the least cost sensitive and the most evidently normatively motivated. At the extreme, they are willing to pay any price to uphold their religious and political convictions, and they tend to belong to religious or political groupings that proclaim these views. Contingent dissenters engage in conscientious objection only when the costs are

sufficiently low; moreover, their opposition to war and conscription is demonstrable through means other than their conscientious objection. Opportunists are also influenced by cost, but there is nothing to indicate any normative grounds. It is not possible to distinguish behaviourally between moral absolutists and those contingent dissenters who are unwilling to pay any price but willing to pay a very high price, such as going to jail for their beliefs.[3] The best we can do is make the inference that an increase in conscientious objection among individuals who do not belong to traditional pacifist religions, anti-war political organisations, or the Jehovah's Witnesses represents an increase in contingent dissent. The behavioural differentiation between contingent dissenters and opportunists can also be difficult since both are cost-sensitive. However, once conscientious objection becomes a legal status, we may be able to discriminate between the two groups with some confidence. The rather stringent screening requirements involve documentation of normative motivations that opportunists can rarely provide.

Our principal hypotheses for the explanation of variation in the reliance on conscientious objection as contingent dissent both over time and across countries are:

1) We expect more contingent dissent when either the government or other citizens, or both, are perceived as acting unjustly or unfairly, ceteris paribus.

We expect that social values are a necessary but not sufficient condition for contingent dissent. Given social values as a motivation, we expect that:

2) If the costs of becoming a conscientious objector are too high, there will be relatively little reliance on conscientious objection as a weapon against war.

3) As the costs of becoming a conscientious objector decrease, there will be a greater reliance on this form of behavioural dissent.

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3. One draft resister I spoke to described how he weighed the consequences of his decision: He was willing to (and did) go to prison for a year or two but only if he were fairly certain that he would subsequently suffer no serious professional or social stigma.

Variation Within Countries Over Time

United States. The issue of conscientious objection was first raised in reference to service in the militias of the American colonies. In 1658 in Maryland Richard Keene engaged in "pacifist resistance" and was, consequently, "fined and abused by the sheriff" for "refusing to be trained as a soldier" (Kohn 1986, 6). Provisions for exemptions on grounds of conscience from compulsory military service were enacted into local laws during the American Revolution, but no such exemptions existed in the Federal Militia Act of 1862 or subsequent Union drafts for the Civil War until 1864. In the interim, Quakers, Mennonites and other pacifists paid for their religious beliefs by spending time in military jails. When objections on religious grounds became legal in 1864, religious exemptions were granted liberally. Most objectors were sympathetic to the liberation of slaves and accepted noncombat assignments in programs meant to aid newly freed slaves.

At the start of World War I Congress limited c.o. exemptions to members of traditional pacifist religions whose creeds forbade them from participating in war in any form. However, the Selective Service authorities failed to clarify which denominations qualified. This lack of a specific policy led to arbitrary rulings by local boards. In December 1917 the law was liberalised to recognise non-religious opposition to war in general. No absolute exemption from military service was legally possible (Chambers 1987, 215-17).

Qualified c.o.s were required to perform non-combatant duties and were sent to army training camps before being reassigned. There they were segregated and, on too many occasions, subject to verbal and even physical abuse. Out of some 24 million registrants, 64,700 men (0.27%) filed claims for conscientious objector status. 56,800 were certified by local boards as c.o.s., 30,000 of these passed the physical exam, and 20,873 were inducted into the army. This experience led approximately 80% to soon abandon their stand as objectors (Secretary of War 1919, 17).

Ultimately, 3,989 draftees, out of a total of 2.8 million inducted, claimed to be c.os. The majority belonged to historic pacifist churches, Quakers, Mennonites and Moravian Brethren, but perhaps 15% were religious objectors from non-pacifist churches and 10% non-religious, "political objectors" (Chambers 1987, 216-7). 450 of these were court-martialled and imprisoned for their refusal to engage in any kind of

service, combatant or non-combatant. Another 940, who similarly refused, were segregated within army camps (Secretary of War 1919, 25). Together these two groups, the statutorily acceptable and the civilly disobedient conscientious objectors, comprised .14 per cent of all inductions.[4] The 1,390 who refused any kind of service were labelled "absolutists", and they were clearly absolutists in our sense as well. The price they paid was very high indeed. There is considerable evidence of brutality and mistreatment in the camps. Given that resistance was considered treason, 17 of those who were court-martialled were sentenced to death, 142 to life imprisonment and 73 to 20 years in prison. Although the death sentences were commuted, 17 of those imprisoned died in jail. (Kohn 1986, 28-9). Among these resisters were Mennonites, Dunkards, members of the Industrial Workers of the World, Seventh Day Adventists and Jehovah's Witnesses. The members of this last sect would accept only ministerial exemptions, which they were routinely denied.

During World War II c.o.s were once again a tiny proportion of the American draft age population. Of 34,506,923 who registered for the draft, approximately 72,354, or about two tenths of one percent, initially requested exemptions on grounds of conscience. Out of approximately 9,600,000 inductees, some 25,000 registered c.o.s served as noncombatants, 11,950 did alternative service in civilian work camps, approximately 20,000 applicants failed to receive official c.o. status, and 6,086 went to prison for violating the Selective Service Act by refusing to serve the military in any capacity. (U.S. Selective Service 1950a; Kohn 1986, 46-7).

Only a minority of imprisoned c.o.s dissented from the war effort on non-religious grounds. The largest proportion, almost 4,500, were Jehovah's Witnesses. 316 admitted no religion, and 255 made political or philosophical claims (U.S. Selective Service 1950b, Table 17, 216). As in WW I, members of traditional peace churches and Jehovah's Witnesses accounted for approximately three-quarters of convicted absolutist objectors.

Unlike World War I, absolutists were tried in civilian courts, not court-martialled as traitors. Moreover, the Selective Service System administrators, aware of the excesses of World War I, sought to find the line between "the harsh treatment of c.o.s, on the one hand, and their overly liberal treatment, on the other" (U.S. Selective Service 1950a, 1).

4. Compiled from Secretary of War 1919 and U.S. Selective Service 1950b.

Consequently, c.o.s who had violated the selective service act were still confined to prison but to federal rather than military prisons. Maximum sentence was five years, and the average sentence peaked at 32.4 months in 1944 (U.S. Prison Bureau 1947, 19). These improvements did not stop all abuse, however. Kohn cites reports of c.o.s being beaten, denied food and medicine, and being placed in cells with "sodomists and homosexuals with the obvious inference and implications (1986, 53)." One c.o. claimant was remanded to a mental institution for no apparent reason other than a refusal to fight the Japanese. He was not released until 1970, some 28 years later (Kohn 1986, 53).

On January 6, 1951 the Universal Military Training and Service (UMTS) Act was passed, replacing the Selective Service Act of 1948. The law lowered the age of liability to 18 1/2. C.o.s were permitted to perform specified civilian tasks as alternative service. The period of service in both military and alternative service was increased from 21 to 24 months. Under the UMTS Act 1,560,000 men were inducted and processed for the Korean conflict. The percent of c.o. exemptions jumped, with three times the percent of inductees receiving c.o. status in 1952 than had even applied for objector exemptions during WW II. In 1952 1.64% of inductees were classified as c.o.s.[5]

In the late 1960s and early 70s, a growing U.S. involvement in Vietnam brought dramatically increased inductions. There were more than three times as many inductions in 1966 as in 1965. There was also an increase in mass disobedience in the form of raids on local draft boards to destroy draft records. Destruction of draft records initially met with severe penalties but, over time, was more and more tolerated by sympathetic juries.[6] The U.S. invasion of Cambodia in May 1970 and the deaths of students at Kent State and Florida State provoked massive nationwide anti-draft activities. More than 10,000 draft cards were returned following the deaths of the students, with this number increasing to 25,000 by November 1970.

