

Legalizing Selective Conscientious Objection

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Abstract. Currently, most nations make no legal provision for selective conscientious objection by potential conscripts or by military personnel who morally object to fighting a particular war. This article argues that nations for multiple moral reasons should grant both potential conscripts and persons already in the military the legal right to apply for and to receive recognition as selective conscientious objectors. Focusing on a nation's collective moral responsibility to permit selective conscientious objection complements arguments centered on individual rights and duties because acknowledging an individual's moral right to selective conscientious objection does not require a nation to recognize that right in law. Nations that authorize selective conscientious objection, from a Kantian deontological perspective, respect the moral autonomy of warriors and potential conscripts. From the perspective of Rawls' concept of moral equality, nations with an option for selective conscientious objection preserve moral equality between warriors, between warriors and civilians, and between conscientious and selective conscientious objectors. Selective conscientious objection, from the perspective of Mill's utilitarianism, benefits the common good by potentially ending an unprofitable war more quickly and avoiding the significant diminution of utility that disrespecting dissent causes. Even if one judges that none of the three arguments sufficiently justifies a nation establishing a provision for selective conscientious objection, the arguments are cumulatively persuasive. Finally, the article refutes several practical objections that prior opponents to selective conscientious objection have interposed against nations implementing provisions for selective conscientious objection.

Key words: selective conscientious objection, conscientious objection, conscription.

Currently, most nations make no legal provision for selective conscientious objection by potential draftees in the event of conscription or by military personnel who morally object to fighting a particular war. This article argues that nations for multiple moral reasons should grant both potential conscripts and persons already in the military (warriors) the legal right to apply for and to receive recognition as selective conscientious objectors. Focusing on a nation's collective moral responsibility to permit selective conscientious objection complements arguments centered on individuals, e.g., selective conscientious objection is a right inherent in a warrior's integrity (Robinson 2009) or freedom of conscience (Hammer 2002, 169), is a warrior's moral duty (Wolfendale 2009), or is not a moral option for warriors (French 2009, and Lucas 2009). Acknowledging an individual's moral right or duty to selective conscientious objection does not require a nation to recognize that right in law (Gans 2002, 44).

After defining key terms, the article's first three sections each present a new or substantially revised moral argument (i.e., a categorical imperative, moral equality, and utilitarian argument) for legalizing selective conscientious objection for potential conscripts and warriors. Even if one judges that none of the three arguments sufficiently justifies a nation establishing a provision for selective conscientious objection, the arguments are cumulatively persuasive. Finally, the fourth section reviews and rebuts practical arguments interposed against selective conscientious objection in prior debates. Emphasizing the practical alongside the philosophical is important because proponents of selective

conscientious objection often have failed to move even those policymakers who seem sympathetic to selective conscientious objection to act, for the latter have contended that creating a selective conscientious objection option entails an administrative nightmare (Wertheimer 2007, 64; Rohr 1971, 103-80).

Although the United States provides the primary context for analysis and source of examples, the article remains persistently international in perspective and relevance. Focusing on a specific nation simplifies the analysis by ignoring largely tangential differences between nations, e.g., some nations permit enlisted personnel to request a discharge before completing obligated service (Great Britain) and others do not (the U.S.). The U.S. provides a helpful context for analysis because neither the U.S. armed forces (U.S. Department of Defense 2007) nor its conscription law (U.S. Military Selective Service Act 1967) currently allows selective conscientious objection.¹ Using Israel, where the issue has recently received much attention, as the primary context risks introducing more heat than light into the debate because of the emotional issues involved in Israeli occupation of Palestinian territories and intrusions into Lebanon, a problem characteristic of selective conscientious objection debates (Capizzi 1994, 340). Additionally, several authors have relied on a false dichotomy between defending Israeli settlements outside Israel's borders or putting those settlers at risk of perishing (Israel Supreme Court 2002; Kasher 2002) when in fact those settlers could withdraw into Israel's internationally recognized borders. Indeed, the Israeli debate on selective conscientious objection has largely ignored the underlying issues (Enoch 2002, 253).

