

Why the Draft Is Hard to Justify

"And suppose the laws were to reply, 'We brought you into the world, we raised you, we educated you, we gave you and every other citizen a share of all the good things we could . . . you ought to obey in silence if (we) send you to battle to be wounded or die.'"—Socrates

"(We have) a national duty to serve in return for the privilege of being an American. I can conceive of no fairer way to spread the obligation of protecting our country."—Rep. Paul N. McCloskey, Jr.

It seems to many critics that America's all-volunteer military policy is a rather spectacular failure. There are too few recruits, of very low quality, with very high attrition rates, recruited at great expense and with grave doubts about their ability to serve. Furthermore, under the all-volunteer policy, minority participation in the military has become disproportionately high. Thus, it is charged, the all-volunteer force is unfair as well as inefficient, placing an unduly heavy burden of service on those most disadvantaged in the society they are expected to serve.

Proponents of conscription argue that a return to the draft would change all this, boosting the number, quality, and racial representativeness of recruits, while simultaneously reducing manpower costs. Defenders of the volunteer force dispute the accuracy of many of these claims. More importantly, they insist that these claims fail to take into account the essential coerciveness of the draft and its severe violation of individual liberty.

But if citizens have an obligation to serve in the military, this objection to conscription is no longer a valid one. If we have an obligation to serve, conscripted service no longer constitutes an invasion of liberty and a violation of rights. Arguments for the draft, then, rely on the assumption that there is such a burden of obligation, to be distributed as fairly and efficiently as possible. For it will not do to distribute fairly and efficiently a burden that ought not be distributed at all.

Do we have an obligation to serve in the military? Is this one of our political obligations as citizens, along with the obligation to pay taxes and obey other kinds of laws? If so, what is the source of these other obligations? On what grounds do we have any political obligations at all? The entire justificatory program for the draft turns on these central questions.

It seems that all moral requirements fall into one of three classes, and so if we have political obligations, they must fall into one of these three classes as well:

- Requirements generated by some voluntary performance, such as making a promise or signing a



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In what follows, **A. John Simmons**, Assistant Professor of Philosophy at the University of Virginia and currently Visiting Professor at Johns Hopkins University, argues that this central assumption is false. His argument is summarized from his paper "The Obligations of Citizens and the Justification of Conscription," prepared for the Center for Philosophy and Public Policy's working group on *The Morality of Compulsory Military Service*. A fuller discussion of Simmons's views on political obligation can be found in his book, *Moral Principles and Political Obligation* (Princeton, N.J.: Princeton University Press, 1979).

contract—these include obligations of fair play, which arise when persons voluntarily enter into cooperative projects

- Requirements arising simply from the moral character of the act in question, and so binding on all persons regardless of any special performances or relationships (for instance, "natural" duties not to lie or assault others)
- Requirements based in some special, but not necessarily voluntarily assumed, relationship (as obligations of children to parents and beneficiaries to benefactors).

Are political obligations requirements of any of these three kinds? If not, it seems doubtful that political obligations are really obligations at all.

(1) Requirements generated by voluntary acts

Classical political theorists such as Hobbes and Locke argued that political obligation—and the legitimacy of all government—arises out of the voluntary consent of citizens to be governed. Realizing the great advantages of organization into a state, persons freely contract to take on the obligations of citizenship in exchange for its benefits and protections.

It is now widely recognized, however, that the political participation of the vast majority of citizens cannot be regarded as fully voluntary. Naturalized citizens are virtually the only non-officeholders who expressly consent to anything in the political sphere, and the kinds of genuine choice situations that would provide opportunities for native-born citizens to give binding consent are all but unheard of in modern political communities. Continued residence in a country need not, and routinely does not, occur in response to any fairly presented choice.

Neither does it seem plausible to characterize the average citizen as voluntarily participating in some ongoing political cooperative scheme with his fellow citizens, and bound by considerations of fairness to serve in the military. While there are surely some persons who can be taken to be voluntary participants in a fairly strong sense, many others clearly cannot—the poor, the alienated, those who are trapped and oppressed and denied opportunities for a decent life. For these citizens political participation consists of making the best of a situation to which there are no options worth considering. Participation of this sort will not ground obligations based on a stronger voluntariness.

(2) Requirements based on natural moral duties

Natural duties, however, are not based in any voluntary transactions, relationships, or performances, but arise simply because of the moral character of the required act or forbearance. I am bound not to murder, for instance, not because of anything I have done (like promising not to), but because of the moral significance of murder. Similarly, duties not to steal or lie, to give aid to those in need, or to promote justice are equally shared by all persons, regardless of their voluntary acts.