Conscientious objection also increased during this period. The ratio of objector exemptions to inductions leapt from 5.6% in 1968 to 14.2% in

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5. These figures differ somewhat from those presented by Kohn (1986, 70 and 93). He has apparently misread at least one of the tables from Selective Service records for his WWII ratio, confusing registrants with inductees. The figures presented here are compiled from *The Selective Service Semi-Annual Report*, (1/1-6/30/73), 55, appendices 12 and 13; U.S. Selective Service 1950a, 314; and Secretary of War 1919.

6. Especially dramatic was the case of the "Camden 28" in early 1972.

1970.[7] The rise in c.o. applicants partially reflected the fact that the basis for claiming a conscientious objection had become more liberal. The Supreme Court decision in *Seeger vs. the United States* (1965), upheld in the *Welsh vs. the United States* (1970), found that a registrant was no longer required to base conscientious exemption requests on a belief in a supreme being. The Supreme Court in the *United States vs. Gillette* (1971) did, however, confirm the rejection of claims on the basis of what was labelled selective conscientious objection. Objection had to be to all wars, not a particular war.

The rules regarding c.o. applications and the attitudes towards those claims by local draft boards also underwent modification during the course of the war.[8] The consequence appears to have been a lowering of the costs of becoming a c.o. There was no change in the requirement that registrants had to apply for c.o. status within a short period of registration or effectively waive their chance. However, statutory revisions of the UMTS Act that accompanied the extension of the draft in 1967 eliminated previous provisions for a thorough third party investigation of the case upon appeal against a negative board decision. This reduced the costs of acquiring and providing information by both applicant and draft board, but the price was decisions by appeal boards made on more limited information. Moreover, if a claimant persisted in refusing to be inducted following a negative decision of the appeal board, he was subject to nearly immediate prosecution. If the court determined that there was a "basis in fact" for the board's decision, the claimant was convicted and sentenced to five years in prison and/or a $10,000 fine. As the war progressed, however, there is evidence that the draft board members were more likely to grant c.o. status and less likely to impose such heavy penalties.

The percentage of claimants for c.o. status, (figure 1) and the percentage granted exemptions (figure 2) went up in the United States with each war.

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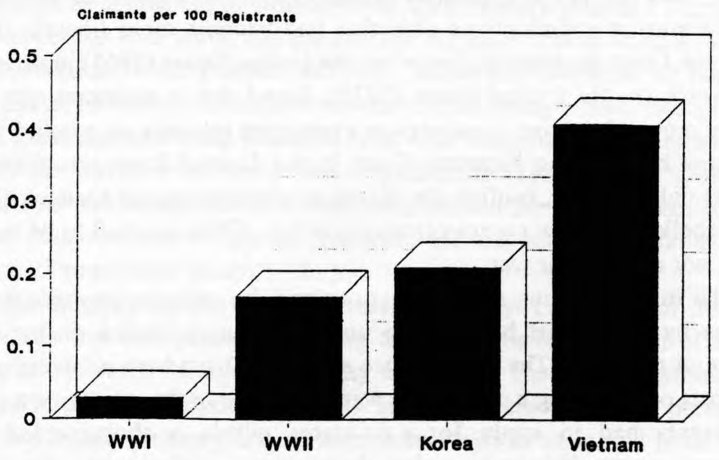
7. Compiled by the authors from *Selective Service Semi-Annual Report* (January-June 1973), Appendices 12 and 13, 55.

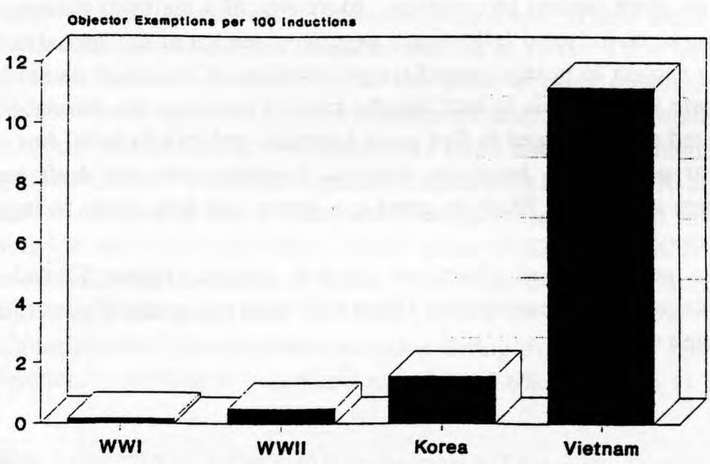
8. The information in this paragraph comes largely from Davis and Dolbeare 1968, 89, 93, and, especially 108-10.

Figure 1. Number of Claimants per 100 Registrants



Sources: U.S. Secretary of War 1919; U.S. Selective Service System 1950b; U.S. Selective Service System 1973.

Figure 2. Ratio of Objector Exemptions per 100 Inductions



Sources: U.S. Secretary of War 1919; U.S. Selective Service System 1950a; U.S. Selective Service System 1973 (January 1 - June 30)

To a large extent, institutional factors account for this change. As we have seen, the costs of applying and the costs of becoming a c.o. went down over these wars. Civilian replaced military authority for both those who were given c.o. exemptions and those who violated the Selective Service Act on grounds of conscience. At the same time, there was greater tolerance of the right to object. Not only were c.o.s less likely to suffer shaming behaviour over time, there was also a greater likelihood of defendants winning in cases involving all kinds of selective service violations, including those by c.o.s. (figure 3).

Figure 3. Convictions for Selective Service Violations as a Percentage of Indictments

Convictions per 100 Indictments

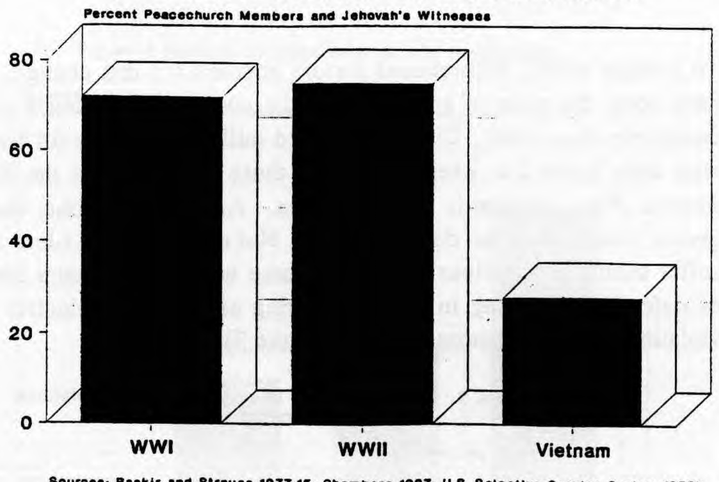
100
80
60
40
20
0

WWI WWII Korea Vietnam

Sources: U.S. Selective Service System Reports 1941-7; U.S. Department of Justice 1973; U.S. Selective Service 1973 (July 1 - Dec. 31)

Consequently, the proportion of conscientious objectors that we might consider contingent dissenters went up. The strongest indicators are the rise in the percentage of exemptions granted to conscientious objectors (figure 2) and the decline in the proportion of those convicted who belonged to traditional peace churches or the Jehovah's Witnesses (figure 4).

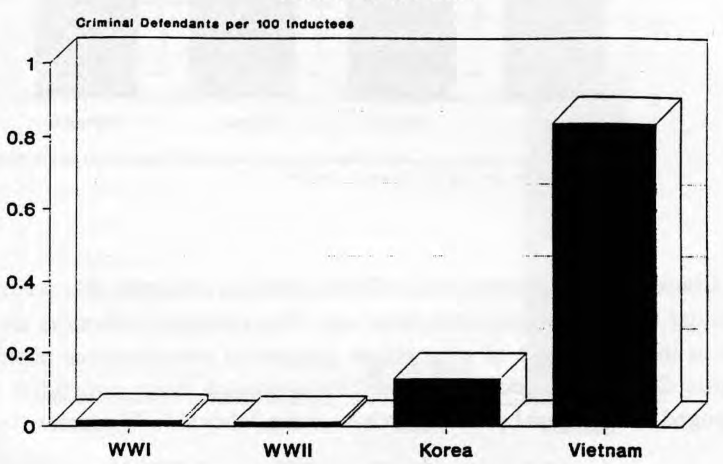
Figure 4. Convictions for Violating Selective Service Act by Traditional Peace Churches and Jehovah's Witnesses



Sources: Baskir and Strauss 1977:15; Chambers 1987; U.S. Selective Service System 1950b.