A conscientious objector (CO) opposes all war; a selective conscientious objector (SCO) opposes particular wars (Moskos and Chambers 1993a, 5). Moral reasons why a person may decide to become a selective conscientious objector include the person believing that:

The aims of a war are unjust, e.g., defending an unjust regime or odious political policy such as apartheid;

The war is fought in an immoral manner, e.g., consistently targeting civilians;

The war's evil effects will probably outweigh any good achieved. (Harries-Jenkins 1983, 73; Childress 1982, 201)

An option for selective conscientious objection constitutes an important indicator of a society's respect for freedom: "The ultimate test of a free society is the extent to which

1] Although the 1967 Selective Service Act addresses only conscientious objection based on religious belief, the U.S. Supreme Court has extended that option to those who hold sincere and meaningful objections, including atheists (Chambers 1993, 42) and upheld the constitutionality of the law (*Gillette v. United States*, 401 US 4370). A small Christian denomination, the Jehovah Witnesses, constitutes the only possible exception to U.S. policies barring selective conscientious objection. Witnesses teach their adherents that they should only fight in theocratic wars, such as the Battle of Armageddon that they believe the Christian Bible foresees (Revelation 16:12-16). In *Sicurella v. U.S.*, the U.S. Supreme Court upheld the right of individuals to claim CO status based being a Jehovah Witness, concluding that theocratic wars like the Battle of Armageddon are legally irrelevant (Childress 1982, 199).

individuals are able to carve out their own destiny on the basis of reflective choice. In shaping one's destiny, few options are more fundamental than the choice between killing and not killing." (Kaufman 1968, 262)

I. THE CATEGORICAL IMPERATIVE ARGUMENT

Although Immanuel Kant formulated multiple versions of the categorical imperative, he staunchly maintained that only one categorical imperative exists: "There is therefore but one categorical imperative, namely this: Act only on that maxim whereby thou canst at the same time will that it should become a universal law" (Kant 2001a, 178). His second formulation of the categorical imperative is particularly relevant to debates about selective conscientious objection: "So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only" (Kant 2001a, 186). According to Kant, the universality of human moral agency – an individual expressing his/her reason through autonomous action – justifies the categorical imperative to treat people always as ends and never as the means to an end (Kant 2001a, 159-60, 170, 185). Consequently, Kant regards moral autonomy as morality's supreme principle (Kant 2001a, 197). Loss of agency violates the categorical imperative and reduces a person to a means to an end (Kant 2001a, 187).

A nation with military conscription, whose potential conscripts lack a legal right to refuse to serve in what the individual believes to be an unjust war, deprives its civilian populace of their individual moral agency, thereby dehumanizing them (Tramel 2008). From a Kantian perspective, this constitutes heteronomy rather than autonomy, people subject to multiple laws rather than a single moral imperative (Kant 2001a, 190). Rational beings co-located within the space-time matrix reflecting on the categorical imperative should reach the same conclusion about what everyone must do (the universality of the imperative). However, a government that usurps this autonomy by giving those who are not COs only one option (i.e., go to war) deprives potential conscripts of the choice integral to moral autonomy, thereby dehumanizing them. This is not an issue in nations with an all-volunteer military, as citizens who object to a particular war may simply refuse to join the military during that conflict. However, in nations with conscription, the law should establish provision for both conscientious objection (arguing the case for this lies beyond the purview of this article) and selective conscientious objection. The existence of a selective conscientious objection option preserves an individual conscript's moral agency.

More broadly, a government that requires civilians who morally object to particular wars to serve in its military during such a war powerfully communicates that the government regards its citizenry en masse as the means by which to achieve the government's goals (Sturm 1983, 273). This collective dehumanization is in addition to dehumanizing individual objectors (Kant 2001a, 190). Collective dehumanizing, in time, can permeate a nation, as happened in Nazi Germany, the former Soviet Union, and elsewhere. The

Vietnam War evidenced a similar, though significantly less severe, dehumanizing in the U.S. Selective conscientious objectors fled to Canada, engaged in acts of civil disobedience, served in spite of moral objections, suffered criminal penalties for refusing to serve, and became lightning rods for those opposed to other, unrelated forces of social change, e.g., the civil rights movement. Cumulatively, these individual actions diminished the collective humanity of U.S. society: internally polarizing those for and against the war, increasing alienation toward and distrust of government, and spreading a perception that government was no longer by and for the people. Many of those effects linger today. Admittedly, a selective conscientious objection option would not have prevented the entirety of those problems. Yet the lack of an option for selective conscientious objection certainly magnified the Vietnam War's dehumanization of U.S. society, violating Kant's categorical imperative by reducing people – U.S. citizens in this case – to a means to an end.

