

A Sketch of Some Arguments for Conscription

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In the run up to the war against Iraq, an op-ed by Congressional representative Charles Rangel (D-NY) rekindled a debate about the military draft; unexpectedly, because most scholars and an overwhelming majority of senior military leaders regarded this matter as settled. The Vietnam-era draft was regarded as arbitrary and unfair, and it was held responsible for dissension within the military as well as the wider society.

In the immediate wake of its disaster in Vietnam, the United States made an historic decision to end the draft and institute an All-Volunteer Force (AVF). On one level, it is hard to argue with success. The formula of high quality volunteers, combined with intensive training and investment in state of the art equipment has produced by far the most formidable military in history. Evidence suggests that the military's performance, especially since 1990, has bolstered public trust and confidence. For example, a recent Gallup Poll of public opinion trends since the end of the Vietnam war

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in 1975 indicates that while the percentage of Americans expressing confidence in religious leaders fell from 68 to 45, and from 40 to 29 for Congress, the percentage expressing confidence in the military rose from under 30 to 78. Among 18 to 29 year olds, the confidence level rose from 20 to 64 percent. (Remarkably, these figures reflect sentiment in late 2002, before the impressive victory in Iraq.)

These gains in institutional performance and public confidence are impressive and significant, but they hardly end the discussion. As every reader of Machiavelli (or the Second Amendment) knows, the organization of the military is embedded in larger issues of citizenship and civic life. It is along these dimensions that the decision in favor of the AVF has entailed significant costs. First, the AVF reflects, and

has contributed to the development of, what I call *optional citizenship*, the belief that being a citizen involves rights without responsibilities and that we need do for our country only what we choose to do. Numerous studies have documented the rise of individual choice as the dominant norm of contemporary American culture, and many young people today believe being a good person—decent, kind, caring, and tolerant—is all it takes to be a good citizen. This duty-free understanding of citizenship is comfortable and undemanding; it is also profoundly mistaken.

Second, the AVF contributes to what I call *spectatorial citizenship*—the premise that good citizens need not be active but can watch others doing the public's work on their behalf. This spectatorial outlook makes it possible to decouple the question of whether *we* as a nation should do X from the question of whether *I* would do or participate in X. In a discussion with his students during the Gulf War, philosophy professor Cheyney Ryan was struck by "how many of them saw no connection between whether the country should go to war and whether they would . . . be willing to fight in it." A similar disconnect exists today. Young adults have been more supportive of the war against Iraq than any other age group (with more than 70 percent in favor), but recent surveys have found an equal percentage would refuse to participate themselves.

As a counterweight to this decoupling, Ryan proposes what he calls the Principle of Personal Integrity: You should only endorse those military actions of your country in which you yourself would be willing to give your life. The difficulty is that integrity does not seem to require this kind of personal involvement in other public issues. For example, a citizen of integrity can favor a costly reform of the welfare system without being required to serve as a welfare caseworker. Presumably it is enough if citizens are willing to contribute their fair share of the program's expenses. So one might ask: why is it not enough for citizens to contribute their fair share to maintain our expensive military establishment? Why should integrity require direct participation in the case of the military but not in other situations? This raises the question, to which I shall return, of when monetary contributions are

morally acceptable substitutes for direct participation, and why.

Finally, the AVF has contributed to a widening gap between the orientation and experience of military personnel and that of the citizenry as a whole. To be sure, this is an empirically contested area, but some facts are not in dispute. First, since the inauguration of the AVF, the share of officers identifying themselves as Republican has nearly doubled, from 33 to 64 percent. (To be sure, officers were always technically volunteers, but as I can attest from personal experience, the threat of the draft significantly affected the willingness of young men to volunteer for officer candidacy.) Second, and more significantly, the share of elected officials with military experience has declined sharply. From 1900 through 1975, the percentage of members of Congress who were veterans was always higher than in the comparable age cohort of the general population. Since the mid-1990s, the congressional percentage has been lower, and it continues to fall.

Lack of military experience does not necessarily imply hostility to the military. Rather, it means ignorance of the nature of military service, as well as diminished capacity and confidence to assess critically the claims that military leaders make. (It is no accident that of all the post-war presidents, Dwight Eisenhower was clearly the most capable of saying no to the military's strategic assessments and requests for additional resources.)

