

A SOLDIER'S RIGHT NOT TO FIGHT: BREACHING THE INSUPERABILITY OF MILITARY OATHS

Edmund Pries

Military conscripts and officers are uniformly required to swear an oath of loyalty, no matter which country they serve. These oaths are commonly interpreted as mandating the unquestioning obedience of soldiers and officers towards all “lawful” orders received. A soldier’s responsibility to discern lawfulness and disobey unlawful commands is normally understood as referring to *jus in bello* (law in war). This paper argues that a careful examination of military oaths in the United States, the United Kingdom, and Canada extends the same discernment responsibility to *jus ad bellum* (justice/law of going to war)—and grants a soldier’s right to determine whether a war is just and whether it is therefore lawful to fight. Moreover, the ancient concept of invincible ignorance can no longer be applied to modern soldiers. Informed soldiers have the right to refuse to fight in unjust wars.

INTRODUCTION¹

Military oaths can be traced back at least 4,000 years to the Bronze Age.² They remain the dominant ancient relic still in daily use by militaries today, but they are not treated as a relic. Rather, they are seen, as they always have been, as a living human speech-document and a self-imprecation, granted a critical juridical role and seen as an effective tool in securing the loyalty and obedience of both soldiers and officers. An oath, as a “religious instrument,” is a statement of promise that incorporates a curse of one’s self should the promise not be kept. The words, “so help me God,” appended

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