Arguing that warriors should have an option for conscientious objection to a particular war poses more difficulties than arguing that civilians should have an option for selective conscientious objection. A nation rightly requires warriors to relinquish much of their personal autonomy while serving in the military (Friedman 2006, 81). Military effectiveness necessitates that warriors obey orders promulgated by their hierarchical chain of command. Subordinates perform duties when, where, and as assigned. Subordinates must follow strategies and tactics dictated by higher authority. A nation and its warriors accept these infringements of individual autonomy as necessary preconditions for maintaining an effective fighting force (McMahan 2004, 704). Attempts to respect individual autonomy by introducing an element of democracy (e.g., some U.S. militia units electing their officers at the beginning of the Civil War) proved less than satisfactory (incompetent leaders led to unnecessary fatalities and mission failure). Modern warfare's rapid pace and greater lethality make effective command and control even more critical as prerequisites to victory. In other words, individuals necessarily become a means to the end of national defense while serving in the military (Friedman 2006, 88).

However, many nations, international institutions, and ethicists concurrently expect warriors to maintain a degree of personal autonomy. Warriors in the U.S. have a legal as well as moral responsibility to refuse to obey an illegal or egregiously immoral order (Cook 2004, 63). Anyone who serves very long in the military is likely to receive an order the individual perceives as immoral. Most immoral orders require obedience because they are neither illegal nor egregiously immoral, e.g., ordering someone to work uncompensated overtime on an unimportant, non-urgent project. An egregiously immoral order causes significant unnecessary personal harm, infringes on basic human rights, or results in the destruction of valuable property. A warrior relies upon his or her reason to recognize illegal or egregiously immoral orders. Then the warrior must exercise autonomy, refusing to obey the illegal or egregiously immoral order.

The pragmatic realization that only warriors can prevent certain atrocities (e.g., the My Lai massacre), rather than any intrinsic respect for warriors, probably explains the eti-

ology of these expectations. One clear message of the post-World War II Nuremberg trials is that warriors cannot justify illegal and immoral acts with the defense that they were only obeying orders (Wakin 2000, 149-50; Orend 2006, 171-73). Clearly, life for warriors without this responsibility would be simpler, i.e., a warrior's moral duty would be to obey all orders.

In classic Just War terms, many nations, international institutions, and legal conventions expect warriors to exercise moral agency with respect to the *jus in bello* non-combatant discrimination and proportionality criteria. International and many national laws incorporate essential elements of the *jus in bello* standards. The massacre of civilians at My Lai by U.S. Army personnel was criminal because most (all?) of those killed were obviously non-combatants. Iraq's employment of chemical weapons in the 1980s Iran-Iraq war violated a widely accepted international definition of proportionality. The U.S. Army tried Lieutenant Calley and Captain Medina for the events at My Lai; Iraq's new government conducted a trial for former Iraqi government officials who authorized using chemical weapons against Iran. Alleged perpetrators of war crimes in Asia, Africa, and Europe have also faced (or are facing) war crime trials. Holding warriors accused of war crimes accountable and establishing justice for the victims of those crimes remains far from perfect. Nevertheless, a growing international consensus about the need for and importance of the *jus in bello* standards is emerging, a standard that presumes individuals do not completely surrender their moral autonomy upon entering military service. The larger community – national and international – becomes less safe, less just, and less moral when warriors become only means to ends. Persons who become selective conscientious objectors because they believe a war is being waged immorally (the second reason for becoming an SCO) reinforce the expectation that warriors will refuse to obey illegal and egregiously immoral orders.

Nations and the community of nations should also expect warriors to exercise moral autonomy with respect to Just War Theory's *jus ad bellum* criteria (Lynd 2011). This argument updates Just War Theory's classical formulation and requires two important caveats. Just War Theory developed prior to contemporary representative democracies and the information age: "Just war theory is unique in contemporary practical ethics in two respects: it is widely and uncritically accepted and differs very little in content from what Western religious thinkers have believed from the Middle Ages to the present" (McMahan 2004, 731). In non-democratic societies, a follower's role and responsibility are more circumscribed and differentiated than that of rulers. Followers may express doubt about the morality of a war, but the decision to go to war belongs exclusively to the ruler and just war theorists have reasonably absolved followers of any moral guilt for fighting in an unjust war (Walters 1973, 201-11; McMahan 2004, 705). Rulers also often had access to fuller and more accurate information than did followers, theoretically enabling rulers to make better decisions (McMahan 2004, 703-4).

