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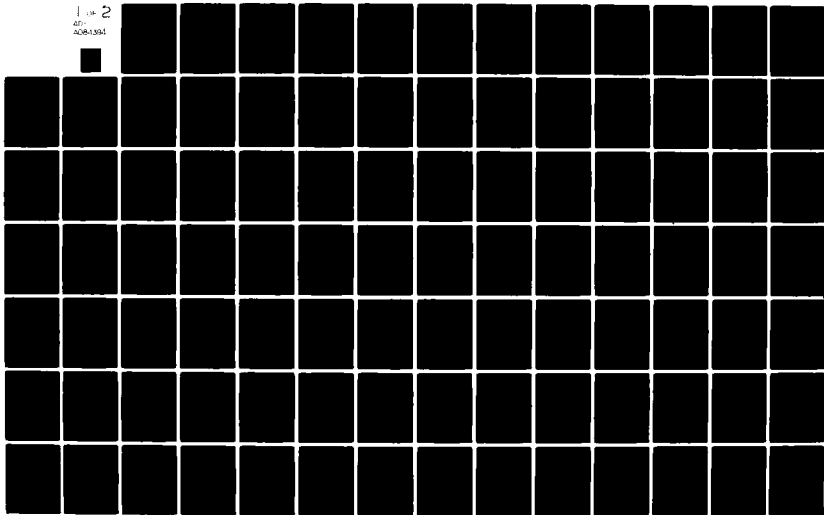
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and comply with his government. Each argument is rejected in turn, thereby rejecting the view that citizens have any moral obligation to support their own government, and hence no obligation to serve in the military. Chapter Three examines the possibility that the state may be morally justified in conscripting, nonetheless. An argument is presented which establishes that in situations of clear national emergency or peril, the state is justified in conscripting its citizens for military service, thereby establishing some rational moral justification for conscription in the modern democratic state.

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CONSCRIPTION: A PHILOSOPHICAL ANALYSIS

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A Thesis Presented to the Graduate
Faculty of the University of Virginia
in Candidacy for the Degree of
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INTRODUCTION

Notably absent from the plethora of contemporary philosophical literature dealing with rights, duties and obligations is any serious attempt to deal with the problem of the moral justification (or lack thereof) for conscription in the modern liberal democratic state.¹ One reason for this may be that it has simply been generally or widely accepted that conscription by the state is justified, at least at certain times. Most of the recent literature which addresses the problem of conscription at all appeared during the height of America's involvement in the Viet Nam War and has approached the problem more as a legal or constitutional issue than as a moral issue. Lately, international tensions have brought the issue of conscription as a contemporary social, political, legal and moral issue in America to the fore once again. Numerous arguments, both from the legal and prudential perspectives, have been offered in an effort to justify the state's practice of conscription or to deny that such a practice is justifiable. Some of these arguments are both relevant in some way and persuasive in their efforts to justify the practice of conscription. None, however, seems to establish firmly the moral basis for the state's right to conscript its citizens for military service.

Given the evident concern expressed by many Americans, particularly those directly affected, and the far reaching

consequences of the state's decision to conscript citizens for military service, there may be no more propitious time than now to investigate the moral basis for the state's right to conscript. So, in this essay I should like to try to answer two questions concerning the practice of conscription by the state. First, is conscription by the state ever morally justified in a modern democratic state? And second, if conscription by the state is justified, under what conditions is it justified? In posing these questions, I am suggesting that there must be some moral principle or perhaps principles that justify the state's practice of coercive interference (conscription, in this case). In answering these questions, I shall attempt, insofar as possible, to stay clear of legal arguments since they turn largely on questions about correct interpretations of constitutional law. And while practical or prudential considerations will ultimately have an effect on what a state decides to do to solve a manpower problem (a state will do what it must to survive), I will not inject such considerations into this analysis. I am not denying that legal and prudential considerations have some relevant bearing on the moral problem of conscription, but I merely wish to leave these aside in this essay and concentrate on trying to uncover some peculiarly moral justification for such a practice.

Moreover, I think it prudent to limit the discussion to the case of conscription as it has developed in the United

States, recognizing full well that in many respects it is a special case. For example, briefly compare the experience of Israel with that of the United States in terms of external invasion. Can we say that Israel has been at peace over the last thirty years, with only brief interludes of war? Or should we say Israel has been at war with her Arab neighbors for the past thirty years, punctuated by periodic intense battles? I have no ready answer to such questions, but surely the justification of conscription is tied in some way to the state's decision to enter into a state of belligerency with another state. What I mean by "war" and "conscription" I will shortly try to make clear, but it will be observed that by limiting the discussion to conscription in the United States, the task will be greatly simplified without obviously sacrificing the validity or objectivity of the moral arguments.

An analysis of conscription from the American perspective has the further advantage of allowing the inquiry to begin with a familiar account of the practice of conscription as it has developed in a modern democratic state. So, in Chapter One I will get some meanings clear, outline some notes of historical interest and from them sketch what I think is the traditional conception of conscription in America. In Chapter Two I will go on to show why I think this conception is false and why conscription is not morally justified generally. Finally, in Chapter Three I will

examine whether conscription may be morally justifiable at certain times, nonetheless. What should fall out in the end is a tentative answer to the two questions posed earlier.

CHAPTER ONE

War and Conscription in America

Talk of conscription among political and military leaders of a state does not usually crop up unless there is some pressing requirement (real or imagined) for military manpower. And traditionally such a requirement and the discussion that surrounds it becomes most pressing when a state is either at war or in imminent danger of becoming embroiled in a war. Successful prosecution of a war, even in this age of advanced technology and strategic nuclear weapons, demands sufficient manpower levels and pools from which a state may draw its reserves. Moreover, the capability of a state to respond to external aggression with a measured and proportioned level of force seems to make the requirement for sufficient conventional forces almost axiomatic. I offer none of these observations as a justification for conscription, but rather to point out that there is some obvious linkage between a state's practice of conscription and the institution of war. The two concepts sometimes are offered as somehow inseparable, though it is immediately clear there is no necessary connection between the two. Frequently however, citizens are offered both war and conscription on the same platter, with little alternative but to accept both or risk perishing. Some of this sleight-of-hand is accomplished because of the very vagueness of what is meant by war.

"War," wrote Clausewitz, "is an act of force...which theoretically can have no limits."² Is it the case that war is simply an act of force as Clausewitz asserts? Certainly acts of force come readily to mind when speaking of war, but doesn't war characteristically involve more than that? Rather than simply an act, it seems to be a state of affairs that comes to exist between two or more agents or agencies which may or may not involve acts of force. Consider economic or psychological warfare. It is not clear that such warfare either entails or involves any acts of force as we would normally suppose "acts of force" means. Clausewitz' definition of war may be illuminating for total war theorists, but I think it is inadequate for our present purposes, for it does not account for certain kinds of warfare.

In Leviathan Thomas Hobbes describes the state of nature as a condition of war in which every man is against every man "without a common power to keep them all in awe [.]"³ Strictly speaking, Hobbes is not giving a definition of war here, but it is evident that he regards the state of nature that men are naturally in as a state of war. And it is a state in which there are no binding moral constraints on men. Hobbes goes on to say that the nature of war consists in a known disposition to fight, more than the act of combat or the use of force itself.⁴ Hobbes' description of war, with its emphasis on conflict between individuals, is undoubtedly a reflection of his obsession with the problem of civil war.

His description of war differs markedly from Clausewitz' in that he maintains that a condition of war can exist without any acts of force being resorted to; the mere threat of or disposition to use force is quite sufficient for Hobbes. And while his definition of war might allow for economic, psychological, and other types of warfare as well, Hobbes' definition also seems inadequate since he does not include war in the international arena, war between nation-states. There is, I think, a real sense in which we might say that two individuals are at war with one another. But this Hobbesian sense is not the ordinary conception of war for most of us. Nor is there any obvious connection between this Hobbesian sense and the state's practice of conscription.

Hobbes' definition of war may be more useful to us if applied to its analogue in the international community, the nation-state. Although Hobbes does not speak extensively about war between sovereigns, it is clearly his view that sovereigns remain in the state of nature with respect to each other. Put another way, on Hobbes' view, sovereigns remain in a state of war with one another. This seems to be a much more plausible view if we give emphasis to Hobbes' point that it is the known disposition to use force to insure self-preservation that is more descriptive of the state of war, rather than actual combat itself. But is even this the way we commonly regard a state of war in our ordinary conception of war? Surely not. On this reading, we could hardly speak of

peace and make sense at all. War seems to be a condition that involves more than the mere disposition to use force. There may always be a potential for war in a Hobbesian sense, but this seems to be different from what we mean when we say two states are at war. But Hobbes is not alone in holding a somewhat narrow conception of war in the sense that he is concerned primarily with men in the state of nature.

In his second treatise on civil government, John Locke describes the state of war as a "state of enmity and destruction" in which one man has a settled design upon another man's life.⁵ It is a state in which one man declares "by word or action" a "settled design upon another man's life, [and thereby] puts him in a state of war with him against whom he has declared such an intention [.]"⁶ Like Hobbes, Locke seems to want to limit his conception of war to a state of affairs which exists between individuals. But unlike Hobbes, he adds two other points. First, it is quite clear that a state of war on Locke's view requires some clear declaration, either by word or action. Precisely what he means by this is not entirely clear, but prima facie, his claim seems to be false. History is replete with examples of wars undeclared in word, the most recent of which in the American experience is perhaps the Viet Nam War. Declaration by action appears to be a little more problematic. If all Locke is saying here, however, is that some action is required for there to be a state of war, then he is probably right. But it seems to me that

this is a fairly trivial point and it does not show that war as we commonly conceive it requires some clear and discernible declaration as Locke seems to imply.

But underlying Locke's point about a declaration, whether by word or action, is a second and more important point for our discussion. What Locke seems to want to convey in speaking of a declaration is the notion of intention. In declaring by word or action that we have some design on the control, destruction, or enslavement of another, we are illuminating an intention of forcing harm on them in some way. What is significant about Locke's view on war is that it captures this notion of intention which lies behind an individual's actions. Similarly, this notion of intention is important in war between nation-states because presumably there is some intention to achieve national interests, usually through the use of some kind of force, when a state goes to war. There is, in other words, some clear design or plan to use some kind of force to bring about certain desirable ends. Though he speaks of a disposition to use force, Hobbes does not speak of a clear intention to use force in the way Locke does and it seems to me that this is an important difference between their conceptions of war. It is also an important point to consider in a definition of war, for the policies that states adopt (like going to war) are surely shaped by national interests or intentions. Some more contemporary views of war will bring us back to this notion of intention

shortly.

Several contemporary philosophers have struggled with the problematic conceptions of war that Clausewitz, Hobbes and Locke articulated and have produced perhaps more useful conceptions for our present inquiry. Joseph Margolis, for instance, describes war as an instrument of external policy that is wielded by collective entities and by individuals only derivatively so.⁷ And Richard Wasserstrom characterizes war as something which takes place between countries, nation-states, rather than lesser groups of individuals.⁸ Additionally, he claims that wars involve the use of a variety of forms of violence under a claim of right.⁹ Finally, Michael Walzer defines war as a "social practice in which force is used by and against men as loyal or constrained members of states and not as individuals who choose their own enterprises and activities."¹⁰ Each of these definitions of war is instructive in some respect and although I do not have time here to do a complete analysis, I want to draw on each conception and offer a plausible definition of my own.