The percentage of draft violators as a percentage of inductees also goes up (figure 5).

Figure 5. Selective Service Criminal Defendants as Percent of Inductees



Sources: U.S. Federal Bureau of Prisons Annual Reports 1949-77; U.S. Selective Service Annual Reports 1949--76; U.S. Selective Service 1950a.

Some of these defendants were probably opportunists, especially during the Vietnam War as it became obvious that the likelihood of penalty, or at least severe penalty, was decreasing. However, of the 3,275 selective service violators sent to prison in the Vietnam era, "many could have easily have avoided any penalty but chose instead to bear witness against the war by submitting themselves to punishment" (Baskir and Strauss1977, 15). We can infer that a high percentage of these young men were contingent dissenters based on the rise in the percentage of non-traditional objectors among those convicted (figure 4). Given the nature of the rules governing exemptions on the basis of conscience, it is not surprising that most conscientious objectors were, up through World War II, members of traditional peace churches. Nor is it surprising that most of those who went to jail for their absolute refusal to serve, even in non-combatant categories, were either Jehovah's Witnesses or individuals with strong political affiliations, such as anarchists and socialists. As long as the institutional arrangements levied a high price for normative convictions, the convictions had to be extremely strong. Instrumental rationality, in these cases, militated against the use of conscientious objection as a weapon of protest.

Further support for the role of institutional factors in determining the amount of contingent dissent is the fact that World War I was a far less popular war than World War II, yet the applications, exemptions and convictions related to conscientious objection were significantly fewer. In World War I, most of the 2,599 who served as non-combatants, as well as the 450 convicted of treason and related crimes for refusal to serve, should, we believe, be considered absolutists. They suffered considerably for their beliefs. They were under military authority and, on the whole, treated abominably. The contingent dissenters and opportunists, we claim, tended to abandon their stand as they realised the stigma of being a c.o. was too high relative to that of doing their military service. The costs of being a c.o. had decreased by WW II, and the proportion of those engaging in contingent dissent went up—even though the war was more generally approved. The 6,086 who went to jail and some percentage of the nearly 37,000 granted c.o. status were absolutists; the rest, we believe, were contingent dissenters.

Institutional costs are only part of the story, however. Once the costs were perceived as sufficiently low, perceptions of the justness of the war, the fairness of conscription, and the behaviour of other young men also

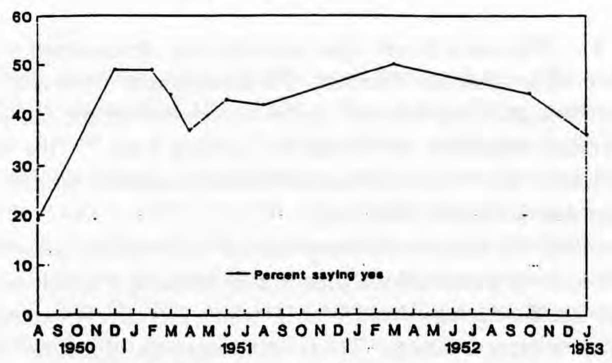
enter the calculus. The institutional costs were effectively the same for the Korean War as they had been for WW II, yet the percentage of claimants went up. They went up considerably more in Vietnam.

Indeed, conscientious objection was highest, in percentage terms, during the Vietnam War. Yet the probability of being conscripted was lower than during World War II and medical and student exemptions easier to obtain. Nor is it at all evident that it was less costly to apply for conscientious objection than to seek some other forms of exemption. It was, however, more costly—in the long run—to leave the country and, thus, worth trying to become a c.o. first. There are two possible interpretations of this increased reliance on conscientious objection despite the existence of alternative and less costly means of avoiding military service. First, there may be a class bias to conscientious objection. Student deferments and some medical exemptions, especially psychiatric exemptions, tended to be more available to middle and upper class young men. Unfortunately, we do not have the data to determine whether conscientious objection was in fact more of a working class than middle class strategy. Our extensive reading of the case materials, however, suggests that it was not. The second possible explanation is that conscientious objection permits an individual to express moral disapproval of the war effort and government policy. It is a form of dissent.

Unfortunately, there are no extant surveys of public opinion on World War I or II. Disapproval ratings of the Korean War (see figure 6) and of the Vietnam War (figure 7) indicate both that Vietnam was more unpopular (although not as considerably as we thought it would be) and that dissatisfaction with government policy increased markedly during the Vietnam era. At least some of this opposition, we suspect, was translated into contingent dissent in the form of conscientious objection, especially given the increasingly low costs of this strategy.

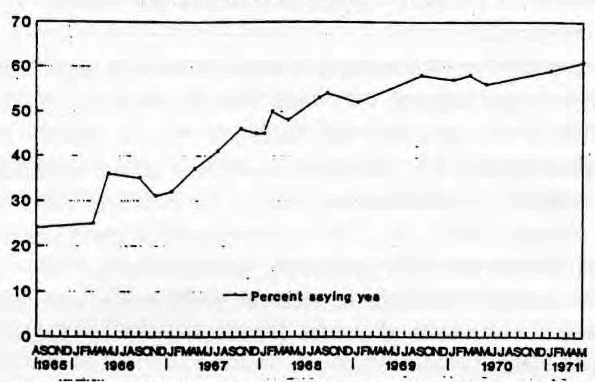
The data does not permit us to determine exactly how much of the increase in the reliance on conscientious objection, especially during Vietnam, resulted from perceptions of the illegitimacy of military service and how much from reduction in the costs of being a c.o. What the data does clearly suggest, however, is that: one, that both factors were at work; and, two, given dissatisfaction with the war effort, conscientious objection is used only if the costs are sufficiently low.

Figure 6. Disapproval of Korean War



Question: Do you think the US made a mistake in going into the war in Korea or not?
Source: Niemi, Mueller and Smith, 1989.

Figure 7. Disapproval of Vietnam War



Question: In view of the developments since we entered the fighting in Vietnam, do you think the US made a mistake sending troops to fight in Vietnam?
Source: Niemi, Mueller and Smith, 1989.

Australia. Australia made provision for conscientious objection in 1903, just two years after constituting itself as a federated and independent Commonwealth country. Indeed, its Defence Act of 1903 was "the first national legislation to grant total exemption from military service on the grounds of religious belief" (Smith 1989, 13). Initially, exemption was permitted only for members of certain churches, what we have called the traditional peace churches. The question of conscientious objection was moot, however, until 1909 when compulsory military training was introduced.

In 1910 the Defence Act was amended to include "conscientious belief" against the bearing of arms. Such a belief was presumed to have a religious basis, but the legislation did not explicitly say so

(Jordens 1989, 3). The amendment also provided for determination of exemptions by civilian courts. Further, the amendment removed the phrase "or to perform military service" in the description of the basis of objection; it limited objection to the act of bearing arms. This was interpreted to imply that non-combatant military service might be required during wartime (Smith 1989, 16).

Australia conscripted men for military service only within Australia during World War I. It extended the area where conscripts could serve to the Southwest Pacific during World War II, which effectively extended duty only to Papua New Guinea. Thus, conscientious objection was hardly at issue in 1914-1918. Even so and despite the stigma attached, some members of traditional peace churches, notably the Christadelphians, Seventh Day Adventists and Quakers (Plymouth Brethren), petitioned parliament to excuse them even from the domestic forces on the grounds of religious objection (Gilbert and Jordens 1988, 343).