Kantian arguments against granting warriors the option for selective conscientious objection, like the one Fiala makes (2008), incorrectly presume those conditions remain

true. Representative democracy – government of and by the people through elected representatives – shares some measure of responsibility for government decisions between those who hold elected office and the electorate. Warriors retain the privilege and responsibility of voting. The advent of the information age provides the electorate more timely and fuller access to knowledge of world events (Wolfendale 2009, 134). Indeed, during both Gulf Wars U.S. government officials relied on public sources such as CNN and the Internet to obtain more timely and accurate information than the officials could obtain from classified government sources. Warriors may have first-hand knowledge or direct access to pertinent information that others cannot access or receive only second hand. In other words, neither of the rationales for treating warriors as a means to an end with respect to *jus ad bellum* criteria remains valid in a modern representative democracy. This coheres well with Kant's concept of "the will of every rational being as a universally legislative will" (Kant 2001a, 188).

The important caveats for granting warriors a right to selective conscientious objection are that warriors must object that a war is unjust as soon as possible and must remain in situ until the military accepts an individual's request for discharge. The soldier cannot wait until ordered to make a frontal assault upon a heavily fortified enemy emplacement and the sailor cannot wait until five minutes before a ship deploys. The timing of those requests suggests a lack of courage or other ulterior motive rather than the exercise of reason and moral agency. Instead, a person in the military who objects to a particular war has a moral responsibility to act upon the objection immediately after reaching that assessment. This reasonably mirrors the U.S. military's expectation that a warrior who becomes a conscientious objector to all war will immediately act upon his or her new belief. The requirement to remain in situ balances honoring the individual's duty to serve with preserving the individual's status as an end not merely a means to an end. During the U.S. Civil War, some U.S. warriors who aligned themselves with the Confederacy remained in situ until their resignation from the military was accepted, honoring their fiduciary responsibility while preserving their moral autonomy. Other personnel simply walked away from their post or turned over Union military assets to Confederate forces (Avins 1962, 431-61). These breaches of fiduciary responsibility clearly violated Kant's first formulation of the categorical imperative because reliably and consistently fulfilling contracts is a necessary element of human interaction. Unlike the usually immediate consequences associated with an immoral order that violates *jus in bello* standards, the warrior who objects to a particular war is unlikely to receive an order requiring decisive, personal participation in that war before the military can process his or her request for discharge as a selective conscientious objector. Establishing an option for selective conscientious objection within the military will not significantly degrade fighting effectiveness nor undercut the efficacy of the chain of command's authority but will increase respect for the moral agency of warriors and civilians.

Kantian arguments against selective conscientious objection may also misinterpret Kant's position on the primacy of the categorical imperative over not only individual

choice but also over national law and policies. Kant recognized that a warrior's duty to obey orders potentially conflicts with the duty the categorical imperative imposes (Kant 2001b, 462). He offers an example of this, a war with unjust aims, the first of the three reasons listed in this article's introduction why a person might become a selective conscientious objector (Kant 2001b, 438). In other words, Kant implicitly maintains that warriors should morally object to a war waged primarily for the unjust aim of implementing regime change. Genocidal regimes in the last century certainly call the validity of Kant's example into question. Nevertheless, the very existence of this example emphasizes that in Kant's thinking a warrior's duty defined by the universal categorical imperative overrides the warrior's duty to follow orders.

In sum, denying military personnel and potential conscripts the right of selective conscientious objection presupposes that human nature is incapable of determining the right course of action. In doing so, a nation unnecessarily dehumanizes its citizenry and military by needlessly depriving them of moral autonomy to the detriment of the individual and the global community (Kant 2001b, 467; Rietkerk 2008).

II. MORAL EQUALITY ARGUMENTS

Moral equality in this article denotes equal respect for the basic human liberty of acting upon one's own sense of right and wrong. This is an admittedly incomplete definition, derived from John Rawls' broader definition (2001, 28, 113). This narrow definition focuses on the aspect of moral equality pertinent to the issue of selective conscientious objection. According to Rawls, only the protection of other basic liberties justifies the injustice that abrogating moral equality causes (2001, 23, 111), e.g., conscription to defend a nation's security (1999, 333-34).