We might say, then, that war is a state of affairs existing between collective entities in which the use of force is commonly employed as an instrument of external policy. In accepting this definition, we sketch a conception of war which is both narrower than Clausewitz' conception and broader than Locke's. It is narrower than Clausewitz' conception because we are not limiting war to any particular acts of force,

military or otherwise. And it is broader than Locke's conception since it is not obvious that a state of war requires any declaration of the sort Locke seems to imply. Implicit in this definition is Locke's notion of intentions, for if force is employed as an instrument of external policy, then presumably the collective agencies wielding such force have certain interests at stake and intentions in mind. One may well ask how collective entities (a state, for instance) might have interests and intentions in perhaps the same way individuals have interests and intentions. I do not think this is especially problematic for this conception, for we surely do speak meaningfully of a nation's national interests, goals and intentions. They might well be considered as the collective intentions and interests of the individuals which comprise the nation or simply the intentions of its leaders.

Our definition of war allows for a broad range of possible kinds of war as well. On a continuum of sorts, we might imagine the range extending from fairly non-violent psychological, environmental, and economic warfare all the way to a modern conception of Armageddon. Falling in between these extremes would be police actions, civil wars, guerilla movements and other forms of limited warfare. Such a continuum may classify war according to both the amount and kind of force employed. But there are other criteria for classifying wars which may be more important to us. Walzer, for instance speaks of just and unjust wars, defensive and aggressive wars and wars of national

liberation.¹¹ Each of these distinctions is important to a discussion of the morality of war in general, but they are only of limited importance in this discussion of war as it affects a state's decision to conscript for military service.

At this point, I want to suggest that the term "war" can have a very broad range of legitimate meanings and that these meanings do not always correspond to our common conception of war as it exists between two nations. Both the amount and kind of force and method of application of force, as well as the reasons or intentions in fighting a war can vary greatly. I want to further suggest that this kind of vagueness is what frequently allows citizens to be "forced" into accepting conscription right along with "war". The tendency has been to identify "war" with "national emergency" or "imminent peril" and in the American experience at least, this is a much strained identity. One would be hard pressed, I think, to show that the Viet Nam War from America's perspective was a case of "national emergency" in the same way that the Japanese attack on Pearl Harbor in 1941 was a case of national emergency. The kinds of interests and intentions seem to be quite different in the two cases and I think such differences will be important in considering any justification of conscription. The importance of the distinction between "war" and "national emergency" will become much clearer when I examine possible grounds for justifiable conscription lying outside the notions of duty and obligation in Chapter Three. The point I

want to make here is that "war" and "national emergency" are not synonymous terms, though there surely have been cases in which a state of war was a clear national emergency. Having gotten clearer on what we mean by war, we need to be sure we have a firm grasp on the meaning of conscription, as well.

"Conscription," as it relates to military matters, came into popular usage during the Napoleonic Campaigns. Technically, the term meant the enrollment by lot of citizens in the military service of the state with provisions for procuring a substitute for such service.¹² In this essay no such meaning is intended. Rather, the more general and contemporary meaning of conscription as compulsory enlistment for military service by the state, has been adopted. This particular meaning has been adopted for several reasons. First, under current laws citizens have no option to procure a substitute for military service. Second, I do not wish to address the separate problem which deals with the manner in which the state justly or unjustly distributes the burdens of compulsory service once the decision to conscript has been settled on. These are interesting issues worthy of examination, but for the present I leave them aside to pursue our main line of inquiry, which may profitably begin with a historical sketch of American conscription.

Conscription in America has enjoyed little popular acclaim since its introduction during the American Civil War. The concept of a large standing army was an anathema to the

minds of America's founding statesmen and yet it was equally clear that some mechanism had to be found to secure the common defense. In The Federalist,¹³ Hamilton argued persuasively for centralized federal control of the various states' militia forces in time of war or national emergency. Consequently, reliance for common defense was placed on militia forces raised by the separate states, with a small standing cadre of regular forces to man frontier outposts. Yet little was said about how the states might go about raising their militia forces and no popular discontent surfaced concerning conscription until the draft riots of 1863 in New York.

United States participation in both world wars and the Korean conflict necessitated compulsory conscription to meet manpower requirements. In spite of some scattered unpopularity, patriotic zeal carried the day and gave increased credibility to the view that compulsory military service was a citizen's duty or obligation. Conscription in America ended after World War II, but only for a short time. It was reintroduced in 1948 as a response to what was perceived to be communist expansionism. This is significant because it marked the first time conscription continued as a practice in peacetime. In fact, conscription continued in America through the 1950s and 1960s largely unopposed until conscription rates dramatically increased during the late 1960s in response to America's need for manpower to prosecute the war in Viet Nam.

Popular resentment finally forced incumbent political leaders to drop conscription as a national policy in 1973.

What I think is useful about this brief historical overview is that it sketches the rise and, to some extent, the fall of what I will suggest is the traditional conception of conscription in America. This conception has its strongest philosophical roots in the Lockean theory of government by consent. On this view, a citizen of the state acquires certain obligations or duties when he either expressly or tacitly enters into a political contract or compact. Moreover, given that one of the primary functions of the state is to preserve and safeguard the life, liberty and property of its citizens, it seems only natural to suppose that each citizen has an obligation to do his part to secure the common defense if called by the state to do so. This Lockean view of the obligations of citizenship in the modern democratic state seems to have been and continues to be the most popular philosophical defense of conscription that is offered, in times both of war and peace. Certainly, the intuitive convictions that most citizens have about the obligations of citizenship (which seem to be grounded in this Lockean philosophical view) are what sustained America through both world wars and the Vietnam struggle. And the notion that such obligations to serve the state obtain at all times (even during peacetime) seems to be the most compelling defense of peacetime conscription. Hence, on the eve of America's entry into

World War I, Army Chief of Staff General Leonard Wood remarked,

There is no reason why one group of the population should assume that another group is going to voluntarily perform their military duties. The obligation to military service is universal. It is a tax upon which all others depend, and a nation which fails to recognize this prepares for its own downfall.¹⁴

Wood's failure to make a distinction between duties and obligations aside, his comment appears to articulate the prevailing feeling among citizens of the state, both then and now.

But the philosophical roots of such thinking go far deeper than Locke's theory of government by consent. Plato records well in the Crito the Socratic view of a citizen's obligations to the state. In response to Crito's urgings to flee Athens and escape sure death, Socrates replies (personifying the Laws),

And if it [the state] leads you out to war, to be wounded or killed, you must comply, and it is right that you should do so...Both in war and in the law courts and everywhere else you must do whatever your city and your country command.... [W]e have brought you into the world and reared you and educated you, and given you and all your fellow citizens a share in all the good things at our disposal...if any of you stands his ground when he can see how we administer justice and the rest of our public organization, we hold that by so doing he has in fact undertaken to do anything that we tell him.¹⁵

Socrates appears to be offering two different arguments to justify his view that citizens have certain political obligations to the state. One of these arguments clearly anticipates Locke's theory of tacit consent, for Socrates indicates that by remaining within the political jurisdiction of the state, the citizen gives his tacit consent to obey the

state. That is, the citizen consensually obligates himself. The other argument seems to rest on a principle of gratitude. Socrates is clearly implying that by accepting the benefits the state provides, each citizen becomes obligated out of gratitude, to obey and serve the state whenever called upon to do so, at least within reason. (The demands of the state should not be out of proportion to the benefits received.) Under this conception, the state commonly provides the benefits of rule of law, police protection and protection from foreign invasion as well as others, and the citizen in turn is obligated to serve on juries, obey the law and serve in defense of the state when called on to do so.

Both of these arguments have a measure of plausibility and persuasiveness about them that seems undeniable. This persuasive flavor may well account for the widespread acceptance of the traditional conception of conscription in America. For it seems clear that the traditional conception of a citizen's military obligations or duties to the state rests on one or both assumptions implicit in that traditional conception. Those assumptions might be stated as:

(1) a citizen has an obligation to serve the state because he either tacitly agreed to or because the state has provided benefits to him; and

(2) a citizen has a natural duty (not grounded in consent) to serve the state when called on to do so.

One or both of these assumptions appears to serve as the principal support for arguments seeking to justify the state's

practice of coercive interference in the form of conscription. One has only to listen with moderate attention to advocates of conscription to hear the words "duty" and "obligation" invoked with both fervor and sincerity to see that this is so.

Most of us, I believe, have some intuitive feelings that this traditional conception of political obligation to the state is either correct or at least justifiable. In part, this feeling accounts for our belief that the state is justified in conscripting citizens for military service, at certain times at least. But what times? Again, the unrefined distinction that quickly comes to mind is that between cases involving war or imminent war and cases in which there is relative peace. But as I have already suggested, the refined distinction that should concern us is the distinction between cases in which the state's survival is clearly at stake and cases when it is not. While some would hold that the state is thoroughly justified in conscripting citizens at any time, most of us probably feel that conscription is justified during a national emergency, but feel less sure about the practice during peacetime. The feeling that the state is justified in exercising coercive interference in the lives of its citizens during national emergencies or war time may be what leads many to believe that the state is justified in conscripting its citizens now time.

It is certainly true that this traditional conception I sketch is not accepted by everyone, but I think it fair to

say that this traditional conception is the view held by most citizens. And as plausible as this view may appear to be on the surface, I believe it is mistaken. For I think it rests on assumptions that are questionable at best and probably false. In the following chapter I hope to show why this is so.

NOTES

¹The one exception is an article by Hugo Bedau, "Military Service and Moral Obligation," in Philosophy and Political Action, Oxford University Press, 1972.

²Karl von Clausewitz, On War, in E. Collins (ed.), War, Politics, and Power, p. 65.

³Thomas Hobbes, Leviathan, p. 106.

⁴Leviathan, p. 107.

⁵John Locke, The Second Treatise of Civil Government, p. 129.

⁶Second Treatise, p. 129.

⁷Joseph Margolis, "War and Ideology," in Philosophy, Morality, and International Affairs, pp. 252-253.

⁸Richard Wasserstrom, "On the Morality of War," Stanford Law Review, XXI (1969), p. 1632.

⁹Wasserstrom, p. 1632.

¹⁰Michael Walzer, Just and Unjust Wars, p. 30.

¹¹Walzer, Just and Unjust Wars.

¹²Oxford English Dictionary.

¹³Alexander Hamilton, The Federalist, secs. 24-29.

¹⁴Leonard Wood, "The Civil Obligation of the Army," in The American Military: Readings in the History of the Military in American Society, p. 46.

¹⁵Plato, Crito, in Plato: The Collected Dialogues, (50 e ff), pp. 211-212.

CHAPTER TWO

Conscription and Political Obligation

If the sketch of the traditional conception of conscription in America offered in Chapter One is accurate and convincing, then any attempt to show that this conception is false should probably begin by examining the two major assumptions which support the view. If the assumptions which support the traditional conception of conscription could be shown to be false, then we could conclude that conscription by the state cannot be justified on the grounds that military service is an obligation or duty of the citizen. Recall that the two major assumptions underlying the traditional view of conscription are:

- (1) a citizen has an obligation to serve the state because he either tacitly agreed to or because the state has provided benefits to him; and
- (2) a citizen has a natural duty (not grounded in benefaction) to serve the state when called on to do so.

And the question of whether citizens have an obligation or duty to serve in the armed services of the state ultimately turns on the larger issue of whether citizens have any political obligations or duties at all. The two assumptions of the traditional conception of conscription explicitly affirm that citizens have such obligations or duties. As counter-intuitive as it may seem, I believe these assumptions are highly questionable at best and probably false.