For these reasons, among others, I believe that as part of a reconsideration of the relation between mandatory service and citizenship, we should review and revise the decision we made thirty years ago to institute an all-volunteer armed force. I hasten to add that I do not favor reinstituting anything like the Vietnam-era draft. It is hard to see how a reasonable person could prefer that fatally flawed system to today's arrangements. The question, rather, is whether feasible reforms could preserve the gains of the past thirty years while enlisting the military more effectively in the cause of civic renewal.

An Abuse of State Power?

My suggestion faces a threshold objection, however, to the effect that any significant shift back toward a mandatory system of military manpower would represent an abuse of state power. In a recent article, Judge Richard Posner drafts nineteenth-century political theorist John Stuart Mill as an ally in the cause of classical liberalism—a theory of limited government that provides an “unobtrusive framework for private activities.” Limited government so conceived, Posner asserts, “has no ideology, no ‘projects,’ but is really just an association for mutual protection.” Posner celebrates the recent emergence of what he calls the

“Millian center”—a form of politics that (unlike the left) embraces economic liberty and (unlike the right) endorses personal liberty, and he deplores modern communitarianism's critique of untrammelled personal liberty in the name of the common good. High on Posner's bill of particulars is the recommendation of some (not all) communitarians to reinstitute a draft.

Mill misapplied. Before engaging Posner's own argument, I should note that his attempt to appropriate Mill's *On Liberty* to support an anti-conscription stance is deeply misguided. To clinch this point, I need only cite a few of the opening sentences from Chapter Four, entitled “Of the Limits to the Authority of Society Over the Individual”:

[E]veryone who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct toward the rest. This conduct consists, first, in not injuring the interests of one another, or rather certain interests which, either by express legal provision or by tacit understanding, ought to be considered as rights; and *secondly, in each person's bearing his share (to be fixed on some equitable principle) or the labors and sacrifices incurred for defending the society or its members from injury and molestation. These conditions society is justified in enforcing at all costs to those who endeavor to withhold fulfillment.*

Posner's view of Mill would make sense only if Mill had never written the words I have italicized.

The fair share argument. It is not difficult to recast Mill's position in the vocabulary of contemporary liberal political thought. Begin with a conception of society as a system of cooperation for mutual advantage. Society is legitimate when the criterion of mutual

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advantage is broadly satisfied (versus, say, a situation in which the government or some group systematically coerces some for the sake of others). When society meets the standard of broad legitimacy, each citizen has a duty to do his or her fair share to sustain the social arrangements from which all benefit, and society is justified in using its coercive power when necessary to ensure the performance of this duty. That legitimate society coercion may include mandatory military service in the nation's defense.

A counterargument urged by the late political philosopher Robert Nozick that that we typically do not consent to the social benefits we receive and that the involuntary receipt of benefits does not trigger a duty to contribute. Mill anticipated, and rejected, that

thesis, insisting that the duty to contribute does not rests on a social contract or voluntarist account of social membership. Besides, the argument Socrates imputes to the Laws in the *Crito* is a compelling one: if a society is not a prison, if as an adult you remain when you have the choice to leave, then you have in fact accepted the benefits, along with whatever burdens the principle of social reciprocity may impose.

Economist Robert Litan has recently suggested that citizens should be “required to give something to their country in exchange for the full range of rights to which citizenship entitles them.” Responding in a quasi-libertarian vein, public policy expert Bruce Chapman charges that this proposal has “no moral justification.” Linking rights to concrete responsibilities is “contrary to the purposes for which [the United States] was founded and has endured.” This simply is not true. For example, the right to receive GI Bill benefits is linked to the fulfillment of military duties. Even the right to vote (and what could be more central to citizenship than that?) rests on law-abidingness; many

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states disenfranchise convicted felons for extended periods. As Litan points out, this linkage is hardly tyrannical moralism. Rather, it reflects the bedrock reality that “the rights we enjoy are not free” and that it takes real work—contributions from citizens—to sustain constitutional institutions.

Conscription as slavery. Now on to the main event. Posner contends that “Conscription could be described as a form of slavery, in the sense that a conscript is a person deprived of the ownership of his own labor.” If slavery is immoral, so is the draft. In a similar vein, Nozick once contended that “taxation of earnings from labor is on a par with forced labor.” (If Nozick were right, then the AVF that Posner supports, funded as it is with tax dollars, could also be described as on a par with forced labor.)

Both Posner’s and Nozick’s arguments prove too much. If each individual’s ownership of his or her own labor is seen as absolute, then society as such becomes impossible, because no political community can operate without resources, which must ultimately come from *someone*. Public choice theory predicts, and all of human history proves, that no polity of any size can subsist through voluntary contributions alone; the inevitable free riders must be compelled by law, backed by force, to ante up.