The issue of conscientious objection only began to take on significance in 1939. In that year parliament, following British precedent (Gilbert and Jordens 1988, 343) amended the Defence Act to clarify that conscientious objection was not limited to members of the traditional peace churches. Further, it permitted appeals to the supreme court of a state or territory (Smith 1989, 17). The amendments stopped short of total exemption, however; they required non-combatant service. Excluded, moreover, were Communists, Jehovah's Witnesses and others believed to represent a threat to the state (Hasluck 1965 [1952], 600; Gilbert and Jordens 1988, 343-4).

Those liable to military service had the right to apply for conscientious objector status. Applications were heard by "a court of summary jurisdiction, i.e. one constituted by a police, stipendiary or special magistrate" (Hasluck 1952, 602), and appeals were possible. If the court granted exemption, it could take either of two courses of action, make the individual liable for non-combatant work in the Citizen Forces or for civilian work. These procedures made the costs of application relatively low for sincere objectors. They were subject to civilian courts and had various means of appealing even those decisions.

The magistrates were not always as tolerant in practice as in principle, however. While they tended to be gentle with those willing to accept non-combatant duties, they were often quite harsh in their prosecution and

jailing of those who sought total exemptions. The prosecutions and jailings intensified after 1941. The change in implementation probably was caused by the rise in applications. 260 claims in December 1940 represented the highest monthly total in the war, and the 1,712 claims from August 1940 through March 1941 represented two-thirds of the total applications for the whole war (Hasluck 1952, 600).

There are no available statistics on conscientious objection prior to World War II. The amount of conscientious objection recorded between 1939 and 1945 was numerically and statistically insignificant. It did have a brief political significance, however.[9] Lobbyists for total exemption succeeded in convincing the Government of their position. The Government, however, was not eager to amend the Defence Act so soon again and tried to liberalise the granting of total exemptions through administrative action.

There is evidence that authorities were indulgent until 1941, when the large rise in applicants seem to have led the courts to increasingly reject claimants. Fear of opportunism, on the one hand, and of illicit applications by Jehovah's Witnesses, on the other, seem to have precipitated the tougher actions by the courts. There were more prosecutions and more convictions, which carried jail sentences of two weeks to six months.

Caught in the net of prosecutions and convictions were sincere objectors. Their plight was the subject of lobbying efforts by pacifist groups and Parliamentarians. In July 1941, the Minister of the Army proposed to the War Cabinet an amendment of the Defence Act to provide for total exemption. No amendment followed, but in July 1942 National Security Regulation S.R. 80 did extend total exemptions and encourage liberal implementation of the act (Jordens 1989, 4). Even with the reduction of prosecutions, there were nonetheless conscientious objectors who were forced to serve and consequently suffer in the army for their continued refusal to obey orders (Gilbert and Jordens 1988, 345).

There were approximately 500,000 volunteers and 250,000 conscripts for World War II. 1 per cent of the conscripts applied for c.o. status (Smith 1989, 17).[10] There were 2,791 applications of which 636, or nearly a quarter, were rejected. 1,076 or approximately 40% of those

9. The discussion of conscientious objection is largely drawn from Hasluck 1965 [1952], 599-602; and Gilbert and Jordens 1988, 343-5.

10. It should be remembered, however, that Australian conscripts did not have to fight overseas until the last year or so of the war and then only in the South Pacific.

accepted were assigned non-combatant duties. 973, or approximately 35%, agreed to approved civilian work. 41, or approximately 1%, were granted unconditional exemptions. 65, or approximately 1%, were still pending determination at the end of the War.[11]

Australia did not send conscripts to Korea, Malaya, or Borneo, where it was militarily involved during the 1950s. The issue of conscientious objection did arise, however, in relation to the compulsory military training scheme of 1951-9. Between 1951 and 1953, there were 329 claims for total exemption, of which 52% were granted, 29% given non-combatant status, and 19% refused, and there were 238 applications for non-combatant duties, of which 92% were granted and 8% refused (Jordens 1989, 5). During a parliamentary debate regarding amendment of the National Service Act, it was reported that 61 out of every 10,000 registrants sought exemption for non-combatant duties (CPD vol 221, 954-5).

The reintroduction of conscription in 1964 brought in its wake a renewed public debate on conscientious objection (Jordens 1989, 5-8; Smith 1990). There were provisions for conscientious objection on both religious and non-religious grounds by those already in the army as well as those facing conscription.[12] Upon registering, which was required, a young man could fill out a special form on which he declared himself a c.o. He only had his case heard before a court of summary jurisdiction if, in fact, he was "balloted in" (that his, name was drawn) and then passed the medical examination. The claimant could hire legal assistance at his own expense and bring in witnesses to testify concerning his beliefs. The Registrar was also entitled to counsel. Appeals of the magistrate's decision could be made by either the Registrar or the applicant.

These provisions came under increasing criticism as the war progressed. By the late 1960s, the Anglican Church and the Australian Council of Churches joined with the traditional peace churches in expressing opposition to the war. They advocated the use of conscientious objection and pressured for liberalisation of the conscientious objection provisions. In 1966 the General Synod of the Anglican Church even went so far as declare that Anglicans could in conscience refuse to bear arms (James 1968, 266-7). The most complete endorsement of reform of the

11. The numbers are drawn from Hasluck 1965 [1952], 598-602. We derived the percentages. There seems to exist no other record of the number of applicants and their disposition.

12. The description of the provisions is drawn from Jordens 1989, 7.

Defence Act was offered by the Australian Council of Churches in a 1968 report. They advocated a very thorough liberalisation of the provisions affecting conscientious objectors. Many of these would significantly reduce the costs of applying. For example, under the unamended act, individuals registered for conscientious objector status only after registering for the military and thus were liable to an examination or call-up while their cases were still pending. Of equal concern were those cases of individuals whose applications had been rejected but who did not then voluntarily agree to military service. The Australian Council of Churches were eager to prevent indefinite detainment in military prisons, for the law did not count these prison terms as part of the two years' required military service (1968, 269-72).

Nor did the law, as defined by section 29A of the National Service Act, permit conscientious objection against a particular war. This was reaffirmed in the William White case in 1966, when Justice Windeyer found, "The requisite for total exemption is, thus, it seems, a conscientious and complete pacifism. I do not read section 29A(1.) as referable to an objection to participation only in a particular war or in operations against a particular enemy" (quoted in Jordens 1989, 15 and Smith 1990, 122). It was reaffirmed by Chief Justice Barwick in 1968 in the Thompson case (Smith 1990, 122-4).

As protest against the War in Vietnam increased in Australia, there was a corresponding rise in applications for conscientious objection. Cases determined by the courts went from 99 in 1965 to 196 in 1970 (Snedden, CPD HofR 71, 622). Cases were not handled the same way in all states, however. (See Table I)

TABLE I

REGIONAL VARIATIONS IN COURT DECISIONS

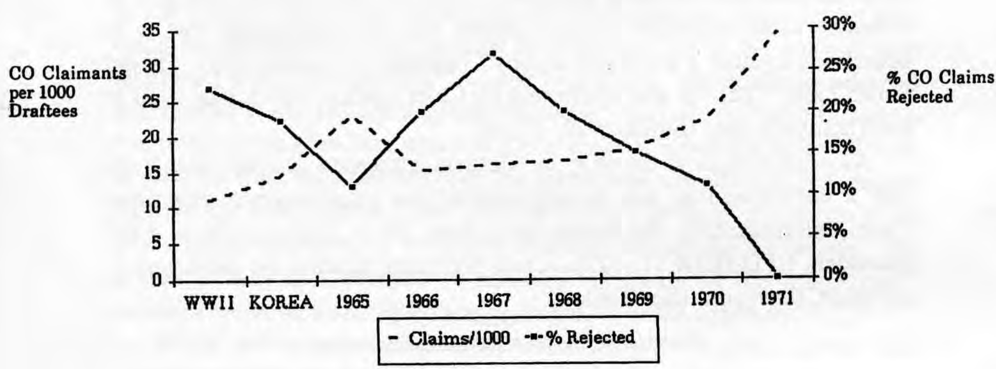
	NSW	Vic	Qld	SA	WA	Tas	Total
As of 15 May 1968:[a]							
Granted total exemp	19	51	39	28	22	3	
	19%	29%	40%	40%	42%	33%	
Other provision	79	124	58	41	31	6	
	81%	71%	60%	60%	58%	66%	
As of August 1971:[b]							
Granted total exem	119	342	87	87	83	15	733
	54%	79%	66%	83%	81%	79%	
Granted non-com	55	63	14	2	5	3	142
	25%	14%	11%	2%	5%	16%	
Refused	45	30	30	16	15	1	137
	21%	7%	23%	15%	15%	5%	
TOTAL	219	435	131	105	103	19	1,012

[a]Barnard, Reps 59:1442
[b]Lynch, HofR 73 18 Aug 1971, p. 279

An applicant was three times as likely to be refused in New South Wales or Queensland than in Victoria, for example. The reason in New South Wales was simple: there was one magistrate who decided all the cases, and he held strong and narrow views (Jordens 1989, 21). There were clearly differences in attitudes among magistrates as well as differential influence by protest groups among the states (Jordens 1989, 21-2).