The attempts by both classical and contemporary politi-

cal philosophers to establish the moral basis for the bonds of political obligation are numerous. In the main, consent theory in the tradition of Locke and Rousseau has been the most persuasive of these attempts and this success is certainly reflected in the widespread acceptance of assumption (1) of the traditional conception of conscription which holds that a citizen has an obligation to serve the state because he either tacitly consented to or because the state has provided benefits to him. Socrates' remarks in the Crito clearly suggest a consent theory of political obligation as well as an account appealing to gratitude. Hume's views on political obligation broadly appear to endorse the principle of utility as the true ground of political obligation. More recently, the principle of fairness and a natural duty of justice have been offered by John Rawls as the grounds of legitimate political obligation. To date these five views are the only plausible candidates that have been offered as the ground of political obligation and each has some point or points in its favor. Two of the five theories in question, the utilitarian account and Rawls' natural duty of justice, appear to be versions of assumption (2) of the traditional conception of conscription. That is, as accounts of political obligation they view the citizen's duty to the state as grounded in benefaction, to serve in the armed forces of the state, and more generally, to support and obey our own government. The three remaining accounts of political obligation

are versions of assumption (1) and each account claims citizens are tied to their political institutions, and morally obligated to serve in the armed forces if called, by appealing to the notion of benefaction.

However, I believe it can be shown that each theory fails to give an adequate account of political obligation for most citizens. Showing in detail why each of these theories fails to establish adequately the bonds of political obligation would be an immense and undesirable task, considering the scope of this essay. But since the problem of political obligation is central to the issue of the justification of conscription, the problem demands attention. So I intend to briefly sketch what I think is a decisive argument against each of the five theories in question. I will consider utilitarianism and the natural duty of justice first, inasmuch as I believe they offer the least plausible accounts of political obligation. In the second half of Chapter Two I will examine the principles of fairness, gratitude and consent as the possible grounds of political obligation. Before moving to this task however, two preliminary matters deserve mention. One involves my assumption of a Lockean conception of natural rights; the other deals with the criteria for a successful account of political obligation.

In examining the problem of conscription, I assume a Lockean conception of natural rights similar to the conception Nozick accepts in Anarchy, State, and Utopia¹, though I

am not sure I would go the whole way with Nozick on this point. According to Locke, the law of nature requires that "no one ought to harm another in his life, health, liberty, or possessions."² There are other points Locke makes concerning an agent's natural rights, but this remark seems to capture the core of his conception of rights. This conception of natural rights seems to flow quite naturally from our ordinary conception of moral agency. To be a moral agent suggests that an individual is a rational and purposive being. What is distinctive about such agency is the agent's ability to adopt and pursue a life plan of his own choosing and this requires a certain sphere of freedom to choose the life plan and act so as to realize its goals or ends. The agent's freedom is essentially unrestrained to the extent that his choosing and acting are compatible with the agency of others. And the assumption implicit in this conception of moral agency is that man is bound only by natural moral bonds until he commits himself to further institutional ties. This assumption does not appear to be obviously objectionable.

A second preliminary matter concerns the criteria for a successful account of political obligation. Presumably, a successful account of political obligation will be an accurate account if it correctly describes or accounts for the nature of the special moral tie citizens have and if it correctly identifies as politically bound those individuals having the required moral ties.³ That is, it will be an accurate account

if it uses valid principles and correctly identifies as bound those individuals falling within the scope of those principles. Additionally, an account will not be complete unless it identifies as bound all those who are bound; unless the account covers all bound persons, it cannot be considered an adequate account of political obligation.⁴ So an account can fail to be an adequate account if it is inaccurate or incomplete. Finally, an account of political obligation is successful if it explains the moral requirement a citizen has to obey his particular political institutions.⁵ This criterion is important because it captures the essence of what a political obligation is: a moral tie to one's own country of residence. If an account of political obligation is not particular in the sense that it does not explain the moral bonds individuals have to their own country of residence, then it fails as an adequate account of political obligation, though it may be an account of something else. Failure to satisfy any one of these conditions will indicate that the account of political obligation in question is an unsuccessful account. Each of the five accounts under consideration as the possible ground for political obligation will be examined in turn with these criteria in mind. I begin with what I think is the least plausible account, utilitarianism.

Hume's view of utility as the ground for political obligation (or allegiance, as he calls it) seems to be a fair representation of a utilitarian theory of political obligation,

though it is a non-maximizing form of utilitarianism. In such a theory the utilitarian would hold that the moral bonds of political obligation derive from the utility to be realized by supporting and obeying the extant political institutions of one's country of residence. Hume, for instance, writes in the Enquiry:

It is evident that, if government were totally useless, it could never have place, and that the sole foundation of the duty of allegiance is the advantage which it procures to society by preserving peace and order among mankind.

Broadly, what Hume is saying is that citizens have political obligations or duties to obey their government because it is generally useful to do so.

Now without wanting to lock horns with advocates of utilitarian theory over its adequacy as a moral theory or to give a complete discussion of utilitarianism generally, I want to assert that I think it clearly fails to give an account of political obligation of the sort specified for two good reasons. In the first place, if we accepted a utilitarian account of political obligation, we would be committed to the view that it is sometimes right to obey our government and sometimes not, depending on whether obeying in a particular instance would produce on balance more general happiness than not obeying. Even with rules or rules of thumb, the utilitarian is ultimately required to consult the single principle of utility for the prescriptive force in his judgments. Secondary principles, like those we will consider in the second

half of this chapter, cannot provide the requisite prescriptive force for the utilitarian. Rule utilitarianism is inadequate for other reasons and is even less plausible than a pure act-utilitarian view of political obligation.⁷

A second obvious problem for the utilitarian concerns the requirement for a political bond to be particular in the way we described earlier. How can a utilitarian account of our political obligations explain why it is we have political obligations to our particular state of residence? On the utilitarian account we seem to be committed to obeying any government as long as the interests of utility are realized. We would be committed to supporting foreign governments, if so doing was in the interests of maximizing utility and this is just not a political obligation, whatever else it may be. The peculiar moral bond to support and obey our own government is clearly lacking on this view. The utilitarian may argue that utility will in fact always favor supporting one's own government, but it is difficult to see how such a view could be defended. It seems to me that both of these points weigh heavily against a utilitarian account of political obligation and render it an implausible account. Another account which faces a similar problem with this "particularity" requirement is the Rawlsian natural duty of justice.

In A Theory of Justice⁸ Rawls holds that the natural duty of justice is what binds citizens to support the political institutions of their country. Unlike obligations, which

arise from special relationships, the natural duty of justice binds each individual irrespective of his voluntary acts.

Rawls writes,

From the standpoint of the theory of justice, the most important natural duty is that to support and to further just institutions. This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist.⁹

So on Rawls' view, it is the natural duty of justice that morally binds us to support our own political institutions when they are just and apply to us. And this is not a special obligation which only some have, it is a natural duty which applies to all individuals equally. Rawls' natural duty account of political obligation seems to be both accurate and complete in its application as our criteria for a successful account require. But there are some serious difficulties with his account as well.

A first difficulty concerns what Rawls means by institutions that "apply to us".¹⁰ Which institutions "apply to us" and in what sense do they apply to us? If Rawls has in mind as institutions that apply to us those which exercise political authority or control over the region or territory in which we happen to reside, then it is not clear that there is anything morally significant about an institution's applying to us in this way. Rawls seems to be saying that there is an important moral difference between institutions which apply to us and those which do not. But what special duty is there to comply

with institutions which apply to us in a territorial sense? There appears to be none. This territorial sense of "apply to us" can be contrasted with a stronger sense in which some performative act on our part entails the institution's applying to us. Examples of these acts are promising, consenting and accepting benefits under a scheme of fair play. But such acts are the kinds of acts that generate obligations by virtue of the special relationship that the individual has voluntarily entered in to. And this stronger sense of "apply to us" does show a moral difference. Rawls, however, cannot have it both ways; either there is nothing morally significant about "apply to us" or all the moral work in Rawls' natural duty of justice account of political obligation is done by other moral principles which apply to us by virtue of our voluntary performative acts without reference to justice.

But a further question is this: Why should we support only those just institutions which "apply to us"? The natural duty of justice, more naturally interpreted, would seem to bind us to support all just institutions wherever they are. It would appear that political institutions applying to us in the territorial sense is simply a practical rather than moral reason for supporting those particular just institutions. In public cases to be that a natural duty of justice account cannot establish the peculiar moral bond we have to support and comply with our own political institutions. The way in which Rawls tries to get the special moral tie to our

own political institutions is through having the institutions "apply to us" in some unclear way, and this is a doubtful course at best. The natural duty of justice does not, then, particularize the moral requirement as we require and so must also fail as an adequate account of political obligation.

So far, we have considered utilitarianism and Rawls' natural duty of justice as two possible grounds for the moral duty to support and comply with the political institutions of one's country of residence. Both of these accounts of political obligation are versions of assumption (2) of the traditional conception of conscription, which holds that citizens have some special duty, not grounded in benefaction, to obey their government. But we have seen that both of these accounts fail mainly because they cannot meet the requirement for an account of political obligation to be particular in the sense we require. That is, neither account can adequately establish the special moral tie an individual has to his own political institutions. And they fail on particularity because neither account involves a special transaction or relationship which commits the individual to a special moral tie to his government. In the remainder of this section I will consider the principles of fair play, gratitude, and consent, in turn, as the possible moral ground of political obligation for citizens in a democratic state. Each account appeals in some way to the notion of benefaction and each is an obligation-centered (rather than duty-centered) account that is persuasive in its

own right.¹¹ This appeal to benefaction is what accounts for the initial plausibility of each view and establishes the particular moral tie we are seeking, but as I hope to show, each account is ultimately inadequate as the ground of political obligation for other reasons.

We have already discussed John Rawls' view that the natural duty of justice is what binds citizens to their political institutions and we have found that account lacking. But Rawls also uses a slightly modified version of H.L.A. Hart's¹² principle of fairness in A Theory of Justice as a supplemental ground of political obligation. Rawls, it will be remembered, claims that the fundamental ground of political obligation for all citizens is the natural duty to support and further just institutions. But, in addition to the natural duty of justice, citizens can become bound to political institutions under the principle of fair play according to Rawls. He says, for example,

I shall try to use this principle (of fair play) to account for all requirements that are obligations as distinct from natural duties. This principle holds that a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair), that is, it satisfies the two principles of justice; and second, one has voluntarily accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests.¹³

Under this principle citizens become obligated to do their part in a cooperative scheme because they have accepted the benefits of the cooperative enterprise or have simply taken advantage of the opportunities the scheme offers. Thus, cit-

izens become politically bound if they accept the benefits of government or take advantage of its opportunities. I should make it clear here that Rawls notes in his discussion of the principle of fairness in A Theory of Justice that few citizens will have the kinds of political obligations generated under a principle of fairness. He argues, for example, that those who gain political office and take advantage of the opportunities offered under a constitutional system will be bound more tightly (under the principle of fairness) than most ordinary citizens.¹⁴ All, of course, will be bound by the natural duty of justice, but only those who commit themselves or clearly benefit from the scheme of social cooperation are tied by the principle of fairness. Having seen that Rawls' natural duty of justice fails as an adequate account of political obligation, it remains to be seen whether the principle of fairness as Rawls formulates it is any more successful.