Posner might object, reasonably enough, that this argument illustrates the difference between taxation and conscription: while political community is inconceivable without taxation, it is demonstrably sustainable without conscription. It is one thing to restrict self-ownership of labor out of necessity, but a very different matter to restrict it out of choice. The problem is that this argument proves too little. Posner concedes

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that “there are circumstances in which military service is an obligation of citizenship.” But there are no circumstances in which slavery is an obligation of citizenship. Moreover, it is not morally impermissible to volunteer for military service. But it is impermissible, and rightly forbidden, to voluntarily place oneself in slavery. Therefore, slavery and military service differ in kind, not degree. And if there are circumstances in which military service is an obligation of citizenship, then the state justified in enforcing that obligation through conscription, which is not impermissible forced labor, let alone a form of slavery. QED. For the purposes of this article, then, I will suppose that a legitimate government would not be exceeding its rightful authority if it chose to move toward a more mandatory system of military recruitment.

Celebrating the cash nexus: four thought experiments. But this is not the end of the argument, because Posner has another arrow in his quiver. He rejects the claim, advanced by Michael Sandel and other communitarians, that substituting market for non-market services represents a degrading “commodification” of social and civic life. Indeed, Posner celebrates what communitarians deplore. “Commodification promotes prosperity,” he informs us, “and prosperity alleviates social ills.” Moreover, commodification enables individuals to transform burdensome obligations into bearable cash payments: middle-aged couples can purchase both care for their children and assisted living for their parents, and so forth.

Posner charges that communitarian theory is incapable of drawing a line between matters that rightly belong within the scope of the market and those that do not. Posner’s celebration of the cash nexus is exposed to precisely the same objection. Rather than scoring rhetorical points, I will offer a series of examples designed to help delimit the proper sphere of non-market relations.

Paying people to obey the law. Suppose we offered individuals a “compliance bonus”—a cash payment at the end of each year completed without being convicted of a felony or significant misdemeanor. It is not hard to imagine situations in which the benefits of this policy (measured in reduced enforcement costs) would outweigh the outlays for bonuses. What (if anything) is wrong with this?

My answer: at least two things. First, it alters for the worse the expressive meaning of law. In a legitimate order, criminal law represents an authoritative declaration of the behavior the members of society expect of one another. The authoritativeness of the law is supposed to be a sufficient condition for obeying it, and internalizing the sense of law as authoritative is supposed to be a sufficient motive for obedience. To offer compliance payments is to contradict the moral and motivation sufficiency of the law.

Second, payment for compliance constitutes a moral version of Gresham’s law: lower motives will tend to drive out higher, and the more comfortable to drive out the more demanding. When those who are inclined to obey the law for its own sake see others

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receiving compensation, they are likely to question the reasonableness of their conduct and to begin thinking of themselves as suckers. Most would end up accepting payment and coming to resemble more closely those who began by doing so.

Paying citizens for jury duty. Consider the analogy (or disanalogy) between national defense and domestic law enforcement. The latter is divided into two subcategories: voluntary service (there is no draft for police officers) and mandatory service (e.g., jury duty). Our current system of military manpower is all “police” and no “jury.” If we conducted domestic law enforcement on our current military model we’d have what might be called “The All-Volunteer Jury,” in which we’d pay enough to ensure a steady flow of the jurors the law enforcement system requires to function.

There are two compelling reasons not to move in this direction. First, citizens who self-select for jury duty are unlikely to be representative of the population as a whole. Individuals who incur high opportunity costs (those who are gainfully employed, for example) would tend not to show up. The same considerations that militate against forced exclusion of racial and ethnic groups from jury pools should weigh equally against voluntary self-exclusion based upon income or

employment status. (We should ask ourselves why these considerations do not apply to the composition of the military.)

Second, it is important for all citizens to understand that citizenship is an *office*, not just a *status*. As an office, citizenship comprises matters of both rights and duties—indeed, some matters that are both. Service on juries is simultaneously a right, in the sense that there is a strong presumption against exclusion, and a duty, in the sense that there is a strong presumption against evasion. To move jury duty into the category of voluntary, compensated acts would be to remove one of the last reminders that citizenship is more than a legal status.

Paying foreigners to do our fighting for us. Consider: we might do as well or better to hire foreigners (the All-Mercenary Armed Forces) as kings and princes did regularly during the eighteenth century. The cost might well be lower, and the military performance just as high. Besides, if we hire foreigners to pick our grapes, why not hire them to do our fighting?

