

Soldiers, Slaves and the Liberal State

David J. Garren

Introduction

John Locke famously argues in his *Second Treatise of Government* that the individual may not alienate his liberty, for it is not his to give away. Thus, on Locke's view, one may neither sell oneself for a slave, nor compact with others to live under a Leviathan, that is, under an absolute monarch or despot. Giving absolute and arbitrary power over one's liberty and indeed one's life to a master is a power the individual himself does not possess. Such power, according to Locke, rests exclusively in the hands of God.

Similarly, in his essay *On Liberty* John Stuart Mill argues that the individual may not surrender his liberty, and thus may not sell himself for a slave, though not because the individual's liberty is not his to give away (as is well known Mill rejects all claims to abstract right) but for the simple reason that so doing would be inconsistent with liberalism. He contends:

[B]y selling himself for a slave, he abdicates his liberty; he foregoes any future use of it beyond that single act. He, therefore, defeats in his own case, the very purpose which is the justification of allowing him to dispose of himself The principle of freedom cannot require that he should be free not to be free. It is not freedom to alienate his freedom.

More recently contemporary liberals such as Arthur Kuflick and Samuel Freeman have articulated much the same position as their classical counterparts, arguing on behalf of the inalienability of the individual's liberty (and autonomy). Kuflick, for example, in distinguishing between personal and moral autonomy suggests that, while the individual in the liberal state may have a right to renounce the former, he does not have the right to renounce the latter. According to Kuflick, one should not "transfer the ultimate direction of one's moral life to someone (or something) other than oneself It is never morally justifiable to assume a duty not to act in accordance with one's critically reflective judgment." And Freeman tells us that so long as "the aim and effect of restrictions [to prevent the alienation of the individual's liberty and autonomy] . . . is to maintain the moral and rational integrity of the per-

son—in the sense of the capacities for rational agency and moral responsibility upon which liberalism and liberal autonomy is based—there is nothing illiberal about imposing [such] restrictions"

Nevertheless, proponents of liberalism, classical and contemporary alike, typically allow an exception for the military. Here, and only here, is the alienability of the individual's freedom and autonomy both possible and permissible. While the individual in the liberal state may not voluntarily and knowingly sell himself for a slave for fear that his liberty and autonomy will be alienated, as a citizen-soldier he may be forced not only to follow the orders of his military superiors as to how a war is fought, but also, and perhaps more importantly, he may be forced to follow the orders of his civilian political leaders as to whether a war is fought. Indeed, the alienation of the soldier's freedom and autonomy is only partial with respect to how the war is fought, but complete with respect to whether the war is fought. In the former case, the soldier is expected to disobey unlawful orders and permitted to disobey, subject to several conditions precedent, lawful orders he believes to be fundamental violations of justice. In the latter case, however, he is expected to obey absolutely and unconditionally the orders of his civilian political leaders. To put the point most explicitly, in the former case the soldier is treated partially as a means, but in the latter he is reduced to a mere means—a mere instrument of the state.

Citizen-Soldiers as Mere Instruments of Obedience?

Three distinct but somewhat related justifications have traditionally been offered on behalf of this exception. The first is essentially a claim about the nature of the military; the idea being that it is necessary, if the military is to function as an effective fighting force on behalf of the state, for it to be structured in such a way as to prevent soldiers from questioning the justice of the cause for which they fight. The second is essentially a claim about the nature of the soldier; the idea

being that the soldier is “invincibly ignorant” with respect to the decision to go to war—such decisions being political rather than military they are considered to exceed the epistemic limits of the soldier. And the third is essentially a claim about the liberal state; the idea being that consensual exchanges voluntarily entered into ought to be upheld, even ones that preempt subsequent consent and bind future acts. I shall consider each in turn.

In *The Soldier and the State*, Samuel Huntington tells us:

The military profession exists to serve the state. To render the highest possible service the entire profession and the military force which it leads must be constituted as an effective instrument of state policy. Since political direction comes from the top, this means that the profession has to be organized into a hierarchy of obedience. For the profession to perform its function, each level within it must be able to command the instantaneous and loyal obedience of subordinate levels. Without these relationships military professionalism is impossible.

But is it? Is it really the case that the only way in which the military can properly and effectively function as an agent of the state, and render the highest possible service, is to require the sort of indiscriminate obedience described by Huntington? Granted, many people assume it is the case that the military must be so structured, but then, again, people used to assume as a matter of course that all large-scale organizations and institutions had to be so structured if they were to succeed and render the highest possible service.

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Contemporary practice, however, has revealed this to be at best a contingent claim. Many a large-scale organization, from private businesses to public schools, has abandoned the top-down hierarchical model in favor of a bottom-up decentralized one only to see a corresponding gain in functionality and efficiency.