The statistics on Australia are very incomplete relative to those on the U.S. There are no statistics for World War I, and statistics on the subsequent wars do not permit investigation of the role of either religion or other violations of the National Service Act. Figure 8 does reveal what appears to be a nearly perfect inverse correlation between the number of claimants and the level of rejection. As the tolerance of applications goes up, the applications go up. As the tolerance of applications decreases, the applications go down.

Figure 8. Australia: WWII, Korea and Vietnam



Sources: Hasluck, Government and the People. 1952, pp. 598-602.
Jordens, Working Paper, p. 5.
Lynch, DLNS. GDP H. of R. 20 April 1971, p. 1730.
Lynch, H. of R. 73 18 August 1971, p. 279.
Snedden, CPD H. of R. 71:622. 3/9/71.

The historical evidence supports the interpretation that institutional costs affected the decision to apply and to remain a c.o., if given an exemption. There was a marked rise in c.o. applications during the Vietnam War relative to World War II. Smith (1989, 17) calculates that c. 1% of all who served as conscripts applied for c.o. status in WW II. Of the 51,272 of those who were balloted in and enlisted during Vietnam, it was closer to 2% who applied.[13] Tables II and III add additional support to the plausibility of the contention that conscientious objection as contingent dissent rises with the reduction of the costs of this strategy.

TABLE II

Conscientious Objector Applicants As Determined by Courts

Year	Total exemption granted	Non-com Status granted	Refused	Total Applicants
1965	62 63%	26 26%	11 11%	99
1966	60 46%	45 34%	26 20%	131
1967	73 54%	25 19%	37 27%	135
1968	93 66%	20 14%	29 20%	142
1969	115 74%	18 11%	24 15%	157
1970	163 83% 150	11 6% 44	22 11% 53	196 217)[b]
SUBTOTAL	566 66%	145 17%	149 17%	860
1971	167	-3	-12	152
TOTALS[c]	733 72%	142 14%	137 14%	1012

[a]Snedden, response to question. CPD HofR 71: 622. 3/9/71
[b] Snedden, debate. Reps 70:2009. 10/13/70. He reports 82% (150 out of 183) applications for total exemption granted with 8% (14) given non-com status and 10% (19) refused; of 34 applications for non-comb, 88% granted
[c]Lynch, HofR 73, 18 August 1971, p. 279

13. The figures are rough in both cases. Smith uses Hasluck's figures on c.o.s and his own estimates of approximately 250,000 enlistees. The Vietnam figure is crafted from statistics provided on actual enlistment in CPD HofR 72, 4/20/71, 73 and CPD HofR 73, 8/18/71, 279. The figures on conscientious objection are drawn from Tables I and II. We are interested only in the years 1965-mid 1971.

TABLE III

CONSCIENTIOUS OBJECTORS AS DETERMINED BY COURTS

1965[a]	51
1965-66[b]	284
1965-68[c]	454
1965-70[d]	550
1965-71[e]	1,012
1965-72[f]	1,133

If these figures are correct, then there were two big jumps:

1965 (1st reg) to 66	**+233**
1965-68	+170
1968-70	+ 96
1970-71	**+462**
1971-72	+121

[a]McMahon in response to question. Reps 49:3637. 12/3/65
[b]Jordens, Working Paper, p. 19, ftnt. 38
[c]Smith, 1990, p. 129
[d]Snedden, DLNS News Release, 8/25/70, p. 2
[e]Jordens (1990), p. 69. Also, see Lynch Hof R 73., p. 279. 18 August 1971
[f]Press Statement by Lynch, 3 September 1972

They offer year-to-year statistics for the Vietnam period. Table II demonstrates a steady rise in the number of applications and an upward trend in the granting of total exemptions in comparison with non-combatant exemptions. Table III indicates a discernible rise in approval of c.o. applications, especially in 1970-71, the years of the most massive anti-war demonstrations.

In the case of Australia as in the case of the U.S., both of the major factors producing contingent dissent increased during the Vietnam War. There was a reduction in the costs of applying for and becoming a c.o. at the same time that there was significant public questioning of the justifiability of the war and of the conscription policy (see Table IV).

TABLE IV

AUSTRALIAN WAR OPINION 1965 - 1968

Continue to fight in Vietnam?

	Continue	Bring Back	Undecided
September 1965	56.4	28.0	15.6
February 1966	70.5	22.5	7.0
September 1966	61.5	25.9	12.5
March 1967	72.6	21.5	5.9
April 1968	68.4	25.9	5.7

Should National Service men be sent to Vietnam?

	Sent	Kept Here	Undecided
July 1966	37.9	52.2	9.9
November 1966	37.9	51.4	10.6

After 1969, the Australian opinion polls indicated that the war was generally unpopular (Curthoys 1990, 151). The "moratorium" on 8 May 1970 involved 120,000 people demonstrating in all of Australia's capital cities (Gilbert and Jordens 1988, 356). This was a large number in a country of only about 15 million.

As the war progressed, the issue of objection to particular wars, on the one hand, and forms of alternative service, on the other, continued to be debated (Jordens 1989; Smith 1990). Conscription itself was always controversial in Australia. During World War I, conscription for overseas duties had been roundly defeated in two national referenda. Conscription for overseas duty was introduced only for the last two years of World War II and only in certain areas of the South Pacific. No conscripts had served in Korea. Thus, the issue of sending conscripts to fight in Vietnam was politically touchy. A majority of Australians were against sending conscripts to Vietnam even when a majority supported the war per se (Curthoys 1990, 151; Goot and Tiffen 1983, 142-3). Such popular opposition to overseas conscription further fuelled the argument for a right to object to a particular war.

France. France has a very different tradition of military service than the other countries in the study and a quite distinct history of conscientious objection.

Universal conscription was first introduced in France under the French Revolution. There were exemptions on religious grounds, but these were granted only to Anabaptists. Quakers were refused exemption. Napoleon I, on the other hand, regularly provided exemptions to members of a variety of dissenting religions in countries conquered by France. There was, however, no legal recognition of the status of conscientious objector. Nor did any such recognition in law take place until 1963.

Prior to 1920, there was no serious discussion of conscientious objection in France. "Insoumis", that is rebels and insubordinates, and "refractaires", that is, draft dodgers, were a serious problem for the government at times (Auvray 1983; Meyer-Spiegler 1969, 100-3). There were also serious problems with desertions and mutinies during World War I (Pedroncini 1968). Despite some tradition of popular resistance to the military, the issue of conscientious objection was not, however, a matter of public discussion until lobbying for a law commenced in the 1920s and 30s (Auvray 1983, 174; Martial 1984, 15). Ingram's excellent accounts (1991a and 1991b) of this early debate reveal that the concept of conscientious objection was so foreign that the French did not even have the concept in their vocabulary until the 1920s or in their dictionaries until the 1930s. Moreover, he argues, while government officials feared the sabotaging effect of conscientious objection on the "nation in arms", leaders of the pacifist movement also expressed concern about this individualist and "negative" course of action. During World War II, there were perhaps a dozen c.o.s (Sabliere 1963, 21) before France was occupied.