There is of course a practical problem, discussed by Machiavelli among others: a pure cash nexus suggests the mercenaries’ openness to opportunistic side-switching in response to a better offer, as happened in Afghanistan. In addition, what Abraham Lincoln called the “last full measure of devotion” would be less likely to be forthcoming in the handful of extreme situations in which it is required.

Beyond these practical considerations lies a moral intuition: even if a mercenary army were reliable and effective, it would be wrong, even shameful, to use our wealth to get non-citizens to do our fighting for us. This is something we ought to do for ourselves, as a self-respecting people. I want to suggest that a similar moral principle does some real work in the purely domestic sphere, among citizens.

Paying other citizens to do our fighting for us. Consider military recruitment during the Civil War. In April 1861 President Lincoln called for, and quickly received, 75,000 volunteers. But the expectation of a quick and easy Union victory was soon dashed, and the first conscription act was passed in March, 1863. The act contained two opt-out provisions: an individual facing conscription could pay a fee of \$300 to avoid a specific draft notice; and an individual could avoid service for the entire war by paying a substitute to volunteer for three years.

This law created a complex pattern of individual incentives and unanticipated social outcomes, such as anti-conscription riots among urban workers. Setting these aside, was there anything wrong in principle with these opt-out provisions? I think so. In the first place, there was an obvious distributional unfairness: the well off could afford to avoid military service, while the poor and working class could not. Second,

even if income and wealth had been more nearly equal, there would have been something wrong in principle with the idea that dollars could purchase exemption from an important civic duty.

The Legacy of the AVF: Economic and Social Stratification

We can now ask: What is the difference between the use of personal resources to opt *out* of military service and the impact of personal resources on the decision to opt *in*? My answer: as both a practical and a moral matter, less than the defenders of the current system would like to believe. To begin with, the decision to implement an AVF has had a profound effect on the educational and class composition of the U.S. military. During World War Two and the Korean War—indeed, through the early 1960s—roughly equal percentages of high school and college graduates saw military service, and about one third of college graduates were in

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the enlisted (that is, non-officer) ranks. Today, enlisted men and women are rarely college graduates, and elite colleges other than the service academies are far less likely to produce military personnel of any rank, officer or enlisted. As a lengthy *New York Times* feature story recently put it, today's military "mirrors a working-class America." Of the first twenty-eight soldiers to die in Iraq, only one came from a family that could be described as well off.

Many have argued that this income skew is a virtue, not a vice, because the military extends good career opportunities to young men and women whose prospects are otherwise limited. There is something to this argument, of course. But the current system purchases social mobility at the expense of social integration. Today's privileged young people tend to grow up hermetically sealed from the rest of society. Episodic volunteering in soup kitchens does not really break the seal. Military service is one of the few experiences that can.

In an evocative letter to his sons, Brookings Institution scholar Stephen Hess reflects on his experiences as a draftee and defends military service as a vital socializing experience for children from fortunate families. His argument is instructive: "Being forced to be the lowest rank . . . , serving for long enough that you

can't clearly see 'the light at the end of the tunnel,' is as close as you will ever come to being a member of society's underclass. To put it bluntly, you will feel in your gut what it means to be at the bottom of the heap. . . . Why should you want to be deprived of your individuality? You shouldn't, of course. But many people are, and you should want to know how this feels, especially if you someday have some responsibility over the lives of other people." It is a matter, not just of compassion, but of respect: "The middle class draftee learns to appreciate a lot of talents (and the people who have them) that are not part of the lives you have known, and, after military duty, will know again for the rest of your lives. This will come from being thrown together with—and having to depend on—people who are very different from you and your friends."

A modern democracy, in short, combines a high level of legal equality with an equally high level of economic and social stratification. It far from inevitable, or even natural, that democratic leaders who are drawn disproportionately from the upper ranks of society will adequately understand the experiences or respect the contributions of those from the lower. Integrative experiences are needed to bring this about. In a society in which economic class largely determines residence and education and in which the fortunate will not willingly associate with the rest, only non-voluntary institutions cutting across class lines can hope to provide such experiences. If some kind of sustained mandatory service does not fill this bill, it is hard to see what will.

The Importance of Universal Service

The inference I draw from this analysis is far from original: to the extent that circumstances permit, we should move toward a system of universal eighteen-month service for all high school graduates (and in the case of dropouts, all eighteen year olds) who are capable of performing it. Within the limits imposed by whatever ceiling is imposed on military manpower, those subject to this system would be able to choose between military and full-time civilian service. (If all military slots are filled, then some form of civilian service would be the only option.) The cost of fully implementing this proposal (a minimum of \$60 billion per year) would certainly slow the pace of implementation and might well impose a permanent ceiling on the extent of implementation. The best response to these constraints would be a lottery to which all are exposed and from which none except those unfit to serve can escape.