More telling still is the fact that the military itself, at least in the US, no longer conceives of soldiers as “instruments of obedience” who must obey instantly and without hesitation. Indeed, where it was once expected of soldiers that they would follow any and all orders given by a military superior, it is now expected of soldiers that they will obey only lawful orders while disobeying unlawful ones, with the express understanding that discrimination between the two is not only possible but desirable. Furthermore, soldiers within the US military are permitted to disobey even

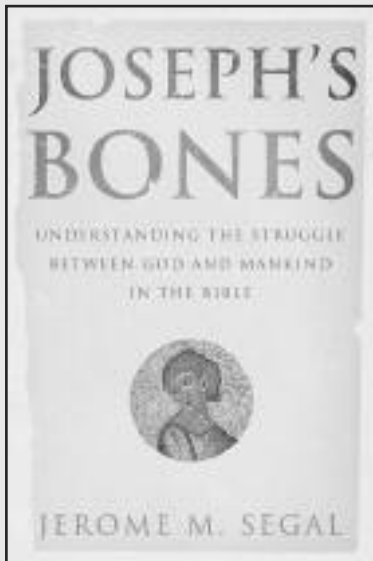
lawful orders if they sincerely believe the fulfillment of those orders will result in a fundamental violation of justice.

Discriminating Obedience

Clearly some measure of autonomy and responsibility can be given to soldiers with respect to *how* the war is fought and without compromising the military’s effectiveness and efficiency. Why then can soldiers not possess autonomy and responsibility regarding *whether* the war is fought? Here I anticipate two likely responses. First, allowing or encouraging soldiers to question the justice of the cause for which they fight (with the corresponding option of refusing to fight in wars believed to be unjust) would render the state unable to prosecute such wars. Second, allowing or encouraging soldiers to question the justice of the cause for which they fight would be to run the risk of soldiers taking up arms in the absence of, or worse yet, in contravention of, legitimate political authority.

With respect to the first claim, given the willingness of some soldiers to fight for any cause the state deems just, as well as the ability of the state to contract with private firms to do its bidding, it is unlikely that allowing or encouraging soldiers to question the justice of the cause for which they fight would prevent the state from waging war. That said, if the liberal state were unable to convince its soldiers of the justice of its cause and thus unable to wage war, that, I suspect, would be all to the good. Soldiers, after all, are citizens of the state and if they cannot be persuaded of the justice of the cause for which they are to fight; then the state, I should think, ought not to wage war.

With respect to the second claim, it is important to distinguish between allowing soldiers the option of refusing to fight in a war declared by a legitimate political authority, and allowing soldiers the option of taking up arms in the absence of, or in contravention to, a declaration by a legitimate political authority. Allowing for the former in no way entails or implies the latter. Just as soldiers are allowed to refuse the unlawful or immoral, but not the lawful or moral, orders of their military superiors, so too soldiers can be allowed to refuse the unlawful or immoral orders of their political superiors, without allowing them to act in the absence of, or in contravention to, the lawful or moral order of their political superiors. Indeed, the very notion of discriminating obedience both at the level of how the war is fought and the level of whether the war is fought presupposes that soldiers are (a) capable of discriminating between the lawful and unlawful and the moral and immoral, and (b) willing to follow the one while disregarding the other.



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Challenging "Invincible Ignorance"

Of course it is the very idea that soldiers are capable of discriminating between just and unjust wars that the argument from invincible ignorance seeks to challenge. Here the argument is made that governments and political leaders, even in open societies such as ours, are privy to all sorts of information that the soldier is not. As such, soldiers simply do not know enough to judge the justice of the cause for which they fight. As an empirical claim, however, this seems even less convincing than the claim that the military must necessarily require of its soldiers indiscriminate obedience if it is to function effectively and efficiently.

Surely there are times when soldiers know enough to judge the justice of the cause for which they fight. Admittedly, such knowledge, as political theorist Michael Walzer suggests, "may be hard to come by," at least in certain cases. At other times, however, I should think it no more difficult for the soldier to make this determination than for any other citizen in the liberal state. Consider, for example, the ongoing war with Iraq. In the many months leading up to the start of this war, was it not possible for citizens, including citizen-soldiers, in the US to assess the arguments, weigh the evidence, and reach a reasonable conclusion whether to support the war or not? Doubtless, citizens and sol-

diers run the risk of being mistaken in their conclusions, but then again so do their political leaders.

Realize I am not denying that in some cases a threat may materialize suddenly and unexpectedly, so much so that it precludes citizens and soldiers from judging the justice of responding to it. Rather, I am denying that this will always be the case. When it is not, that is, when there is time and information enough to form a judgment as to the justice of the cause, it is absurd to suggest that soldiers lack the requisite cognitive capacities to do so.