Is the obligation to serve in the military a natural duty? There is good reason to think that it is not. First, because these duties are binding on *all* persons, the content of any natural duty must be perfectly general: I am bound not to kill *anyone*, not just certain specified individuals. If our duty to serve in the military were a natural duty, then, it could not bind us to service in any *particular* state (specifically, our state of citizenship). Suppose, for instance, that the duty to serve were conceived as part of a natural duty to support just governments. We would then be bound by it to serve in the military of *all* just governments—certainly not a duty we should recognize as genuine.

What needs to be explained is why a government's being *ours* grounds special ties to it, such as the requirements to pay taxes to it, obey its laws, and serve in its military. This an account in terms of natural duties cannot do.

(3) Requirements based in nonvoluntary relationships

If political obligations must arise out of some special tie between the citizen and his particular country, where this tie cannot be construed as voluntarily assumed by the citizen, then this third class of moral requirements is especially promising. An account in these terms captures the spirit of the most familiar answers to questions about political obligation. The reason we are obligated to serve the state, many argue, is that it has so effectively served us. It has provided numerous and substantial benefits at low cost, and it is the duty of those who have benefitted from the labor of others to reciprocate. Thus, in the earliest recorded account of political obligation (Plato's *Crito*), Socrates argues for political obligation both as reciprocation for benefits provided and as that which is due the state as "parent." Here the appeal is to two special relationships—benefactor-beneficiary and parent-child—both of which need not be entered voluntarily, and both of which are ordinarily taken to ground special obligations.

Few would deny that the state provides considerable, even essential, benefits to its citizens—benefits, furthermore, that citizens are incapable of providing for themselves. Does this mean that citizens owe a debt of reciprocation to the state, to be rendered in the form of taxes, obedience, and military service?

It does not. We need to remember what the content of an obligation of reciprocation is normally taken to be like. What we owe a benefactor is almost never determined with any precision by the context, but varies with our capabilities, the benefactor's needs, and the value of and sacrifice involved in providing the benefit. There is considerable latitude in discharging such an obligation, and the best guide is only a very vague sense of what constitutes a "fitting" return. What we certainly do *not* owe a benefactor is whatever he demands as repayment.

Thus, even if we are obligated to reciprocate for the benefits we receive from government, we are not obligated to reciprocate in all (or perhaps any) of the ways that the government demands. We are not required to serve in the military, to obey every law, or to pay precisely the amount of tax imposed on us simply because we are told to do so. The government, as benefactor, has no special claim to dictate the content of our obligation or pass final judgment on what constitutes a fitting return. The benefactor-beneficiary relationship cannot ground an obligation of military service.

Perhaps the filial obligations arising from the parent-child relationship provide a more helpful comparison. We can set aside the claim that children owe reciprocation for parental care, since the argument that obligation arises from benefaction is even less convincing in cases where the benefactors have them-

selves created the needs that their benefits satisfy. But parent-child and state-citizen relationships have been taken to be analogous in other ways.

Socrates maintains that the citizen ought to obey the state as a child obeys his parents, "to obey in silence if it orders you to endure flogging or imprisonment, or if it sends you to battle to be wounded or die." It does not seem, however, that children do in fact owe obligations of obedience to their parents. Young children do not, because young children do not have any moral obligations, to their parents or to anyone else. Where the capacities necessary for minimal levels of moral responsibility are absent, so are moral requirements. Mature children do not owe obedience, because they have the same rights and obligations as other adults. And children of middle years may act either rightly or wrongly in obeying or disobeying parental commands. The rightness or wrongness is a function of the acts performed, not of the parental command having been obeyed or disobeyed. So, by analogy, citizens also have no obligations of obedience to the state, though it may be independently right or wrong for them to do whatever it is that the state is commanding.

Filial and political relationships are also analogous in that both are routinely accompanied by strong emotional ties, of love and friendship in the one case, and loyalty and concern in the other. It is often argued that filial obligations arise from this personal intimacy—mutual caring creates the obligations, and where mutual caring ceases, the obligations cease as well. Perhaps political obligations are created and erased in the same way.

This view, however, seems to be mistaken. Moral obligations do not come in and out of existence with changes in our emotional state, and, furthermore, it is precisely in the absence of emotional reasons for certain kinds of behavior that the point of ascribing moral obligations comes most clearly into focus. While children love their parents and citizens remain loyal to their country, loving and loyal behavior will be natural and unconstrained. But the love and loyalty do not make such behavior into a matter of obligation. The parent-child analogy fails as well, then, to establish an obligation of military service.

The Justifiability of Conscription

It seems, then, that there is no moral obligation to serve. The central assumption of the standard arguments for conscription is a false one. Before concluding, however, it is useful to examine the connection between political obligation and conscription more closely. It is frequently assumed that if there is an obligation to serve, conscription is thereby justified. Likewise, it is assumed that if there is no obligation to serve, conscription is thereby impermissible. Neither is the case.

If there is an obligation to serve, is conscription justified?