Rawls defends a warrior's responsibility to disobey illegal or egregiously immoral orders, i.e., selective conscientious objection by military personnel with respect to the *jus in bello* criteria (the second reason a person may become a selective conscientious objector) (1999, 333). He also explicitly supports the right of potential conscripts to become selective conscientious objectors exempted from conscription because they object to the aims of a particular war (the first reason a person may become a selective conscientious objector) (1999, 333-35; 2001, 47). In his discussion of selective conscientious objection, Rawls concludes: "What is needed, then, is not a general pacifism but a discriminating conscientious refusal to engage in war in certain circumstances. ... Given the often predatory aims of state power, and the tendency of men to defer to their government's decision to wage war, a general willingness to resist the state's claims is all the more necessary." (1999, 335)

A nation granting potential conscripts and active duty personnel an option for selective conscientious objection respects their moral equality without posing a conflict to the basic liberties of other people. This argument addresses three moral equality issues with respect to selective conscientious objection:

Authorizing selective conscientious objection for military personnel will eliminate one unjustifiable cause of moral inequality among some nation's warriors;

Authorizing selective conscientious objection for military personnel will eliminate one unjustifiable cause of moral inequality between civilians and warriors in nations with all-volunteer armed forces;

Authorizing selective conscientious objection establishes moral equality between a nation's universal and selective conscientious objectors.

First, not granting all warriors an explicit option for selective conscientious objection creates an unjustifiable moral inequality between officers and between officers and enlisted personnel. Officers in many militaries may submit a resignation at any time. In general, militaries prefer officers who want to serve. An unmotivated or negatively motivated leader, rarely, if ever, leads as well as a motivated leader. In battle, this may cost a nation the lives of warriors, perhaps even a defeat. However, no requirement exists for the military to accept an officer's resignation. Indeed, militaries routinely deny an officer's request to resign when the officer has an obligated service commitment connected to education, training, promotion, transfer, etc. Although a military may have the discretion to waive that obligation, militaries are more prone to accept a resignation from one of the many officers who serve without a current obligation than from an officer with obligated service. Enlisted personnel, as in the U.S., may have no option to resign or to request discharge for any reason, including selective conscientious objection to a particular war. The difference between officer and enlisted dates back to an era when officers and enlisted personnel came from different social classes, often with different levels of education, a distinction preserved in U.S. by enlisted personnel signing a contract to serve for a specified period. Since the advent of universal education and the extension of the voting franchise to all citizens, arguments that officers are better prepared to make moral judgments than enlisted personnel have lost their cogency and force (Rawls 2001, 87). By establishing a selective conscientious objection option for all warriors, regardless of rank, nations avoid or eliminate an anachronistic and unjustifiable moral inequality between officers and enlisted.

Second, nations like the U.S. with all-volunteer armed services respect warriors who have conscientious objections to a particular war less than the nation respects civilians who hold the same selective conscientious objection (Tramel 2008). The civilian can act upon his or her moral conclusion by refusing to join the military during the conflict. Although the U.S. may accept protest resignations from some officers who object to a particular war, no option for discharge as a selective conscientious objector exists for enlisted personnel and for officers whose resignation the government refuses. Expecting even the most prescient individual to anticipate every objectionable war during his or her service before entering the military is unreasonable. Thus, the absence of an option for discharge as a selective conscientious objector creates an inherent moral inequality between civil-

ians free to follow the dictates of their conscience and warriors duty bound to obey the orders of a government whose policies they may abhor. Rawls rightly argues that a nation should treat all of its citizens equally unless doing so jeopardizes basic liberties, which is clearly not the case with respect to selective conscientious objection (2001, 87, 132).