Assuredly, some will argue that invincible ignorance is not so much a descriptive term as an ascriptive one, a status afforded to soldiers so that they may effectively do their jobs unburdened with having to determine the justice of the cause for which they fight and unburdened with responsibility should it prove to be unjust. In other words, soldiers are considered to be ignorant in order to allow them to function effectively as, you guessed it, instruments of obedience for the state. In this way the argument from invincible ignorance bleeds into the argument from necessity, both maintaining that if the military is to serve the aims of the state, soldiers *must* be treated as mere means, ignorant of and not responsible for, the ends to which they are put.

But as I earlier pointed out, it is not necessary to make a mere means of the soldier in order for the military to function effectively and efficiently as an agent of the state. The effectiveness and efficiency of the US military—a military that does not make a mere means of the soldier, at least not with respect to the conduct of war—belies that claim. That being the case, it is neither necessary, nor desirable, to conceive of soldiers as imbued with invincible ignorance. For what follows from the ascription of invincible ignorance is the supposed moral equality of soldiers, i.e., the supposed equal right to kill that all combatants possess, no matter what side they fight on: one form of equality, I would suggest, we would be better off without since it fails to distinguish between killing in defense of self or others and murder. As the chief British prosecutor at Nuremberg put it, “The killing of combatants is justifiable . . . only where the war itself is legal. But where the war is illegal . . . there is nothing to justify the killing and these murders are not to be distinguished from those of any other lawless robber bands.”

Admittedly, dispensing with the fiction of invincible ignorance and the moral equality of soldiers that flows from it will place a burden upon the soldier and indeed the citizen that he may not wish to bear. But in a liberal state, barring exceptional circumstances that would make the fulfillment of the burden impossible, should there be any escaping it?

Some authors have suggested that there should be, so long as the burden is transferred consensually to another individual or institution willing to accept it. Political philosopher Paul Christopher explains:

Determining when a nation should resort to the use of force is a difficult matter involving human judgments and political processes. Wars fought in accordance with these judgments and processes are formally just. It is as though professional soldiers have taken the following oath: ‘Recognizing that I may never know in advance whether the use of force being contemplated is objectively just, I swear to respond as a soldier on behalf of my nation to all wars that are formally just.’ Soldiers agree to accept as just all wars declared in accordance with a predetermined decision-making procedure.

On Christopher’s view, since soldiers, at least those in the liberal state, voluntarily agree to alienate their liberty and autonomy with respect to the justice of the cause for which they fight, their agreements ought to be recognized as valid. Now while it may be true that soldiers in the liberal state do in fact agree to alienate their liberty and autonomy in just this way, the question remains whether they should be permitted to do so.

A Moral Exit Option

While I believe that the liberal state, consistent with liberal commitments and principles, should permit the individual to sell himself for a slave (and indeed do

any manner of things that may result in the alienation of his liberty and autonomy), I do not believe it should permit him to become a soldier and swear an oath of indiscriminate obedience, and for the following reason. It is true that in selling oneself for a slave the individual is voluntarily and knowingly choosing to alienate his liberty and autonomy, but to the extent that there is a harm it is in all likelihood one that redounds to the individual himself who has voluntarily and knowingly accepted it. In the case of the soldier who swears an oath of indiscriminate obedience, however, the harm done in many (if not most) cases is not to him, but to others, who have not voluntarily and knowingly accepted it. This is an important and relevant distinction, for the liberal state in its effort to maximize individual liberty and autonomy is and ought to be one that seeks to prevent harm to others not self.

Lest I be misunderstood, the purpose of this essay is neither to convince anyone to sell himself for a slave nor, alternatively, to refuse military service. Rather, my purpose is to make clear that individuals in the liberal state who serve in the military ought to be permitted the right to exercise their liberty and autonomy and to refuse to serve in those wars they *sincerely* believe to be unjust. It is this exit option and this exit option alone that makes military service compatible with liberalism.

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Sources: John Stuart Mill, *On Liberty* (NY: W.W. Norton and Company, 1975); Arthur Kuflick, “The Inalienability of Autonomy,” *Philosophy and Public Affairs*, vol. 13, no. 4 (Fall, 1984); Samuel Freeman, Liberalism, Inalienability, and Rights of Drug Use,” in *Drugs and the Limits of Liberalism*, edited by Pablo De Grieff, (Ithaca, NY: Cornell University Press, 1999); Samuel Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Cambridge, MA: The Belknap Press, 1957); concerning the point that the state can contract with private firms to do its bidding, see for example P.W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2003); the quote of the British prosecutor at Nuremberg is found in Michael Walzer, *Just and Unjust Wars* (NY: Basic Books, 1977); Paul Christopher, *The Ethics of War & Peace* (NJ: Prentice-Hall, 1999).