To the extent there was a movement for conscientious objection during wartime, it existed in the 1950s and early 1960s. France engaged in two wars of note, the war in Indochina (1949-52) and the Algerian War (1955-62). Opposition to the war in Indochina was organised by the Communist Party and the "Mouvement de la Paix", who led large demonstrations against it. The only significant act of conscientious objection, however, was by one Henri Martin. Martin became a martyr after being accused and condemned for sabotage, demoralising the army, etc. (Meyer-Spiegler 1969, 313-33; Verlet 1967, 29).

The war in Indochina was fought primarily by professionals and the Foreign Legion, rather than conscripts (Silver 1989, 18; Meyer-Spiegler 1969, 292). Thus, it is not totally surprising how little conscientious objection there was during this period. Meyer-Spiegler reports a total of fourteen (14) c.o.s in 1950, of whom nearly all were Jehovah's Witnesses (1969, 233-4).

The Algerian War was more controversial and did involve sending conscripts to serve in Algeria. There was political opposition but nowhere near the scale provoked by U.S. or Australian involvement in Vietnam. The French protests began as early as 1955, when those who had completed their military service were recalled (Meyer-Spiegler 1969, 337-54; Auvray 1983, 216-19). These first protesters were vocal but generally stayed within the bounds of legality. Over the course of the war, however, there seems to have been a marked increase in draft dodging, desertion and other forms of noncooperation with the military. According to some accounts, 3-4,000 youths deserted or fled to Switzerland (Martial 1984, 20-1; Verlat 1967). The alternative was to serve in a war-time army or spend time in prison. The non-cooperators were generally allied with the "Jeune Resistance" started by maybe a dozen draft dodgers around 1959 but becoming a significant political force by 1962 (Auvray 1983, 222-3; Verlet 1967).

Conscientious objectors existed throughout the 1950s and early 1960s, but few chose this difficult route. In the absence of a statute legalising and regulating conscientious objection, there was no way for an individual to object legally to participation in military service. This meant the only alternative was some act of disobedience against the military. The determination of the offence and punishment was by the military. There was no consideration of motive. The most frequent offences were failure to turn up on day ordered and refusal to carry out orders, usually the order to don the uniform or to engage in weaponry training. Failure to turn up carried a sentence of one to two months in military prison during peace-time and two to ten years during war; officers were dismissed (Sabliere 1963, 41-2). Disobedience was punishable by one to two years (Sabliere 1963, 42-3). This was after time spent in the brig awaiting trial when the prisoner was likely to be subject to insults and ragging (Sabliere 1963, 60-1).

Objecteurs de conscience en prison condamnés pour la première fois chaque année.

Figure 9.

RÉPARTITION SUIVANT LES CONVICTIONS.

Catholiques
Protestants
"Laïques"
Témoins de Jéhovah

70
60
50
40
30
20
10

1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962

SOURCE: Pierre Sabliere. 1963. "L'Objection de Conscience en France. Depuis le Second Guerre Mondiale." Memoire presente à l'Institut d'Etudes Politiques, p. 100.

According to Sabliere, disobedience was even more frequent than the failure to report. He claims this was because most individuals desired to indicate their submission to the state, if not to military service (1963, 60). It may have also had to do with the considerably lesser amount of prison time during war.

The time spent in prison did not, however, count as credit towards one's time in the military (Sabliere 1963, 65). A person who had fulfilled his prison sentence could be reimprisoned if he still refused to turn up or to obey orders. Recidivism was reduced somewhat by discharges granted after the first imprisonment for reasons of health and by forfeiture of French citizenry. 93 objectors were discharged, and 17 forfeited citizenry in the post WW II period (Sabliere 1963, 76-7).

There were, at the most, no more than 500 c.o.s altogether between 1950 and 1962, that not quite .02% of approximately 3,160, 838 young men called up.[14] Approximately 80% of those who have been labelled c.o.s were Jehovah's Witnesses (see Figure 9).

The numbers did go up sharply in the late 50s, but at the highest point, 1961, only 65 went to court, of whom 50 were Jehovah's Witnesses (Meyer-Spiegler 1969, 233-6; Sabliere 1963, 51-4; Also, see Table IV).

TABLE V

CONSCIENTIOUS OBJECTION IN FRANCE
1945-1962

Year	# CO's Imprisoned	# Men Called	% CO Imprisoned/ Men Called
1945	0	244,907	0
1946	0	166,637	0
1947	0	211,931	0
1948	3	264,686	.001
1949	5	203,680	.001
1950	16	233,117	.007
1951	11	227,231	.005
1952	19	224,424	.008
1953	15	179,456	.008
1954	20	233,196	.009
1955	15	236,519	.008
1956	21	365,072	.006
1957	23	248,003	.009
1958	40	234,989	.017
1959	45	249,589	.018
1960	30	201,929	.014
1961	65	262,202	.025
1962	49	265,111	.018

Source:
Files from the Service Historique de l'Armee de Terre, drawn from "Bilans Officiels" of the Ministère de la Défense, France

14. These figures are compiled from a single onion-skin sheet entitled "ETAT de renseignements statistiques: Effectif appeles sous les drapeaux." The sheet was found in an unnamed file of materials on conscription provided by the Service historique armee de la terre during a research visit to their Archives in Vincennes in July 1990. It lists the young men called up in the various services and the totals for 1945-1965.

Even during the Algerian War, most of those who sought recognition as conscientious objectors were members of traditional peace churches, Jehovah's Witnesses and anarchists. These last two groups tended to be absolutists. They denied the right of the state to require their service in any form.

During the period of the Algerian War there was a movement to introduce a statute on conscientious objection as well as to improve the abysmal conditions for those already convicted. Anarchists, particularly Louis Lecoin, played a crucial role in these campaigns. In 1957, he founded *Liberte*, which was the organ of the Committee to Help Objectors (Martial 1984, 19). His actions are credited for the institution, in 1958, of a five year limit on prison terms for c.o.s and the release of 9 out of 90 c.o.s currently in prison who had already served five years (Sabliere 1963, 155-206; Martial 1984, 19-20).

When the war ended, there was still no statute on the books. In June 1962 Lecoin, then aged 74, commenced a highly publicised hunger strike. In 1963 the first French statute authorising conscientious objection finally appeared. It had some peculiar features, however. It required c.o.s to spend twice as much time in non-combatant or civilian service as the length of service required of those who did not object. It also made it illegal to propagandise, that is inform others, about the existence of the statute. Finally, it required a written explanation of one's reasons for requesting exemption, and this explanation had to be submitted within a very short and precise time. The determination was then done in a closed session by a judicial committee, half of whose members were from the military. Neither the c.o. applicant nor his counsel could present oral argument (Martial 1984, 22-6).

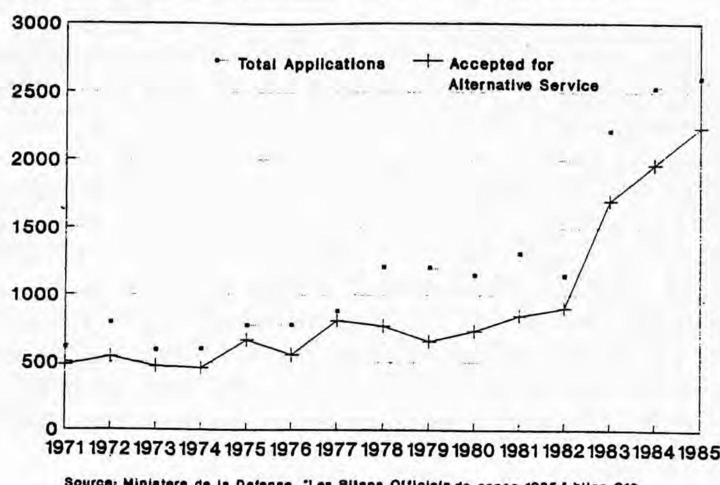
The Jehovah's Witnesses refused to take advantage of the statute, but others did. The problems of implementation and the increasing number of applications led to renewed political pressure to liberalise the statute. The 1970 transformation of the universal and compulsory military obligation to an obligation to serve the nation in one of a variety of ways added an additional pressure (Pietri interview 1990). 1983 represents the most recent liberalisation of the law affecting c.o.s. They can now be part of a civilian service. The result is greater legal tolerance of c.o.s and a significant increase in their numbers. They still have to perform a longer length of service than those who join the military, but it has become easier to apply, easier to get one's application approved, and

easier to actually engage in alternative service. Moreover, it is now legal to publicise the possibility of being a c.o.