Third, in nations that permit conscientious objection because an individual objects to all war, not allowing an option for selective conscientious objection creates a morally unjustifiable inequality between people who subscribe to different belief systems (Rawls 2001, 20). This distinction is especially egregious during conscription. For example, the U.S. generally approved twentieth century requests for exemption from conscription by Quakers who adhered to their Church's teaching of absolute pacifism. Meanwhile, the Roman Catholic, Lutheran, or Anglican who sincerely adhered to his Church's Just War teachings, who concluded that a particular war, such as the Vietnam War, was immoral, and who applied for exemption had that request denied because the U.S. did not exempt selective conscientious objectors. Such individuals were then eligible for conscription. In short, U.S. government policy favored Quaker dissent over dissent from Roman Catholics, Lutherans, Anglicans, and others who dissented based on Just War Theory. This morally privileged Quakers and others who objected to all war. This policy, intentionally or unintentionally, ironically embodied a lack of respect and moral equality for the selective conscientious objector vis-à-vis the universal conscientious objector even though the SCO may develop his position from universal principles that the law recognizes, e.g., moral principles for waging war (Childress 1982, 205-6; Capizzi 1996, 345).

III. UTILITARIAN ARGUMENTS

According to John Stuart Mill, utilitarianism argues that the morally correct action is that which best promotes the common good (2002b, 244). Mill thus seeks to avoid the allegations of hedonism sometimes leveled at utilitarians, insisting that an individual should act not only for personal benefit but also for the public good when he or she has the power to do so (252). He defines utility "in the largest sense, grounded on the permanent interests of man as a progressive being" (2002a, 13). Actions that promote utility (the common and individual good) are right; those that diminish utility are wrong (Mill 2002b, 239). Selective conscientious objection promotes the communal good both by potentially allowing dissent against a war in which the costs appear to outweigh gains (the third reason for becoming a selective conscientious objector) to end that war more quickly and by avoiding the significant diminution of utility that results from disrespecting dissent (Wolfendale 2009, 135; Foster 2009).

Quantifying the effect of selective conscientious objection on terminating a hypothetical war is impossible. The effect may be so slight as to minimize the weight assigned to this argument since both citizens and soldiers generally have reasons for supporting a war, at least in its initial stages (McMahan 2004, 705-6). Citizens generally want to trust an elected government to act in the nation's best interests; military personnel usually want

to believe that any war they fight is just. The Korean War, for example, was unpopular in the U.S. when waged. Although the war's lack of popularity resulted in a ten-fold increase in the number of COs, growing from .15% of conscripts in both world wars to 1.5%, that remained a still relatively insignificant number (Chambers 1993, 39). On the other hand, not all of the evidence about conscientious objection's influence is negative. During the Reagan presidency, U.S. law required eighteen-year-old males to register for a possible resumption of the draft. At least half a million failed to register. There were no prosecutions. This passive protest added momentum to ending mandatory registration.² The growing numbers of COs in both the Vietnam War and the first Israeli invasion of Lebanon (1982-1985) may have expedited the conclusion of both wars (Peri 1993, 150-56). The potential for a war's lack of popular support expressed through selective conscientious objection helping to pressure the government to end the war rapidly is real, if unquantifiable and at times small (Goldberg 2006, 70; Knapp 2009; Enoch 2002, 244).

The number of conscientious objectors tends to increase with increasing social opposition to a particular war (Chambers 1993, 39). Rampant militarism in many nations, including the U.S, heightens the importance of creating a selective conscientious objection option (Bacevich 2005, 2). The conditions under which a person may qualify as a selective conscientious objector will be one factor in determining the importance of selective conscientious objection for ending a war sooner. In Britain, for example, persons can seek selective conscientious objector status when "materially affected by a specified stimulus." These include belief that the armed forces no longer defend their interests (e.g., in Northern Ireland where some were convinced that the Army did not protect) and belief that the military is a divisive element within society (e.g., socialists who criticized Britain's participation in WWI) (Harries-Jenkins 1983, 74-75). Similarly, but probably less likely, an option for selective conscientious objection might cause a nation's leaders to consider more carefully any future war or military deployment (Ruesga 1995, 68), perhaps even undermining their ability to wage war (Friedman 2006, 91; Foster 2009, 390).