It may be observed that for the principle of fairness (or fair play) to be appropriate as a suitable ground of political obligation, political institutions must be regarded as cooperative schemes on quite a large scale in which citizens are thought to stand in a cooperative relationship with one another, each doing his part and accepting the benefits of their mutual cooperation. The special tie that binds individuals under a principle of fairness arises as a result of the special relationship that exists between the cooperating members. Notice, that for the principle of fairness to be applied correctly, the

moral ties must be viewed as existing between the members participating in the cooperative scheme; in this case, the citizens of the country. So considered, it seems to give a general enough account of political bonds. And on Rawls' account, acceptance of benefits under a scheme is what qualifies a citizen as a participant in the scheme and obligates him to do his share by complying with the rules. Initially, this appears to be a very plausible account of political obligation, for it appears to be true that most of us have accepted benefits provided by political institutions.

Here it seems, however, that there is a distinction worth making between the acceptance of benefits and the mere receipt of benefits. What is it to accept benefits? Active acceptance seems to entail wanting the benefit or seeking it out and getting it when it is available or offered.¹⁵ Alternatively, accepting benefits could mean receiving benefits with the clear understanding that the benefits are the product of the cooperative labors of others and are not free in any sense. Most of us certainly receive some benefits from political institutions, but I think it is implausible to say that we actively accept these benefits in either sense of "accept" just mentioned. Most of the benefits we do receive are benefits that are available to us even though they are available to all of us whether we wish them to be or not. Rule of law, police protection, and protection of the armed forces are three such benefits commonly provided by governments. From

this it seems clear that most of these unavoidable benefits are not genuine cases of active acceptance of benefits at all.

Further, most people believe (or at least feel) that benefits like police protection and military defense are benefits which are purchased with tax money. As a result, tax payments are characteristically considered as payments given in return for the benefits of government, with little thought that they might be payments to and from other citizens who are considered as participants in a cooperative scheme. This is significant because when citizens regard the benefits as services purchased from the government through taxes, it indicates that they do not regard the benefits in question in the right way for them to be considered as products of a cooperative scheme and generative of obligations. Hence, if citizens do not regard the benefits of government in the right way, there can be no cooperative scheme in force which morally binds citizens to do their part. In short, it is not clear that the principle of fairness applies in the way Rawls thinks it does.

Finally, it does not seem at all plausible to think of our political institutions as schemes of cooperation into which we have voluntarily entered. Most of us are born into a society of violence and their political institutions are, in a sense, just dropped into such schemes. In fact, most of us simply have no choice in the matter and the importance of this fact will be stressed again when we consider

consent theory. Rawls acknowledges this difficulty, but admits there is no plausible answer to it.¹⁶

Put briefly, the principle of fairness does not appear to account for as much as Rawls thought. This is not to deny that it can account for some obligations in certain narrowly defined schemes of social cooperation. But it seems clear to me that the principle cannot account for the political bonds of most citizens for the reasons just outlined. And it is not even clear that the principle can account for the political bonds of the few citizens Rawls has in mind. So the principle of fairness fails to give an account of political obligation we are seeking because it cannot account for the special ties citizens are thought to have to each other or to their government. But if the rule of law, police protection and military defense may be regarded as benefits received from the government, then perhaps political bonds can be explained in terms of gratitude.

Plato's work appears to be the first recorded attempt to explain political bonds in terms of gratitude. Socrates' remarks in the Crito¹⁷ set out fairly clearly the general argument that considerations of gratitude are the grounds of political obligation. On this view citizens are obliged to support and comply with the government because they owe a debt of gratitude to their government for the benefits they have received from it. These benefits, of course, include the rule of law, and protection of the armed forces, as well

as others. And given this argument, it is easy to see how conscription might be readily regarded as part of one's debt to society or to one's government. It is one of the most persuasive arguments in support of conscription by the state, but it too has special difficulties.

To begin, gratitude is a complex and even subtle notion. We can have feelings of gratitude, but mere feelings cannot suffice to ground the moral requirement to pay debts of gratitude. Certain conditions seem to be required to generate a debt of gratitude in the first place.¹⁸ Normally, debts of gratitude are generated by small and perhaps trivial acts performed by persons for one another. And it is even common to ask the benefactor what we might do to pay the debt, but exorbitant demands by the benefactor for small benefits would be regarded as either extortion or simply laughable. Some acts that generate debts of gratitude are not trivial, but in either case there seems to be nothing which specifies the content of the debt to be paid. If I am in an automobile accident and you happen by, put me in your car and rush me to the hospital, thereby saving my life, it does not follow that I have any obligation to pay my debt of gratitude to you by a similar performance on my part. If the trip to the hospital involved little of your time, then perhaps my thanks and an offer to pay for the gasoline or dinner at a nice restaurant would be sufficient. On the other hand, if taking me to the hospital caused you to be late for work and resulted

in your being fired, then perhaps more could be expected of me. Notice, though, that there is nothing obvious which specifies how the debt of gratitude must be paid, though there is a general notion of compensation for expense and effort.

A further distinctive feature of a debt of gratitude is that it appears to be generated when someone goes out of his way for us or in some way makes a sacrifice for us. We do not feel it obligatory to pay a debt of gratitude to someone if we have only benefitted unintentionally or incidentally from that person's performance. If I am sound asleep in my house (which is on fire) and you happen to drive by in an automobile in need of a muffler, thereby awakening me and saving my life, then I am not obligated to you out of gratitude. I may, in fact, be grateful that you happened by, but there is no moral bond to repay you for your happening to drive by. This point seems to indicate that the reasons for beneficial performances are important in generating the moral bond to pay a debt of gratitude. If the reasons or motives behind the beneficial performance are lacking, or are not of the right kind, not directed at the benefit of the beneficiary, then it is fairly clear that no obligation to pay back the benefactor is generated.

This admittedly brief analysis of the notion of gratitude seems to indicate at least two conditions which must obtain for there to be an obligation arising from a debt of gratitude.

One is that the performance of the benefactor must involve some special effort on his part. The other is that the benefit conferred must not be given unintentionally or for some reason other than the beneficiary's benefit. There may well be other conditions necessary to generate a debt of gratitude, but reflection on these two minimal conditions will be sufficient, I think, to show that considerations of gratitude cannot account for our political obligations.

A gratitude account of political obligation would hold that debts of gratitude are owed by the citizen to the government for benefits either accepted or received. But notice that our brief analysis of gratitude shows that the content of such a debt does not dictate what specific payment must be made. Yet governments demand as their payment obedience. Obligations to pay debts of gratitude do not specify that we are bound to any particular conduct to pay the debt incurred. Obeying the law may be only one way of many possible ways of paying a debt of gratitude to the government. Citizens might well point to tax payments as a suitable manner of paying a debt of gratitude owed to their government. A gratitude account of political obligation cannot explain why the required payment is obedience.

But another difficulty is that it is not even clear that a debt of gratitude is generated by the benefits conferred by political institutions. For the principle of gratitude appears to apply more appropriately to cases involving individuals

rather than groups of people or institutions. This is because the reasons and motives for which benefits are granted play a central role in generating an obligation of gratitude. It is difficult to see how a group of people or an institution could have the requisite motives to generate a debt of gratitude for some beneficial performance on its part. How plausible is it to think that government institutions have reasons common to them for their beneficial performances? If a policeman happens by or even responds to my call for help when I am being robbed and prevents the robbery, what possible "institutional" reason or motive could lie behind this beneficial performance by the policeman? In helping thwart a robbery, the policeman is performing a duty which he has as a result of his position in the police organization of which he is a part. Indeed, I may feel grateful that the policeman intervened and may be grateful to him personally for his help, but how his beneficial performance thereby generates a moral obligation to pay a debt of gratitude to the institution he represents is not at all evident. We may feel grateful for certain benefits the government provides, but it seems hopeless to ascribe the requisite motives to the actions of political institutions and such benefits do not appear to fulfill the condition that they be intended only for the benefit of the individual.

While it is true that most benefits which generate obligations of gratitude are trivial, some are clearly not. Some government benefits are not at all trivial (the rule of law, for

instance), but such benefits do not at all seem to be sacrifices either. Certainly this is true of most all benefits that are openly available to all citizens equally. Consider again, police protection or protection of the armed forces. What special sacrifice is involved in extending the protection to any given citizen? In special cases or locations (the wilds of Idaho, say) there may be a special effort required to insure adequate protection, but even this is not a sacrifice for an institution which already has constitutional or regulatory requirements to provide such protection. Even if the requested protection involved a special effort on the part of the individuals assigned the mission, it is simply not true that the performance required any special sacrifice on the part of the institution they represent. I think it is evident, then, that government benefits do not require any special sacrifice on the part of the political institutions constitutionally required to provide the benefit. And, hence, such benefits do not fulfill the condition that there be some special effort or sacrifice involved in the performance of the benefactor.

I think it is fair to conclude that the principle of gratitude, though a valid principle, has a narrower scope for its application than appears on first glance. It seems to be limited in its application to the realm of interpersonal relations and in spite of its initial plausibility, it cannot account for the special moral tie citizens are thought

to have with their own governments. This brings us to the final account of political obligation to be considered, the Lockean view of consent as the legitimate ground of political obligation.

Since the time of Locke consent theory has been the most promising direction to take in attempting to establish the grounds of political obligations citizens are commonly thought to have. Promising, contracting and consenting are regarded as the clearest grounds of obligation generally,¹⁹ and the plausibility of consent as the ground of political obligation flows from this more general view of the grounds of obligation. One reason for this is that it seems least objectionable to require a performance of one who has expressly tied himself to that performance. In a sense, the performance flows from the agent's own will, so how could the agent object to the performance without absurdity? And it is readily agreed by most people that express consent is a clear ground of political obligation. The trouble, of course, with express consent as a ground of political obligation is that it does not give us a general enough account of political bonds. Only those who expressly consent can be said to be bound to obey their government; but most of us never give any sign of express consent to obey our government. Hence, the disputed ground in consent theory remains in the area of tacit consent. Locke was keenly aware of the problem and tried to overcome it by identify-

ing tacit consent with residence and the enjoyment of the benefits of government.²⁰ Before examining Lockean tacit consent, however, we need to be clear on what we mean by tacit consent in the first place.

Genuine consent, whether express or tacit, appears to be similar to promising in that each requires some voluntary and intentional act on the part of the consentor.²¹ One cannot unintentionally promise; nor can one unintentionally consent to something. This fact indicates that for some sign of express consent to be morally significant and binding, it must be given intentionally. Almost any intentional act, including mere silence, may suffice as a clear sign of consent, if performed in the appropriate context. The condition of voluntariness seems to imply that for consent to be binding at all, it must be uncoerced consent. If I "consent" to give you my wallet after you have demanded it at gunpoint, no one would want to say that my consent was morally binding. It is unclear whether this is a case of non-binding consent or not a case of genuine consent at all. On either view, we would not consider consent under such conditions as morally binding. As in the case of promising and contracting, it must be supposed that the agent has the freedom to consent or dissent for his act of consent, whatever it may be, to be morally binding.

We are of course concerned with the special case of tacit consent as the possible grounds of political obliga-

tion. And on the Lockean view of tacit consent, we are concerned to know when silence or inactivity may be rightly taken as a sign of tacit consent to obey the government. Regarded in this way, tacit consent differs from express consent only in its mode of expression, not in its binding force as Locke apparently regarded it.²² For tacit consent to have the same sort of morally binding force as express consent, it must be possible to view silence or inactivity (mere continued residence, for example) as a clear sign of tacit consent in response to some choice situation.