It might be argued that a program of this sort would have little if any effect on the armed forces, which would continue to draw their manpower from the current stream of volunteers. That may be the case if the military does not expand during the next decade.

But there are reasons to believe that it will. It is fast becoming evident that the post-war occupation of Iraq will take more troops and last longer than administration officials had predicted. As an interim response, the military has already moved away from the all-volunteer principle. The US Marine Corps has frozen enlistments for all of the 175,000 personnel currently on active duty. Marines whose period of voluntary enlistment has expired are required to remain in the service, on active duty, until the free expires. Other services have imposed similar if more limited freezes. It is likely, moreover, that the prospect of being sent to Iraq as part of a vulnerable long-term occupation force will depress voluntary enlistments, especially in the Army and Marines.

There is evidence suggesting that movement toward a less purely voluntary system of military and civilian service could pass the test of democratic legitimacy. For example, a 2002 survey sponsored by the Center for Information and Research on Civic Learning and Engagement (CIRCLE) found 60 percent-plus support for such a move across lines of gender, race and ethnicity, partisan affiliation, and ideology. Still, it is plausible that intense opposition on the part of young adults

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and their parents could stymie such a change. Assuming that this is the case, there are some feasible interim steps that could yield civic rewards. Let me mention just two.

First, we could follow the advice of former secretary of the navy John Lehman and eliminate the current bias of military recruiters in favor of career personnel and against those willing to serve for shorter periods. As Lehman puts it, we should "actively seek to attract the most talented from all backgrounds with service options that allow them to serve their country . . . without having to commit to six to ten years' active duty." He makes a strong case that this change would markedly increase the number of young men and women from elite colleges and universities who would be willing to undergo military service.

Second, the Congress could pass legislation sponsored by senators John McCain (R-AZ) and Evan Bayh (D-IN) that would dramatically expand AmeriCorps (the Clinton-era national and community service program) from its current level of 50,000 to 250,000 full-time volunteers each year. Survey evidence shows

overwhelming (80 percent-plus) support for the basic tenet of this program, that young people should have the opportunity to serve full-time for a year or two and earn significant post-service benefits that can be used for higher education and advanced technical training. As Sen. McCain rightly puts it, "one of the curious truths of our era is that while opportunities to serve ourselves have exploded . . . [,] opportunities to spend some time serving our country have dwindled." In this context, the ongoing resistance to AmeriCorps in some quarters of Congress verges on incomprehensible.

It would be wrong to oversell the civic benefits that might accrue from the revisions to the AVF that I propose, let alone the more modest steps I have just sketched. Still, some of our nation's best social scientists see a link between World War Two-era military service and that generation's subsequent dedication to our nation's civic life. If reconsidering a decision about military manpower made three decades ago could yield even a fraction of this civic improvement, it would be well worth the effort.

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Sources: The Gallup Poll referred to is cited by Robin Toner, in "Trust in the Military Heightens Among Baby Boomers' Children," *New York Times* (May 27, 2003); Richard Posner, "An Army of the Willing," *New Republic* (May 9, 2003); John Stuart Mill, *On Liberty* (Viking, 1982); Robert Litan's arguments for compulsory service occur in, among other sources, "September 11, 2001: The Case for Universal Service," *Brookings Review* (Fall 2002), and Bruce Chapman's response, "A Bad Idea Whose Time Is Past: The Case Against Universal Service," occurs in the same issue. David M. Halbfinger and Steven A. Holmes, "Military Mirrors Working Class America," *New York Times* (March 30, 2003); Stephen Hess, "Military Service and the Middle Class: A Letter to My Sons," in *United We Serve: National Service and the Future of Citizenship*, edited by E.J. Dionne, Jr., Kayla Meltzer Drogosz, Robert E. Litan (Brookings, 2003); John Lehman's editorial, "Military Recruiting and Common Sense" has been reprinted variously; for instance, see: www.nwaonline.net/pdfarchive/2003/january/28/1-28-03%20A6.pdf; Senator John McCain, "Putting the 'National' in National Service," also has been variously reprinted; see for instance <http://www.washington-monthly.com/features/2001/0110.mccain.html> ((the online edition of the *Washington Monthly*, October 2001).