Respecting the right of individuals to express dissent through selective conscientious objection increases a nation's utility. Dissent by a selective conscientious objector is the personal and sometimes political expression of moral ideas: "the objector is an 'officer of society' giving witness to the priority of peace as a political virtue and symbolizing war, even in its most justified forms, is a morally ambiguous endeavor" (Sturm 1983, 276). Representative democracies invest ultimate responsibility for political decisions in the electorate; if sufficient numbers of military personnel or future conscripts became SCOs to diminish the nation's ability to wage a particular war, then perhaps the government lacked justification for the war or for fighting it with conscripts (Rawls 1999, 335; Malament 1972, 382). Rigorous controls, as exist now in the U.S. for officially recognizing

2] Most of those who failed to register were not conscientious objectors opposed to all war. They simply wanted to end the draft, were too lazy to comply with the law, or were ignorant of the requirement to register. (Ginerich 1983, 135-43)

COs, can ensure that those recognized as SCOs are in fact motivated by moral objections instead of other concerns (McMahan 2004, 707). Granting individuals the opportunity to express dissent through selective conscientious objection is consistent with the idea that “respect for personal integrity is a central principle of any just legal and political order” (Sturm 1983, 276; also, Robinson 2008 and Cohen 1968, 276; more broadly, Mill 2002b, 297). From Mill’s utilitarian perspective, a just political order is a system that treats all equally; doing otherwise diminishes utility (Mill 2002b, 298-300). An option for selective conscientious objection is the only way a nation can treat both a war’s proponents and opponents equally, allowing each to act in accordance with his or her views.

Conversely, the lack of a selective conscientious objection option diminishes a nation’s utility. Conscripting an individual who objects to a particular war violates personal integrity, diminishing the conscript’s sense of worth. Because of the military’s self-image as an honorable profession, an even greater diminution of utility occurs when a warrior who objects to fighting a particular war must nonetheless fight that war (Wolfendale 2009; Robinson 2009, 46). In either case, compelling an individual to kill in spite of the person’s moral objections constitutes an especially “inexcusable form of human cruelty” (Ruesga 1995, 71), thereby diminishing the collective utility of that nation.

Selective conscientious objectors who refuse to serve by committing acts of military, criminal, or civil disobedience diminish a nation’s utility by eroding its democratic institutions and rule of law while jeopardizing, if the individual is in the military, her or his unit’s safety, morale, and ability to accomplish its mission (Kasher 2002, 174-78). Legalizing an option for selective conscientious objection obviously reduces these problems substantially.

Furthermore, the violation of personal integrity through coerced military service and the resultant diminished sense of self-worth often contribute to an individual’s moral desensitization. Admittedly, the lack of an option for selective conscientious objection will rarely result in complete moral desensitization. However, for individuals whose personal development locates them on the cusp between general patterns of acting morally or immorally, requiring the person to compartmentalize or otherwise override moral objections to a particular war may very well constitute the tipping point that pushes the balance of their actions from moral to immoral. This same individual subsequently confronted with an illegal, egregious immoral order, as at My Lai, may then obey that order. Before dismissing this line of reasoning as too hypothetical or unlikely, recall the youthfulness and immaturity of many military personnel and potential conscripts. Conversely, the existence of an option for selective conscientious objection promotes moral discourse within the military, encouraging moral development within the military and the nation. Although only a minority of personnel may inquire why a particular war is moral or immoral, and the criteria for distinguishing between the two, that person may subsequently engage others in that discourse thereby contributing to their moral development. During the Vietnam War, Paul Ramsey, concluded that this improvement from an option for se-

lective conscientious objection, in total, might be substantial enough to improve the level of political discourse in the U.S. (1968, 35).

The major adverse consequence for a nation that has a selective conscientious objection option appears to be that the dissent selective conscientious objection generates may badly fray the nation's social fabric. Given the historically small number of COs in all nations, existence of an option for selective conscientious objection will rarely produce a sufficient magnitude of SCOs to tear the social fabric seriously – unless the war is widely perceived as immoral in which case the dissent may prove beneficial. Israeli reservists who refused to mobilize during the first Lebanon war and first Intifada (1987-1994) did not tatter their society in a nation in which Army service is the “entrance ticket to Israeli society” (Linn 2002, 60).

Other potential disadvantages seem slight or remote:

In most cases, the level of noncooperation that might reasonably be expected in an unjust war would be unlikely to incapacitate or imperil the viability of just democratic or military institutions. Indeed, it seems that those who refuse to fight in an unjust war might in the long term actually benefit their country's institutions by setting a precedent that would help to deter those in positions of authority within the institutions from initiating further unjust wars. It is also possible that those who refuse to participate in an unjust war could prompt the institutions to shield themselves from the instability that such challenges can cause by adapting themselves to anticipate and accommodate instances of conscientious refusal to fight. The enhanced institutional flexibility would almost certainly be healthy and would presumably involve more generous provisions for conscientious refusal to fight. It also seems unlikely that allowing or even encouraging conscientious refusal would seriously impair a country's ability to fight just wars. ... Nor is it likely that more liberal provisions for conscientious refusal would prompt malingering in the guise of moral scruple. (McMahan 2004, 705-6)

The utility to a nation of selective conscientious objection, based on the limited evidence that exists and given the difficulties in hypothesizing about the impact of future events (Ruesga 1995, 68), seems to outweigh any disadvantage.