But this fact suggests that in the case of tacit consent the situation must be one in which it is perfectly clear that some sign of consent is required. We can, for example, consent in a situation which does not require consent, for we can consent without any solicitation for that consent. But for silence or inactivity to be taken as a sign of consent, it must be against some background situation which would allow that silence to be taken as a sign of tacit consent. That is, it would have to be clear to the tacit consentor that his silence or inactivity is to be regarded as a sign of tacit consent. The point is, it would be quite implausible to say that someone had tacitly consented to something by remaining silent, if it was unclear to the "consenting" party that he had some clear choice to make in the situation which required either his tacit consent (through silence) or dissent.

Our robbery example of a few moments ago seemed to indicate that it is possible to consent when dire consequences will follow for failure to consent, but that such coerced consent is not morally binding. But it is also possible to expressly consent when it is clear that very bad consequences will likely result. I may, for example, expressly consent to my daughter's marriage to an inveterate alcoholic, knowing full well that the marriage will prove immensely unhappy for her. But we would agree that my express consent in such a case would be morally binding, nonetheless. Is it possible, however, to take inactivity or silence as a clear sign of consent, where very bad consequences will follow dissenting? Consider the professor who desires to keep his students past the usual class time and suggests that anyone who objects will receive a failing grade for the semester. Could we say that the students tacitly "consented" in any morally significant way by remaining silent or remaining seated in this case? It seems implausible to say that they tacitly consented to remain after normal hours. And it seems implausible to hold that genuine tacit consent is given where the consequences of not consenting or of dissenting are extremely detrimental to the consenting party.

What I want to suggest at this point is that this brief sketch of tacit consent indicates that at least two conditions are necessary for a case of tacit consent to be morally binding in the way express consent clearly is. First, it must be

clear to the consenting party that the situation calls for some sign of tacit consent on his part. He may indeed recognize that the situation calls for some sign of consent and give it expressly, but if the situation does not present a clear choice to the potential consentor, then it is not clear that inactivity or silence on his part could be binding or morally significant. Second, if the consequences of not consenting or of dissenting are unduly or unreasonably harsh or detrimental, then we could hardly regard silence or inactivity by an individual as a sign of consent and morally significant or binding in any way. These appear to be necessary though probably not sufficient conditions for a case of tacit consent to be morally binding on the consenting party.

With this brief and general account of tacit consent in mind, what can be said about tacit consent as the ground of political obligation? First, Locke wants to identify certain acts like continued residence with clear signs of consent. Many acts, as I suggested earlier, may suffice as clear signs of consent, if performed in the appropriate context. And there are cases in which silence would be considered a clear sign of tacit consent. But can we consider the kinds of acts that Locke has in mind as constituting genuine acts of tacit consent? Take the enjoyment of certain government benefits; they seem to be cases in which citizens simply make use of public services without the slightest thought that they are

consenting to anything, much less obedience to the government. If we are to regard the receipt of government benefits as a clear sign of tacit consent, it must be against the background of some clear situation in which our acceptance of the benefits is recognized as a sign of consent. Surely, however, this is not the way we regard the benefits of government. This suggests that the kinds of acts Locke has in mind cannot be considered as clear signs of consent, for most citizens certainly do not accept benefits with the clear understanding that they are consenting to anything.

Both Socrates and Locke insist, however, that mere continued residence in the state constitutes a clear sign of tacit consent. But is this so? I suggest that for most of us it is not. First of all, for most citizens no situation ever arises that presents itself as a clear choice between remaining in their own country and leaving. Again, even as Rawls acknowledges, most of us are just "dropped" into our country of residence and its political institutions and have no choice in the matter. It seems absurd to maintain that there is anything morally significant about continued residence when (a) most of us had no control over our being in our country of residence in the first place and (b) most of us are never presented with a clear choice of leaving or remaining with all the burdens of political obligation. Some of us may regard such a choice as being available and in this case there is no difficulty. What is not appropriate is taking

someone, simply because he resides, as knowing there is such a choice to be made. Locke's view that mere continued residence does constitute a clear sign of tacit consent seems false, for the act of continued residence is not presented in the context of a clear choice for most citizens.

Emigration does remain a possibility, in democratic states anyway. But for most citizens the consequences of emigrating would be much more than merely unpleasant; they would be disastrous. For all the things most men value greatly, such as home, family and friends, cannot be readily taken out of the country. Emigration does not appear to meet the requirement that a sign of dissent (sign of non-consent) not result in extremely detrimental consequences for the potential consenting party. Given the dire consequences associated with emigrating, could we really say a man consented to the political institutions of his state simply because he elected to remain in the country in which he was born and raised? I do not think so. Once again we seem to be pushed to the unpalatable conclusion that even tacit consent theory cannot adequately establish the bonds of political obligation.

Now admittedly, the arguments I have sketched against these five views of political obligation are brief. I do not think, however, that they are weak arguments. I have tried to state what seem to me to be the key points which militate decisively against each view. If I have succeeded, then we are pushed to the conclusion that citizens generally have

no political obligations to their country of residence. Certainly some few citizens do have political obligations, but most I would maintain do not. Now this may seem counter-intuitive, but most of the feelings we harbor about our political obligations can probably be explained in terms of long-term conditioning and thoughtless acquiescence. We simply believe (though falsely) that we have genuine political obligations and even armed with the knowledge that we have no such obligations, most of us would continue to act as though we had such obligations.

But the conclusion that most citizens do not have political obligations drives us to the conclusion that most citizens do not have any obligation to serve in the armed forces of their state. At least it is hard to see how there could be a special argument to this conclusion which did not turn on general considerations about political obligations. Having seen that neither Rawls' natural duty conception nor the utilitarian account, or any of the obligation-centered accounts of political obligation can firmly establish the special moral ties citizens are thought to have with their state, we are forced to dismiss both assumptions implicit in the traditional conception of conscription as false. The argument, then, that the state has a moral right to conscript and citizens a correlative duty or obligation to serve, falls apart.

Ardent advocates of conscription will not be pleased with this conclusion. But the conclusion does not seem so

counter-intuitive if we consider that conditions of peace do not usually require large numbers of citizens in service. Peaceful conditions seem to obviate the practical necessity for conscription. And this fact seems to agree with our conclusion that there is no rational moral basis for conscription generally. Still, there seem to be vestiges of doubt surrounding our conclusion when applied to the case of war. Many will still believe (or feel) that the government is justified somehow in forcing citizens to serve in the armed forces in extraordinary circumstances. Whether there is any rational justification for this belief remains to be seen. In the next chapter I will examine some possible rational grounds for this common belief.

NOTES

¹Robert Nozick, Anarchy, State, and Utopia, p. 10.

²John Locke, Two Treatises of Government, p. 123.

³See A. J. Simmons, Moral Principles and Political Obligations, p. 55.

⁴Moral Principles and Political Obligations, p. 55.

⁵For a good discussion of this criterion see Moral Principles and Political Obligations, pp. 31-34.

⁶David Hume, An Enquiry Concerning the Principles of Morals, p. 202.

⁷There is the immediate problem of irrational rule worship which Smart discusses in "Extreme and Restricted Utilitarianism," Philosophical Quarterly (Oct, 1956). Though act utilitarianism does not appear to be able to give an account of obligation at all, rule utilitarianism does not appear to be defensible. For a fuller discussion of the difficulties rule utilitarianism faces see R. Sartorius, Individual Conduct and Social Norms, pp. 11-18.

⁸See Chapter VI and Section 19 of A Theory of Justice for a complete discussion of both duty and obligation.

⁹John Rawls, A Theory of Justice, p. 334.

¹⁰This objection to Rawls' view is raised and discussed fully by A. J. Simmons in Moral Principles and Political Obligations, pp. 147-151.

¹¹Obligation-centered accounts stress the voluntary and performative acts which generate the obligation (like promising, consenting, considerations of fair play); duty-centered accounts stress duty as the moral tie. See A. J. Simmons, p. 115.

¹²H.L.A. Hart, "Are There Any Natural Rights?" Philosophical Review 64 (April 1955), p. 21.

¹³A Theory of Justice, pp. 111-112.

¹⁴A Theory of Justice, p. 116.

¹⁵This distinction was first suggested and argued for by A. J. Simmons. For a full discussion see Moral Principles and Political Obligations, pp. 107-108.

¹⁶A Theory of Justice, p. 114.

¹⁷See Footnote 13, Chapter One of this essay.

¹⁸For a complete discussion of gratitude see A. J. Simmons, Moral Principles and Political Obligations, pp. 163-183.

¹⁹H.L.A. Hart brings out this point well in his paper "Are There Any Natural Rights?" Philosophical Review 64 (April 1955).

²⁰Two Treatises of Government, p. 182.

²¹H.L.A. Hart, "Are There Any Natural Rights?" pp. 20-21.

²²Two Treatises of Government, pp. 182-183.

CHAPTER THREE

Conscription and the Catastrophic

In Chapter Two we reached the conclusion that most citizens do not have political obligations to their country of residence. We may wish to regard this as a tentative conclusion since my arguments are only brief sketches of fuller arguments which support that conclusion. But insofar as those arguments are successful, the conclusion strongly suggests that citizens generally do not have any moral obligation to serve in the armed forces of the state and it further suggests that the traditional conception of conscription in America is probably false.

If we accept for the time being the conclusion reached in Chapter Two, we might well go on to ask what else can be said for the state's practice of conscription. Might there not be special cases of the state's practice of conscription which could be viewed as morally justified on grounds other than some principle of moral obligation or duty to the state? Are there not some cases in which we (most of us, anyway) would be willing to regard the state's practice of conscription as morally justifiable in the interests of the common good or national welfare? This suggestion does not seem as objectionable as the suggestion that we allow conscription in peacetime when it is clear that the national welfare is not in jeopardy. Most of us, I think, feel quite comfortable with the

view that American conscription during World War Two, for example, was entirely justified. This feeling about conscription during World War Two suggests the general thesis that conscription is justified in time of war, for it is generally supposed that it is at these times that the common good or national welfare is clearly in jeopardy. In this chapter I want to show why I think this general thesis is false and then to show how a more restricted thesis which this general thesis suggests might be defended.

Given that one of the state's primary functions is to insure the security of all its citizens, it seems unobjectionable to affirm the state's right to act in the interests of national security, especially in war time. That national security is one of the primary functions of the state is pretty well accepted by classical and contemporary philosophers alike. Hobbes clearly regarded security as the fundamental motive for leaving the state of nature and entering civil society, though it is clear that he was more concerned about civil strife than with foreign invasion. More recently, Robert Nozick's argument for the minimal state in Anarchy, State, and Utopia clearly suggests that individuals in a state of nature (of the Lockean sort) would deliberately form or join protective associations to assure their own security, both from within and without the region the protective association protects.¹ Additionally, we have already seen that citizens generally regard protection of the armed forces as one of the expected benefits of their

political institutions.

But even if we may regard defense against foreign invasion as one of the primary functions or ends of the state, it does not follow that the state is justified in coercively interfering in the lives of citizens by conscripting them for military service. This would be true even if conscription were the only means available, for it surely does not follow from defense being a "function" that conscription is justifiable. Many institutions have indefensible "primary functions" (take the case of a mafia hit team whose primary function is to murder people). We cannot justify conscription by the state simply on the grounds that national security is a function of the state. Moreover, it is fairly clear that there are means other than conscription available to achieve the state's end of national security. Volunteers could be requested or a mercenary army could be hired and paid from general tax revenues to secure the common defense.