Philosophers commonly claim that the existence of an obligation entails that coercion is justified in its enforcement. As stated, however, this view is too



Photo by Dana Pallotto

simple. It is not true that whenever someone has an obligation someone (or everyone) else is morally justified in forcing performance. Just as it can be morally wrong, all things considered, to discharge an obligation, so it can be morally wrong to force another to discharge his obligation. For example, it would be wrong of me to ignore the drowning man in order to discharge my obligation to meet you for lunch, and it would be wrong of you to force me to discharge this obligation.

Thus, even if citizens did have a moral obligation to serve in the military, the state should not enforce this obligation under many conceivable circumstances. Some of these circumstances are in fact recognized in current practice as limits to the state's justified enforcement of the citizen's obligation to serve: strong competing obligations, such as the obligation to support dependent family members, and the obligations of religion and moral conscience are recognized as having overriding importance, making state enforcement of the obligation to serve indefensible. Many other circumstances in which state enforcement of the obligation to military service is illegitimate are not recognized in actual practice. These are cases in which the conscript is to be used for morally unacceptable purposes, such as to wage an unjust war. Where it is wrong to serve, it cannot be right to force service.

If there is no obligation to serve, is conscription impermissible?

It is not, for just as obligations sometimes ought not to be discharged, so rights may sometimes legitimately be infringed. I do not act wrongly in taking your rope without permission (and so violating your property rights) in order to throw it to a drowning man.

Even if citizens have no obligation to serve, certain kinds of social or military emergencies may still make

conscription (military or otherwise) morally justifiable; even if citizens have a moral right not to be conscripted, they may be justifiably conscripted. But because conscription violates many people's rights, and violates them extensively (causing prolonged loss of liberty and opportunity and risk of death), justifying emergencies must be very real and very serious indeed. And in order to be justified, the benefits of

conscription must not only outweigh its costs, but conscription must be far enough better than the next best alternative policy in reaping these benefits that its higher probability for success outweighs the infringed rights that it involves. So even if conscription might otherwise be defensible, it would almost certainly be unjustifiable in virtue of the moral superiority of alternative non-coercive policies.

Children and the Constitution

In considering the conflicting claims of children, their parents, and the state, the Supreme Court has ruled that:

- parents have the authority to commit their children to mental institutions without any formal hearing
- parents do not have the authority to limit their children's legal access to contraception devices and abortion services
- some form of due process procedure is owed to students in cases of suspension
- no form of due process procedure is owed to students in cases of corporal punishment
- parents' religious interests override the state's interest in requiring compulsory education through high school
- parents' religious interests are overridden by the state's interest in regulating and limiting child labor.

According to David A. J. Richards, Professor of Law at New York University, this hodgepodge of inconsistent decisions signals the lack of any explicit underlying principle justifying the Court's conclusions. In "The Individual, the Family, and the Constitution," (*NYU Law Review*, April 1980), he takes on this task: "To assess what is valuable and what is mistaken in this incoherent body of case law we must do what the Supreme Court has failed to do. We must philosophically conceive and explicate the conflicting rights of children, parents, and society as a matter of general moral and constitutional principle."

The moral and constitutional principle needed, Richards proposes, is the principle that every person has a right to equal respect and concern in the pursuit of autonomy. That is to say, every person has an equal right to develop his capacity for determining his own goals and life purposes, for deciding independently the content of his own desires, needs, choices, projects, and aspirations. One practical implication of this deeper principle is a principle of equal opportunity in the broad class of external circumstances that bear

upon personal development. These include opportunities for emotional nurture within the family and educational opportunities for training in basic skills and cultivation of self-critical faculties.

This principle provides both the justification and the limitation of what Richards calls "liberal paternalism" in child rearing. Parents and educators are required to exert a certain amount of control over young children, and, to a much lesser degree, adolescents. The aim of this power is to guide the child into mature, independent rationality, to protect the child's interests so that she becomes able to choose and defend her own interests in adulthood. While parents do of course rightly impart their own values and concerns to their children, liberal paternalism requires that "they must do so in ways that acknowledge and foster the child's critical rationality in making decisions on her or his own." To achieve this end, "appropriate nurturing and education should be supplied, notwithstanding the child's resistance, that will lead to rational autonomy."

This, then, is the principle by which the Court's decisions should be evaluated: autonomy and equal opportunity preserved through liberal paternalism. If the Court had explicitly relied on this principle in its deliberations, Richards suggests, it might well have reached some rather different rulings.

Compulsory Education and School Discipline

Since Locke and Rousseau, education has been at the heart of the liberal tradition, education designed to foster the child's emerging intellectual independence and to fit him for defining the meaning of his own existence. From this perspective, Richards finds the Court's educational record a disappointing one: "The Supreme Court's decisions regarding both the requirements of compulsory education and rules governing speech and discipline in educational institutions fail to meet the demands of liberal paternalism. The Court has been overly lax in enforcing compulsory education laws that are critical to the develop-