Even in France, where it was so difficult to be a conscientious objector, we see a rise in reliance on its usage during the post World War II period, the only period for which we have statistics. The numbers are small, but there is nonetheless a fairly steady rise (see Table IV). From the historical narrative, we know that two factors probably contributed to this rise. The first was the unpopularity, among some, of the Algerian War. The second was the liberalisation of the treatment of c.o.s, particularly in the wake of Louis Lecoin's 1957 campaign.

The importance of institutional arrangements is made strikingly apparent by a consideration of the figures for its usage since 1971. (See Figure 10).

Figure 10. Conscientious Objection in France, 1971-85



Source: Ministere de la Defense, "Les Bilans Officiels de annee 1985," bilan C12.

There is a particularly big jump in both applications and acceptance following the legal changes of 1983. In 1987 the number accepted as c.o.s went to 2616 (SIRPA 1988, 16) and in 1988 to 2379 (SIRPA 1989, 16). Since these figures represent national service during peace-time, it is not possible to gauge the effect of an unpopular war. We would expect, however, that should some future war begin to use conscripts and be the object of protest, there will be a corresponding and fairly significant rise in applications for conscientious objection.

In considering the cross-time variation in the usage of conscientious objection, it is apparent that when institutional costs are extremely high, as they were in all countries during World War I and in France until the 1960s, only those who are moral absolutists are willing to pay the price. As the costs go down, more of those who are contingent dissenters become conscientious objectors. Between World Wars I and II, there was both institutional liberalisation and an increase in the perceived acceptability of the war. It was easier to become a c.o. during World War II but there was less reason to. Yet, in all our cases conscientious objection goes up. Again, we do not have the data necessary to determine whether conscientious objection rose less than one would expect given the lower costs. We can conclude, however, that institutional arrangements are a necessary condition for explaining the rise in this form of dissent. To put this another way, we can conclude that there are contingent dissenters, those whose decision to become c.o.s is cost sensitive.

While there was little variation across time in conscientious objection motivated solely by strong normative beliefs, there was considerable variation in what we have labelled contingent dissent. The cause of the variation, we believe, was, first and foremost, changes in institutional arrangements that lowered the costs of becoming a c.o. When these lower costs also combined with normative opposition to the war or conscription, then we see a significant rise in conscientious objection as contingent dissent. Finally, a certain amount of social learning probably went on during the course of wars, especially the Vietnam War.[15] The parents of boys and the boys themselves learned that years before registration, they should start establishing their credentials as c.o.s. Thus, by the late 1960s and early 1970s more potential contingent dissenters were prepared to become c.o.s.

Institutional Change

There are several possible arguments that might account for the changes in institutional arrangements that lower the costs of contingent dissent. One possible cause is liberalisation over time in attitudes towards dissent. This is a hard case to make during the period of the Korean War when the Cold War was being fought at home as well as abroad. Liberalisation may, however, have been part of the explanation during

15. Fred Block brought this argument to our attention.

Vietnam, which came during a period of increasing legislative and court protection of individual rights.

Another explanation has to do with social control.[16] Since so much of the increased tolerance for c.o.s was produced through administrative implementation rather than actual legislative change, the government retained its ability to be more repressive or to buy off discontent as needed. Neither the Korean nor Vietnamese wars required full mobilisation, and thus the government could afford even more exemptions from combat during these conflicts.

Of course, the government response may not have reflected social control at all but rather simple expediency. Given that only a relatively small proportion of potential draftees were necessary to the war effort, it was less politically and financially costly to exempt dissenters or give them alternative service than to let them continue as trouble-makers, in the army or out.

What is irrefutable is that the rules and the implementation of the rules change in response to increased political pressure on government by constituents and actors with moral clout and good publicity campaigns. This was the case of the religious leaders in the United States and Australia in both World War II and Vietnam and of Louis Lecoin during his hunger strike in France. The effect is to illuminate an unattractive government policy and subsequently mobilise media and public opinion against it. When the attack on government could be mollified by administrative reinterpretation of the rules or by an amnesty, this was done, leaving the rules themselves intact. When public agitation could be assuaged only by actual rule modification, that was the course of action chosen.

The case of Vietnam, in both Australia and the U.S., suggests an additional source of institutional change. The considerable popular agitation against the war and the well-publicised and wide-spread draft resistance presented clear evidence that many young men were not supporting the war effort. This evident break-down in contingent consent probably encouraged even more contingent consent, and conscientious objection was one of its forms.

It is also likely that draft board members, magistrates, and others with crucial judicial or administrative roles were also influenced by the extent of the opposition to the war as well as by the increasingly tolerant

16. Fred Block brought this argument to our attention.

behaviour of their counterparts elsewhere. We have shown that the interpretation of the rules became more liberal as the War in Vietnam progressed. This, too, is a possible indicator of a breakdown in contingent consent among the very persons implementing the rules. The consequence was an effective rule change.

Variation Among Countries

There is not only variation in applications for and acceptance of conscientious objection over time. There is also considerable variation among countries for the same or similar wars. Both the U.S. and Australia sent conscripts to fight in Vietnam, and from 1954 to 1962 France sent conscripts to Algeria. All three of these wars evoked serious protest movements in their home countries. The jump in the use of conscientious objection also rose relative to its use in previous wars. The reliance on this weapon against war varied, however, quite widely among the three countries. We shall now explore the extent to which this variation might be accounted for by: (1) differences in perceptions of legitimacy of the war; (2) differences in perceptions of fairness of conscription; and (3) differences in institutional arrangements. On all of these dimensions, France raises the greatest obstacles to contingent dissent, the U.S. the fewest, and Australia lies between them (although closer to the U.S. than France).

During the Vietnam War, the percentage of U.S. registrants who applied for c.o. status has been estimated as slightly over .4% while the percentage of the Australians registrants was slightly over .1%.[17] In France, of course, there was no legal way to be a c.o., and even the number of illegal c.o.s was tiny. Institutions are the major factor in accounting for the French behaviour, but it is also true that the protests around Algeria never reached the proportions of those against the Vietnam War in the U.S. and Australia. The protest movement in Australia rivalled that in the U.S. However, opinion polls indicate that Australians were more likely to approve the War than American citizens.

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17. Approximately 2% of those who actually served were c.o.s, but only .1% of the total pool of registrants. Of those who were balloted in, that is actually drafted, the percentage was closer to .6%. Unfortunately, however, we do not yet have comparable figures for the U.S. The Australian statistics are drawn from available numbers on c.o.s through 1972, as presented in Table III, available figures on registrants (CPD HofR 81, 10/26/72: 3443-4), and available figures on numbers balloted in through 1970 (CPD HofR 71 2/24/71: 623-4).

It is hardly the case that the French are less contentious than the Australians or Americans. What may enter in here, along with institutions, are very different perceptions of the fairness of conscription. A curvilinear perception of fairness when one compares the countries may account for some of the variation.[18] The least questioning of conscription should take place in France. The U.S. case should encompass the strongest sense of the violation of the norms of fairness. In Australia there should be issues of fairness regarding conscription but not nearly so many as the U.S. In France, the obligation for military service is a relatively unquestioned part of growing up a French male. It is simply a matter of bad luck if your year comes up when there is a war. Australian young men have had to engage in compulsory national training since the beginning of the century. So, in terms of acceptance of national service, Australia falls in the middle between France and the U.S., which has a history of conscription only during wartime (with a few short exceptional periods).