But someone arguing for the general thesis that conscription is justified during war time might continue by pointing out that during war time individual liberties are overridden by considerations of the greater good of the whole nation. This kind of broadly consequentialist reasoning suggests that consequences (the good or bad effects of one's action, apart from any rightness or wrongness in itself) have increased weight in the "moral calculus" when catastrophic losses are possible in unusual circumstances like war time.

This argument suggests that we should be willing in time of war to weigh the evil of coercively interfering in people's lives (by conscripting them) against the greater evil of failing to avert a national disaster in which, say, citizens would lose their liberties. And that conscription can be justified by viewing it as a necessary evil to avert the greater evil implicit in a failure to secure the national interest or common good. This appears to be the kind of argument Hume suggests in the Enquiry when he speaks of the moral obligation holding in proportion to the usefulness of considerations of justice. He says,

All politicians will allow, and most philosophers, that reasons of state may in particular emergencies dispense with the rules of justice, and invalidate any treaty or alliance where the strict observance of it would be prejudicial in a considerable degree to either of the contracting parties. But nothing less than the most extreme necessity, it is confessed, can justify individuals in a breach of promise, or an invasion of the properties of others.²

Though his remarks in this paragraph refer to moral obligations which arise between sovereigns or princes, Hume's general line of argument seems applicable to the thesis that conscription is justified during war time. For Hume is allowing that the rules of justice can be suspended in "particular emergencies" when there are compelling reasons of state. Again, the suggestion here is that reasons of national security in war time temporarily suspend other moral considerations or at least override other moral considerations. I think this has been a widely accepted argument to justify conscription in

war time, but I believe there are at least two major difficulties with this argument which will force us to reject the general thesis that conscription in war time is justified.

In the first place, this general thesis assumes that the only way to achieve the common good or the national interest in war time is through conscription. I have already suggested that there are other means available to the government in a democratic state to achieve the national interest, if achieving that interest requires the use of military force. A standing force of volunteers or a hired mercenary army might well be able to accomplish the military mission. Of course, neither of these alternatives might be sufficient, but the objection here is that this general thesis assumes without any obvious justification that in war time conscription is necessary. But a little reflection will show that all wars do not necessitate conscription by the state. The American War of 1812 did not necessitate conscription, yet by any appraisal it was a war which involved an invasion by a foreign power. So, the general thesis that conscription is justified in war time rests on the shaky assumption that conscription is the only way to achieve national interests in war time. But underlying all this is an even more fundamental error in this general thesis.

Among advocates of this general thesis there has been and, I believe, continues to be a tendency to identify war with national emergency. That is, there is a tendency to

regard all wars as cases in which the very lives and liberties of the citizens of the state are clearly at stake. But surely, this is simply false. As I argued in Chapter One, "war" is not to be identified with "national emergency", where what we mean by "national emergency" is some situation or set of circumstances in which there is a high probability that the citizens will lose their lives, liberties, and security.

Those arguing for the general thesis along Hume's line have either overlooked or intentionally ignored Hume's use of the phrase "particular emergencies" and his emphasis that only "the most extreme necessity" can justify an invasion of the properties (and liberties, I assume) of others. The general thesis suggests that a state of war constitutes a sufficient condition to justify a suspension of the liberties of citizens. I want to suggest, however, that a state of war constitutes neither a necessary nor a sufficient condition to justify conscription by the state. We have already seen that "war" can have any number of a variety of meanings, from mere psychological or environmental warfare to nuclear and chemical warfare. It can involve the use of minimal force or the use of thermonuclear weapons. Finally, "war" can mean the aggressive use of force in an unjustified foreign excursion just as well as it can mean the attempt to repel an unjustified invasion of a nation's home territory. All of these possibilities do not constitute a clear "national

emergency" of the sort Hume evidently had in mind. Additionally, later we will consider the possibility that conscription might be justifiable if it is invoked as part of a response to a foreign or international emergency. Loose use of the word "war" in arguing for the general thesis that war time conditions justify conscription by the state begets an eager assent to the validity of this thesis. Such usage, however, obscures the simple fact that every genuine case of war, as we defined it in Chapter One, is not ipso facto a clear national emergency in which the very lives and liberties of the citizens of the state are in danger of being lost. This point, then, and the unargued assumption that conscription is the only means to secure the common interest, are two good reasons to reject the general thesis that war time conditions morally justify conscription by the state.

But the discussion of this general thesis suggests a more restricted and perhaps defensible thesis. Might it not be possible to justify conscription if it could be shown that (1) the situation involved a clear national emergency which entailed the high probability of the loss of lives, liberties and security of many citizens of the state, and (2) it was clear that nothing short of conscription could avert the disastrous consequences about to befall the populace? This appears to be the sort of argument Rawls offers

as the only justification for conscription in a democratic state. In A Theory of Justice he says, for instance,

Now I shall assume that since conscription is a drastic interference with the basic liberties of equal citizenship, it cannot be justified by any needs less compelling than those of national security. ... Conscription is permissible only if it is demanded for the defense of liberty itself [.]³

Unlike Hume's, Rawls' argument for the justification of conscription is an argument from considerations of justice. It rests on the view that since the state is only just when it provides equal and maximally extensive liberty, it can limit liberty (equally) in some areas in order to preserve or increase the total liberty available to everyone. Moreover, both our conditions (1) and (2) above are implicit, I think, in Rawls' argument here. He clearly believes that conscription can only be justified if it is invoked to prevent a greater loss of liberty by the citizens of the state. Second, Rawls says that conscription is permissible only if it is demanded for the defense of liberty. And by "demanded" I take him to mean required in the sense of condition (2) above. And these appear to be necessary conditions to justify conscription by the state. I believe that they are jointly sufficient, although this point does not seem as clear as their status as necessary conditions. An additional feature of Rawls' argument for the justification of conscription is that it commits the state (and its citizens) to the defense of liberty anywhere and not just in the state itself.⁴ Cr

this view, it would be morally permissible for the state to conscript citizens to defend the liberties of citizens in foreign countries. And although this position may be somewhat astonishing, it is consistent with Rawls' general views on what the natural duty of justice requires. I mention this point both because it is interesting and because we will come back to it later.

What seems to me to be more interesting about Rawls' argument from justice is that it appears to converge on the same conclusion toward which Hume's broad consequentialist view was driving, though clearly from a different direction. This of course does not show that this restricted thesis is right, but it does suggest that we might profit from pursuing some plausible defense of this restricted thesis. Both Hume's and Rawls' arguments imply that there are times when individual liberties may be overridden, but only for reasons of extreme necessity in general and national security in particular. They are saying, I think, that there are times when the weight of consequences in a situation or (in Rawls' case) the demands of justice make it morally permissible to limit the liberties of individuals. But I think an even stronger case can be made for this more restricted thesis if we approach it from a direction other than Rawls' or Hume's.

Another argument which supports our more restricted thesis has also been suggested by Charles Fried in his book Right and Wrong, though he is not arguing along Hume's lines

at all. Fried is arguing for a deontological view that certain acts are not just bad, but absolutely wrong; they are acts we must not do no matter what. Lying and murder, he argues for example, are acts which are absolute wrongs in the sense that they are not mere negatives to be outweighed by considering the greater good that might be done or harm avoided by performing such acts. His argument is an argument against a consequentialist view that might regard acts like lying and murder as wrong only when their negative consequences outweigh any positive consequences. But Fried goes on to admit that there may be cases which fall outside the norms of absoluteness.⁵ He says for example,

Even within such boundaries we can imagine extreme cases where killing an innocent person may save a whole nation. In such cases it seems fanatical to maintain the absoluteness of the judgment, to do right even if the heavens will in fact fall. And so the catastrophic may cause the absoluteness of right and wrong to yield [.]⁶

Now Fried goes on to suggest that extreme cases which entail catastrophic consequences constitute cases in which the usual judgments do not apply, though it seems simpler to admit that they are not absolute in the first place. And though they are defending opposite views, it is interesting that Fried and Hume appear to converge on the conclusion that extreme or catastrophic cases may override other moral considerations in certain cases. Fried goes on to argue, however, that these extreme or catastrophic cases do not show that consequentialism as a general moral theory is right; and in this he may be

correct. For our present purposes, what I want to suggest is that we can accept the importance of consequences in extreme cases without accepting consequentialism itself. One way of getting clear on how this sort of argument might go and how plausible it might be is by considering the somewhat more attenuated deontological view of W. D. Ross.

Ross' moral views in The Right and the Good may plausibly serve as an inspiration for a sort of "vector analysis" of moral dilemmas. Ross says that there are a number of prima facie moral duties, each of which specifies a respect in which an act may have moral significance. Some of these duties include: fidelity, justice, beneficence, and the duty not to harm others.⁷ These prima facie moral principles define morally relevant considerations (vectors) in the "moral calculus". One vector might be the effect on the general happiness. This would then be a morally relevant consideration at all times, outweighing the other vectors where the happiness or unhappiness involved is sufficient to overcome other moral considerations like individuals' rights. I may, for example, have promised to meet you for lunch and I therefore have a prima facie duty to keep my promise. But if enroute to keep my appointment with you, I arrive on the scene of an accident in which my rendering aid might help relieve someone's suffering, then what I morally ought to do is render the aid. It is not that I no longer have an obligation to meet you for lunch, it is simply that this obligation is overridden

by the weightier "moral vector" which specifies that one should help others in need of aid. Similarly, one morally relevant feature of an action may be its effect on human happiness and the larger the amount of happiness or unhappiness involved, the weightier the consideration of happiness in the "moral calculus" which we use to decide what we ought (morally) to do.

If this sort of view is right, then we can accept the importance of consequences without adopting a full consequentialist view. Such a view falls between Fried's absolute view of rights and the utilitarian position which analyzes rights in terms of consequences. This moral view is perhaps not as neat as a pure consequentialist or absolutist view, but it has the virtue of retaining the most intuitively plausible features of those moral theories. It recognizes the moral weight rights have, denies that such moral rights are analyzable in consequentialist terms, but affirms that the consequences of acts are morally relevant as well. But if this view is right, then we need not adopt Fried's more extreme position that appears to concede the primacy of consequences in extreme or catastrophic cases only. In any case, what the view should suggest to us is that the Friedian argument from extreme consequences is not at all an implausible line to take in considering the justification of conscription. How does this line of argument fit into the view which accepts a natural rights theory and demands some moral justification

for the state's infringement of these rights by its practice of conscription?

Our Lockean conception of natural rights views the right not to be coercively interfered with, in the absence of special justifying moral reasons, as having extreme moral importance and requiring strong moral justification to be legitimately overridden in any given case. That is, unless we voluntarily give up or transfer our right not to be interfered with (and I have already argued in Chapter Two that most of us do not), then there is little short of the catastrophic which can justify the state's interference with our liberties because exercising our rights normally does not have disastrous consequences.

To show just how plausible this Friedman argument from extreme consequences is, consider the case of the biochemist who discovers a cure for cancer, then threatens to burn the only existing copy of the formula for the cure.⁸ Although the chemist has a right to do with the formula as he sees fit (we are supposing there are no legal difficulties), is there any doubt that the government (or anyone for that matter) would be justified in seizing the written formula before he could burn it? It seems fairly clear that in seizing the formula, the government is interfering with the exercise of the chemist's rights, but we are morally justified, nonetheless. Surely, this is because the positive good to be gained by seizing the formula forcibly far outweighs the wrongness

of violating the chemists' rights plus any negative consequences arising from the act. But if this example seems far fetched, consider the following cases. Children entering school at the beginning of the school year are required by the state to be immunized against certain diseases. On the account of rights developed here, individuals have a right not to be so vaccinated, yet it is pretty clear that the state is justified in requiring such immunizations. Or take the case in which an epidemic outbreak of some disease strikes a town or locality or even a person and the state authorities limit the liberty of citizens through quarantine. And there are other cases in which the state coercively interferes in the lives of its citizens (and violates rights by so doing) and is justified, nonetheless. Isn't this essentially what the state does when it redistributes income through taxation and feeds the needy in society? This example of social justice indicates that "catastrophic" may be more dramatic than necessary to show just how plausible this argument is; perhaps the stakes simply have to be high. In each of these cases the government violates the rights of its citizens, but is justified because the high stakes involved far outweigh any negative consequences and the violation of the rights of the individuals involved.

If we can accept this, then I think conscription in certain extreme circumstances can be justified by the sort of argument Fried's remarks suggest. We are saying, on this

Friedian argument from extreme consequences, that the evil that would be brought about in allowing events to run their apparent course in a clear national emergency (a full fledged invasion, say) would be so great or catastrophic that it would be morally permissible for the state to coercively interfere in the lives of its citizens to avert these catastrophic consequences. We are not adopting a consequentialist view whole hog, but observing that there are instances in which the weight of consequences override other moral considerations. And the kinds of cases in which we could view conscription as being justified are not mere logical possibilities either; the history of warfare is replete with them. Consider the German invasion of France in both world wars, or the Arab invasion of Israel in the Six Day War, or the Japanese attack on Pearl Harbor and subsequent invasion of the Aleutians during World War Two. Notice that in each of these examples, the case is one of actual invasion by a foreign power, a clear threat to the lives, liberties and security of the citizens of the state. These cases seem to suggest several points for consideration in employing this Friedian sort of argument.

In the first place, for this Friedian line of argument to succeed in justifying conscription, it would have to be shown that the case being considered is one involving extreme or catastrophic consequences. That is, it would have to be reasonably clear that the national emergency at hand was one of the sort that clearly might lead to the loss of liberty

and security for citizens in the state. This is merely our condition (1) from earlier; it would have to be a clear national emergency and not simply a case of war. Further, it would have to be reasonably clear that the only way to avert or prevent this loss of liberty and security would be to conscript citizens and employ them in the defense of the nation. Unhappily, this condition (2) presents a difficulty. Though it may be clear that neither a volunteer nor a mercenary army would be sufficient to avert the catastrophe, might it still not be possible to employ weapons of mass destruction (nuclear, chemical or biological) to repel an invasion? That this is an unthinkable option matters little; it is still an option that would allow the state to forego the use of a conscript army. This point appears to leave the door open on the use of weapons of mass destruction, and then it is not clear that the negative effects of the means used to avert the impending catastrophe would not be greater than the positive consequences themselves.

Perhaps we can make this last point sharper by considering two ways in which we might consider consequences. If our calculations of "catastrophic consequences" are local only, then the loss of foreign lives is irrelevant. If, however, all consequences are relevant in our calculations in catastrophic circumstances, then not only must there be a national emergency, but one which would not, in being prevented, have even worse consequences for the world as a whole.

As moral men, it would seem evident that we should consider all the consequences of our actions and not just those which are of local interest. This broader view of the consequences of a state's actions would appear to make it morally impermissible to use weapons of mass destruction in many cases (even in some catastrophic cases), for then we are employing the catastrophic to avert the catastrophic and it is not evident that the overall positive consequences in the broad sense would in fact outweigh the negative consequences plus the wrong done in violating citizens' rights. There is the further point that the rights of the defenders are being violated by the attacking state, so that even if repelling the invaders costs more lives than say, surrendering, it may be justified because the right of self-defense is on the side of the defenders. These points would seem to preserve condition (2) as a necessary condition in justifying conscription in catastrophic cases. But in adopting the broader view of consequences like this, we seem to be committed to the consideration of all catastrophes wherever they are and the justification of conscription by the state to avert these (foreign) disasters when they involve the loss of life, liberty or security. This is essentially the same conclusion Rawls draws from the natural duty of justice and one which we will consider shortly.

A further point to be considered in justifying conscription and citing cases like the German invasion of France in

World War Two is that we seem to be asserting that conscription can only be justified in cases of defensive war. Suppose, however, that the "national emergency" was one in which the nation's food supplies or other vital goods were cut off. Or perhaps a drought brought on mass starvation and it necessitated launching an aggressive war to get food supplies for the populace. Would these kinds of national emergencies with their catastrophic consequences justify the state in conscripting citizens to fight an aggressive war? This is a difficult question, but there seems to be two different cases here worth distinguishing. First, if food supplies or vital goods were cut off without justification, and their loss jeopardized the liberty or security of the citizens of the nation, then the war would be defensive in nature and not aggressive.

If the national emergency were the result of some natural disaster, then it is not so clear the state would be justified in conscripting or in launching a war at all. Given these circumstances (a natural disaster, say), the state would not only be coercively interfering in the lives of its citizens by conscripting them, but it would also be interfering with the lives of other innocent individuals in another state by launching an aggressive war against them. Again, the right of self-defense on the defendant's side, even if utilitarian considerations do favor aggression. If we consider only the local consequences, those consequences which only fit into the moral scope of interest of the nation conscripting and waging ag-

gressive war, then it may appear that conscription can be justified for some aggressive wars. Viewed in the broader sense, that which recognizes the full scope of consequences of the state's action, it is not so clear that the positive moral factors involved in launching an aggressive war under these conditions would outweigh the negative factors. That is, it is doubtful that the violation of rights brought about through conscription, the unjustified interference with the liberties of other men in other nations, and combat itself, would in fact be outweighed by the good in preventing starvation produced by natural causes.

But a more fundamental difficulty with a case of aggressive war like this is that in waging war for some reason other than defense of liberty or security, the state is going to war and using force for the wrong sort of moral reasons. It is not protecting the individual's right to be free from harm or interference (as our condition (1) requires) when it wages aggressive war necessitated by some natural catastrophe. In using force for this purpose the state is violating the general principle that the use of force is only justified if it is employed to prevent the unjustified use of force. The state which wages this sort of aggressive war is interfering in the lives of other citizens of other states without any obvious justification in the first place. The only reasons in favor of aggression might be utilitarian ones, which ignore the nonutilitarian importance of rights. This point should

also suggest to us that the reasons states go to war and use force are important in the justification of the state's practice of conscription.

Consider the case, then, in which one state decides to wage "aggressive" war against another state which is engaged in some obviously immoral activity like wholesale genocide. Would the state intending to launch an "aggressive" war against the state which is acting immorally be justified in conscripting its own citizens? If we adopt the narrow view of the importance of consequences in catastrophic situations, then it is not evident that there would be any justification for conscription. For this is not obviously a case in which the catastrophe presents a clear threat to the liberties and security of the state which is conscripting. On the other hand, regarding the consequences in catastrophic situations in the broader view, the view that takes into account more than just consequences of local interest, it seems plausible to hold that conscription could be justified if it were invoked to raise an army which was needed to prevent or stop mass genocide or other similar catastrophes wherever they might be taking place. Applying the Friedian line of argument, conscription could be justified in an "aggressive" war if it could be shown that the positive effects produced in stopping some foreign catastrophe (like mass genocide) would far outweigh the wrong done in conscripting and the negative effects of combat itself. In this sort of case the only rights violated are those of the

people conscripted. Such a war defends the rights of those threatened with genocide. And those attacked have forfeited their rights of self defense by genocidal policies, so we don't violate their rights. When one throws in the prevention of a disaster (in terms of happiness), it looks like calculations might well favor conscription.

If this point seems implausible, consider America's decision to enter the fight against Nazism in World War Two. It is true that we would be hard pressed to show that America waged an aggressive war in any sense against Germany, but one would also find it difficult to show that the liberty and security of Americans was in some clear danger in the sense required by our condition (1). But this fact suggests that the "moral cause" plays an important role in justifying the state's practice of conscription. In defending against the aggression of an oppressive and immoral Nazi regime, Americans were defending the right to liberty and security of other citizens of other states and not merely their own liberty and security.

What this discussion suggests is that conscription for an aggressive war can only be justified if war is being waged to defend other men against inhumane, oppressive states seeking to deny them their liberty or security. The moral cause or purpose in waging such a war, the attempt to prevent the catastrophic loss of life, liberty and security of others, outweighs the infringement of rights which occurs in

conscripting for military service. If we are truly moral men, committed to the defense and preservation of the right of men to be free, then we must be committed to the broader view of the consequences of acts involving the use of force in war and conscription. And if we take this view we are committed also to an expanded necessary condition (1) for the justification of conscription. This expanded condition might be stated as: conscription is justified only if there is a clear international emergency in which the lives, liberty or security of citizens of any state are in jeopardy of being lost.

The contrast between an aggressive war in which the "aggressive" state is defending either its own citizens or citizens of another state against the unjustified use of force, and the aggressive war in which the aggressive state is not defending against the unjustified use of force, implies that the aim or purpose in using force will play some important part in the justification of conscription. The unjustified use of force, even in cases where there is some national emergency like mass starvation brought about through natural causes, does not have the right sort of moral reason behind it to justify: (a) the use of force in the first place, and (b) conscription as a means to apply that force. What this admittedly brief analysis of aggressive war indicates is that "aggressive" war in which the purpose is to defend the liberty and security of other men in foreign countries is not ag-

gressive war at all, it is quite defensive in nature. It is in fact a special case of our condition (1). Conscription by the state is justifiable if the purpose is to preserve their freedom and security when it is unjustifiably threatened and if conscription is the only means to do so.

If we can accept the Friedian argument from extreme consequences, then we have uncovered a rational justification for conscription in a modern democratic state. We have seen that this argument need not be viewed as incompatible with our theory of natural rights, though to preserve consistency with our view that all men have these rights, the argument which considers all the consequences in catastrophic cases forces us to accept the justifiability of conscription even to defend persons in foreign countries from catastrophic loss of life, liberty and security. Some will suspect that we have probably justified too much, for there are some objections to this view which we need to consider.

To make this Friedian sort of argument work, we would have to show that the good to be gained or evil to be averted by forcing citizens to serve in the armed forces would heavily outweigh the violation of rights involved in the loss of freedom through conscription and the harm brought about through actual combat. Now I have already made it clear that the conditions necessary to justify conscription would have to be such that it was fairly evident that a catastrophe of extreme proportions was about to be realized. I am not sug-

gesting that making such a determination is an easy thing to do, especially considering the kind of emotional atmosphere which generally obtains at such calamitous times. The very vagueness of the relevant moral factors and their relative moral weights make it unclear whether anyone could uncontroversially establish some balance of good over evil in any given circumstance. It is probably true that any such calculations would be difficult to make at best. But surely their difficulty is not a good reason not to make them. I suggest that if it is reasonably clear that the right of citizens of a particular democratic state to live as they choose and pursue their own life plan is of great moral importance, then we can give great positive moral weight to acts which prevent the loss of these rights and thereby justify the temporary infringement of rights by the state.

But there is a more fundamental objection to this Fried-ian argument from extreme consequences that we must consider. In attempting to justify conscription by the state by invoking some principle of the catastrophic, we are failing in an important way to see what is really going on when the state conscripts. In accepting this Fried-ian argument, we are affirming that the state is morally justified in forcing citizens to give up the free exercise of their rights in extreme circumstances so that some greater social good might be realized. But in conscripting citizens for military service, we are doing more than just demanding that they stand aside

in the exercise of certain rights. In conscripting citizens the state is in fact using individuals to achieve some social good or goal. The state is not merely overriding individuals' moral rights when it conscripts for military service, it is using persons as means to achieve some national or international interest.