In both the U.S. and Australia there was significant public opinion opposed to military intervention and a large and noisy anti-draft movement. Moreover, the method of the draft, the lottery in the U.S. and the ballot in Australia, was seen as a trivial basis for being sent to war. However, in the U.S. deferments were rampant and class-biased. Moreover, the lottery was revealed to be non-random. Although the eligible in both Australia and the U.S. had reasons to raise questions about the fairness of the system, the inequities of the American system were more clear-cut.

What most clearly varied among the three countries were the institutional arrangements affecting the incentives to apply. They were by far the lowest in France, which lacked a statute providing legal protection for conscientious objectors. While conscientious objection did go up during the Algerian War, it was hardly an important weapon against war by those who dissented. The costs were considerably lower in the U.S. and Australia, and the institutional incentives to at least apply the greatest in the U.S.

In the U.S. a young man could and was best off applying for c.o. status upon registering for the draft. Australians applied only after being drafted, that is balloted in, and passing the medical exam. Thus, one

18. Russell Hardin suggested this point.

should expect that a smaller percentage of Australians would apply, *ceteris paribus*.

In addition, it was somewhat more difficult to apply and qualify in Australia. Both countries permitted objections on non-religious grounds and both forbade (and continue to forbid) objections against a particular war. In the U.S., however, the initial determination was made by the applicant's local draft board, and the draft boards varied in their tolerance and in their susceptibility to influence. There was less difference in Australia, and all applicants had to go to court from the very beginning.

It is, of course, possible that there were more alternatives available to Australians. However, it was if anything more difficult to get deferments. There were a large number of individuals who joined the Citizen Military Force (Jordens 1989, 20-1), but there were a large number of Americans who joined the National Guard. Australia did experience a rise in violations of their military service requirements. Nearly 12,000 youths failed to register between 1965 and 1971, with an average annual number of prosecutions being 202 until a crackdown in 1971-72 that produced 723 prosecutions (CPD, HofR 81, 10/26/72, pp. 3443-4; Jordens 1989, 21). According to the Minister of the Department of Labor and National Service, there were 1625 prosecutions for failure to register, between 1968 and the middle of 1972, but only 13 were imprisoned out of c. 38,000 enlisted (Lynch, New Release, 9/3/72, 1). Other figures suggest that out of 761,854 young men who turned 20 during, 53,315 failed to register between 1965 and 1972 (CPD HofR 81, 1/26/72, 3443-4).[19] In addition between 1965 and 1971, an average of 16 persons per year failed to attend their medical (Jordens 1990, 70).

Unfortunately, it is not possible to compare these figures with those from other wars fought by Australia or with the figures from the U.S. The extent of national service violations indicates that there may have been some serious reluctance about being part of the military effort. The data also suggests, however, a relative paucity of institutional disincentives. There were few prosecutions and even fewer jail sentences. While it is clear that there was decline in punitive action in the U.S. during Vietnam relative to the past (see Figure 3), it is not clear whether U.S. or Australian institutions were more tolerant of these violations.

19. The figures provided, although official, are not consistent with some of the other official figures. This is generally a problem, and so we give the reader both sets.

Thus, the only clear-cut differentiation is in the institutional arrangements that encouraged applications by Americans and made it more difficult for Australians.

Alternative Hypotheses

There are several alternative interpretations of our findings. It could be that the variation in conscientious objection is better explained by changes in political culture. Or, perhaps, all conscientious objection is in fact straightforward instrumental action.

A political culture argument could take several forms. The first is that the crucial variable is the religious traditions of the different countries. France, with its predominantly Catholic population, does not have the same history of pacifist churches and dissenting religions as does the U.S. Australia lies in the middle. The religious variable may be further supported by a second cultural factor, the difference in the rights traditions of the countries. The U.S. was founded with the Anglo-Saxon emphasis on individual rights. Its very origins were based on the legal tolerance of dissenting religions. Australia also developed within the Anglo-Saxon rights tradition, at least once its free population surpassed its convict population. France is more statist, with a greater emphasis on the rights of the state relative to those of the citizen.

These factors lead one to expect proportionately less conscientious objection in France, more in Australia, and most in the U.S. This does, indeed, seem to be the case. Unfortunately, the data is inadequate for a statistical analysis that controls for the effect of religion. There are no good cross-cultural statistics on the distribution of religion in the population over time, nor are there even good statistics on the religious affiliations of conscientious objectors.

Despite the paucity of statistical evidence, there is no denying that religious differences are crucial to an explanation of the origins of the institutional arrangements affecting conscientious objection. Nor can one deny the importance of the rights tradition. The effects of such cultural factors, however, is mediated through institutions. It is the rules, the material incentives and disincentives—not socialisation—that are doing most of the work. Even in France, with its citizenry's commitment to "the nation", its statism, and its relatively high degree of Catholicism, a lowering of the costs of becoming a conscientious objector (or doing other kinds of alternative service) significantly increased the numbers who applied and qualified. (See Figure 10).

Another form of the political culture argument has to do with the steady increase in the extension of and consciousness of rights throughout the Western world during the twentieth century. Again, while this may help explain the institutional change, it does not deny the salience of the resulting rules. On the other hand, consciousness of rights may be an important factor in accounting for an increased search for forms of expression of dissent. The extent to which it is more, less, or equally important than considerations of the legitimacy of the war and the fairness of the conscription policy is worth exploring, should possible arbitrating evidence be found.

There is also a case to be made that all contingent conscientious objection can ultimately be reduced to instrumental motivations. One reason why some individuals were willing to pay such a high price is that they would have paid a higher price for joining the military. Indeed, if we push this line hard enough, even the absolutists are instrumentalists in that they tend to reside in communities that make it more costly for them to engage in military action than to spend time in jail resisting the service. Both religious and political pacifists actually are affected by two, often competing, sets of institutions, one national and one local. If they highly prize their association with the relevant religious or political group and if that group requires conscientious objection, expulsion from the group may represent a higher cost than the jail sentence imposed by the state.

To argue that instrumental motivations exist is not, however, to deny a normative element in the decision to become a conscientious objector. Rather, what we are suggesting is that here is, possibly, a case where both moral beliefs and instrumental motivations operate in the same direction. What makes this so is community-based institutions that encourage certain norms, on the one hand, and affect incentives, on the other. Thus, while it is true that we have demonstrated that contingent objectors are cost-sensitive, we have also tried to show that a necessary condition for contingent conscientious objection is a perception of the illegitimacy of the war and the unfairness of the conscription system. In other words, contingent objectors are norm-sensitive as well as cost-sensitive.

Conclusion

Conscientious objection reveals critical elements of the relationship between citizens and the state. Military service is one of the obligations constitutive of citizenship. In democracies, however, this citizen

obligation carries with it a corresponding obligation of government towards its citizens. Military service can only be demanded, conscription can only be required, when the war is "just". What makes a war just is neither clear cut nor self-evident. It is, however, incumbent upon democratic governments to somehow persuade the citizenry that the undertaking serves the interests of the nation as a whole. This is most clearly the case when the country is under attack. The "justness" of the war becomes more problematic when the threat is far away or when it is a war of intervention. It is further incumbent upon democratic governments to use a system of conscription which is fair, or at least is perceived as fair. Inequities in the system may be understood as a failure on the part of government officials to keep their side of the conscription bargain.

Variation in requests for conscientious objector status is one indicator, albeit a rough indicator, of the perceived legitimacy of the war and the fairness of the conscription system. Its use as an indicator, let alone as a weapon against war, is largely determined, however, by the institutional arrangements that delimit its availability.

> The major finding of this study is that both instrumental rationality and norms play important roles in motivating application for conscientious objection, a political weapon that, on the face of it, appears to be a wholly normatively motivated decision. One finds a greater reliance on conscientious objection when the cost of its use goes down, dissatisfaction with government policy goes up, or both. When both institutional costs are reduced and normative dissatisfaction increases at the same time, one expects to see a fairly big jump in the use of conscientious objection. And that in fact is the case.

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