In discussing moral side constraints which apply to actions of the state in Anarchy, State and Utopia, Robert Nozick makes the force of this objection quite clear. He says,

Why not, similarly, hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But there is no social entity with a good that undergoes some sacrifice for its own good. There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others, uses him and benefits others. Nothing more.... Talk of an overall social good covers this up. To use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has. He does not get some overbalancing good from his sacrifice, and no one is entitled to force this upon him--least of all a state or government that claims his allegiance....⁹

Nozick's point about the dangers of talking about an overall social good is, I think, quite beside the main point in his remarks. There is nothing illicit in talking about overall social goods or things that are in the national interest. States do have national interests and one of these interests is the collective interest citizens have in maintaining their security. In free democratic states it is implausible to hold that most citizens do not have an individual and collective

interest in maintaining their freedom and security. I have already alluded to the hazard involved in not being precisely clear in what we mean by "national interest". The simple identification of national security and anything which is thought to be in the national interest is surely a mistake. Some things may well be in the national interest, and yet not have a thing to do with or direct bearing on the national security. So mere talk of an overall social good is not a strong point in Nozick's objection and one we need not concern ourselves with if we keep clear the difference between national interests in the broad sense and national security in the context of a national emergency which threatens loss of life and liberty and security.

But Nozick's thoroughly Kantian notion here that demands we regard individuals as ends in themselves is not the kind of thing we can easily dismiss in our discussion of conscription. For in conscripting citizens for military service, the objection goes, this is precisely what is not being done: the state is treating persons as means to an end. And talk of even the most lofty of social goods cannot erase this fact. Even the evidently high value citizens of free democratic states place on their freedom and security cannot obscure the morally significant fact that in conscripting for military service the state is using its citizens as means to attain some social goal.

But is this fact about the nature of conscription incom-

patible with our conception of natural rights? I do not think so. It is certainly true that conscription for military service is an extreme interference in the lives of citizens and one, therefore, to be avoided if possible. Our conception of natural rights does not view the right to be free from coercion as being absolute in a Friedian or Nozickian sort of way. The parallel cases of immunizations and quarantine seem to confirm the view that rights can be justifiably overridden by the state (or, indeed, by individuals) in certain circumstances. But it also shows that they are rights which are not to be lightly treated and which require some strong moral justification for the state to override them. Both the Friedian argument from extreme consequences and the Rawlsian argument from justice affirm that for conscription by the state to be justified, it must be clear that conscription is demanded to apply force in the defense of liberty and security of other men. The argument from extreme consequences requires that it be shown that conscription is justifiably invoked as the only possible means of averting a catastrophe which involves the great loss of life, liberty and security of a people. This argument establishes necessary conditions to justify conscription in a democratic state, but as I suggested earlier our analysis does not make it completely clear that these necessary conditions would be jointly sufficient, though I am inclined to believe they are. One other point this analysis of conscription in the defensive and aggressive use of

force suggests is that conscription is only justifiable when invoked in a just war. But this is a point worth pursuing at some other time.

NOTES

¹See Chapter 5, Anarchy, State, and Utopia for a complete discussion of this point of Nozick's.

²David Hume, Enquiry Concerning the Principles of Morals, p. 203.

³John Rawls, A Theory of Justice, p. 380.

⁴A Theory of Justice, p. 380.

⁵Charles Fried, Right and Wrong, p. 10. (Fried prefers to call such absolute norms "categorical" to reflect the fact that they have some boundary, outside which the normal judgments do not apply.)

⁶Right and Wrong, p. 10.

⁷W. D. Ross, The Right and the Good, p. 35.

⁸This example is borrowed from Professor A. J. Simmons.

⁹Robert Nozick, Anarchy, State and Utopia, pp. 32-33.

CONCLUSION

In our attempt to establish whether there is any rational moral justification for conscription in a modern democratic state, we began by examining what was believed to be the traditional conception of conscription in America. This traditional conception viewed conscription as a right of the state and military service as a correlative obligation of the citizen. This particular moral obligation of the citizen to serve the state was thought to be a special obligation which flowed from a more general view that there is some moral obligation to obey the state. The arguments in Chapter Two strongly suggest this conception of conscription is false.

The intuitive feeling or belief that conscription in America is justified during war time suggested that we should pursue some argument that might rationally ground this belief. The conclusion we reached in Chapter Three is that there is some rational justification for conscription, but only in certain narrowly defined circumstances. In concluding our analysis, I want to focus on two cases of American conscription which when contrasted will show just how plausible is the conclusion reached in Chapter Three.

American conscription in World War Two is generally regarded by Americans as the clearest example of a case of justified conscription by the state. And perhaps American conscription during the Viet Nam War is generally regarded

by Americans as the clearest example of unjustified conscription by the state. Why is this so?

To begin, American conscription in World War Two was continued in response to a clear national emergency which posed a direct threat to the lives, liberty, and security of some American citizens, namely those in the Hawaiian and Aluetian Islands (and perhaps eventually, to others as well). The unjustified use of force by the Japanese at Pearl Harbor posed just the sort of national emergency which required the government to curtail the liberties of some citizens to avert the possible catastrophic loss of the liberty and security of all. Second, it was fairly clear that nothing short of conscription would avert the impending catastrophe. There were no weapons of mass destruction available to the United States government in 1941 and the American Army of 1940-41 was pitiful in terms of its ability to successfully defend against an invasion. Japanese aggression in the Pacific, then, appeared to constitute just the sort of necessary conditions which our analysis in Chapter Three required to justify conscription.

For America, however, World War Two was a two front war and it is important for our case to see just how German aggression fits into the picture. Although it is true that German aggression on the continent of Europe did not constitute to Americans the same sort of clear national emergency that Japanese aggression in the Pacific did, it is certain that Germany's continued unchecked aggression was resulting

in the loss of the lives, liberties and security of large numbers of innocent people. This is true even though we cannot make the claim that Hitler's drive to exterminate the Jewish population in Europe was the compelling moral reason for conscripting an American Army to fight in Europe. We cannot make this claim because it was not known at the time that Hitler was engaged in a program of mass genocide. But it was quite obvious that Germany's use of military force for the most part was without justification and did in fact constitute a clear international emergency with catastrophic consequences of the sort that nothing less than conscription in America could avert. The view of the Nazi state as an inhumane, oppressive and immoral state was so strong, that it largely dictated the "Germany first" strategy of the war. It is true that historical hindsight has shown that some perceptions of the nature of the Japanese and German threats were wrong, but the belief that German and Japanese aggression constituted both a national and international emergency with the high probability of catastrophic consequences was substantially correct. That same hindsight shows that more than six million Jews were systematically exterminated at German hands. Surely, in moral terms the harm of conscription and the loss of innocent lives was outweighed by the positive consequences which resulted from the defeat of both Germany and Japan.

But American conscription during the Viet Nam War does

not seem to have the sort of national ground conscription in World War Two has. It does not appear, for example, that there was any clear national emergency which threatened to result in the loss of life, liberty or security of the American people. Nor is it evident that any such catastrophe was imminent in South Viet Nam. It is doubtful that one could show that the takeover of the South Vietnamese government by those holding a communist ideology would have resulted (or in fact did result) in a greater loss of life, liberty or security of persons living in the south. What began as an internal political struggle, escalated eventually into full scale fighting largely as a result of active American military participation in the domestic struggle. American conscription and military participation in the conflict drew an active military response from North Viet Nam and resulted in a substantial increase in the negative consequences overall. Moreover, even if it could be shown that there was a clear national emergency in South Viet Nam, one would be hard pressed to show that conscription in America was the only way to avert the impending catastrophe.

It may be objected here that America had an obligation under treaty commitments to aid South Viet Nam. Now this is a slightly powerful moral point to be raised in justifying both American participation and conscription. For I think we are inclined to agree that treaty commitments have the same sort of moral binding force that promises and contracts

have. And this should suggest to us that treaty commitments are not to be entered into in a light fashion.

In response to this there are a few points worth making. First, it would have to be shown that the conditions necessary to activate the treaty commitment did in fact obtain. American military participation was defended under the provisions of the SEATO pact which stated that armed aggression against one signatory signalled aggression against all and therefore justified intervention with military force by any signatory. It is not obvious that the internal political struggle in South Viet Nam constituted the sort of armed aggression specified by the SEATO pact. Second, it must be supposed that a treaty obligation a nation undertakes has the general consent or approval of the general populace for it to be binding on those in the nation. It would be absurd to suggest that individuals in the state became morally bound by some action of the government which those individuals themselves were either unaware of or did not approve or consent to. Is it plausible to hold that Americans were aware of their obligations under the provisions of the SEATO pact or that, supposing they did know, they signalled their general approval of the terms of that treaty? I do not think so. That large numbers of American citizens were and still are politically ignorant is an unfortunate state of affairs, but it is a fact nonetheless. General disinterest and political ignorance probably do much to aid the government in the

formulation of policy rather than hinder it. I do not, of course, want to deny that Americans have any obligations under treaty commitments, but it does not follow from the existence of a treaty that there is any moral obligation on the citizens of the state. The very process of treaty ratification makes one sceptical of the moral obligation citizens acquire under such a process. So I do not believe that invoking the notion of a treaty commitment as a moral reason extricates us from the difficulty of giving some rational ground for American conscription during the Viet Nam War. And this contrast between American conscription during World War Two and the Viet Nam War is so stark and illuminating in moral terms that it lends a great deal of plausibility to the restricted thesis which was defended in Chapter Three and which held that conscription can be justified in a modern democratic state under certain narrowly defined circumstances such as those which obtained during World War Two.

This philosophical analysis of conscription in the modern democratic state has established, I think, a rational ground for our belief that conscription is justified at certain times. But in so doing we should realize that we are in a strange dilemma of sorts, for we have justified a practice which is in practical terms useless in a free society. I say it is useless because it is just when the sorts of conditions necessary to justify conscription obtain that it is too late for conscription to avert the catastrophe it was supposed to

prevent. And this is so simply because the nature of warfare in the world has changed drastically since conscription became a part of American policy in the Civil War. It no longer takes months to build and employ military force in the 20th Century. Foreign countries are only hours away by air, and modern technological developments have increased the accuracy and lethality of both conventional and nuclear weapons and weapons systems. The increased mobility and the large size of standing armies of potential adversaries make the practical usefulness of conscription doubtful at best if it can only be justified when the extreme is upon us. By the time an army of conscripted citizens could be trained and fielded to prevent the catastrophic, it would be well past the point when it could do any good. This is one reason that current American strategy calls for the regular volunteer forces, augmented and supported by reserve and national guard units, to go with what they have and try as best they can to win the first battle of the next major ground conflict wherever it might occur. There is unlikely to be time or room for any buildup and second chance, given the nature of modern warfare.

This prospect should suggest to us the logical task of governments in free democratic societies. Given the view that citizens who have done no wrong have the right to be free from coercive interference by the state, and that this right must be respected unless the most extreme justifying conditions obtain, it would seem that governments should illuminate clear-

ly the dimensions of the problem of security and maintenance of liberty for free democratic states and work hard to convince citizens that their voluntary support of and participation in the defense of the nation is not, perhaps, the best way to insure they keep the freedom and security they treasure, but the only morally acceptable way.

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