IV. PRAGMATIC ARGUMENTS AGAINST

Four additional arguments against allowing selective conscientious objection warrant brief consideration: the practicality of administering selective conscientious objection, the effect of selective conscientious objection on fighting effectiveness, the alleged impossibility of differentiating political and moral issues, and the inappropriate entanglement of government with religion. These arguments do not represent, *prima facie*, ethical objections to selective conscientious objection. However, opponents relied upon these arguments to block 1967 efforts to create an option of selective conscientious objection in the U.S. conscription system (Edwards 1972, 120). Arguing for the practicality of establishing a legal option for selective conscientious objection necessitates rebutting these four arguments, exposing them for the “straw men” that they are (Rohr 1971, 181).

Administering an option for selective conscientious objection, within a conscription system or the military, poses no greater challenge than administering an option for conscientious objection within the same system (Malament 1972, 380; Paz-Fuchs and Sfar 2002, 138).³ The ability of some nations to provide an option for selective conscientious objection suggests that all nations should be able to follow suit. The British, notably, even at their moment of greatest peril during World War II offered potential conscripts an option to seek exemption as an SCO (Malament 1972, 384-85; Brock and Young 1999, 45-47, 156-64, 166). With only sixty-seven thousand World War II applicants for CO/SCO status, the existence of an option for selective conscientious objection did not create an unmanageable burden for Britain nor did it jeopardize national security (Malament 1972, 383-84). Furthermore, the option of selective conscientious objection did not adversely affect the morale or effectiveness of British warriors (Childress 1986, 119; Moskos and Chambers 1993b, 204). Given that between 2002 and 2010, the U.S. military had roughly 600 applicants for CO status (Vitello 2011), establishing an option for SCO status seems unlikely to create an unmanageable administrative burden or to diminish combat effectiveness significantly.

Concomitantly, alleging the impossibility of differentiating between political dissent and moral objection in the case of selective conscientious objection is a red herring that deflects attention from an effort to suppress dissent. Those evaluating the claims of an applicant for SCO status must focus on the real issues, i.e. the depth and cogency of the applicant's moral objection to a particular war. An applicant's political dissent may indicate, in fact, the degree of sincerity with which the applicant holds the underlying moral objections (Childress 1982, 202). Obviously, applicants for either CO or SCO status may cite moral objections when their actual motive is cowardice, avarice, emotional entanglements, etc. Germany, as a measure of sincerity, requires conscripts granted CO status to serve a longer period in unpaid alternative civilian service than paid military conscripts serve (Kuhlman and Lippert 1993, 101-3). Additionally, the social cost that COs and SCOs usually pay (Chambers 1993, 23-26, 35-36, 43-46; Kuhlman and Lippert 1993, 103-4; Peri 1993, 154-55) helps to deter the insincere from seeking that status, whether in or out of the military. Attempting to stifle political dissent by opposing the existence of an option for legal selective conscientious objection violates basic principles of representative democracy (Murray 1968, 22-23).

Moral objection to a particular war may originate from philosophical analysis or from religious belief. Either offers a paradigm clearly distinguishable from purely political dissent. Harvard philosopher Michael Walzer's *Just and Unjust Wars* (1977) is an enduring classic that offers the primary non-religious basis by which an individual can assess the morality of particular wars (Foster 2009, 392). Religious objections to a particular

3] Ramsey and Israel's Supreme Court disagree without providing explaining their rationales or showing problems experienced by nations that currently permit selective conscientious objection (Ramsey 1968, 31, 34; Israel Supreme Court 2002).

war take diverse forms. Christians often rely upon a Christian version Just War Theory (Ramsey 1983, 94, 124-37; Edwards 1972, 118). In addition to the Roman Catholic Church, Anglicans, and Lutherans, diverse groups including the American Baptist Churches, the United Presbyterian Church, the U.S. National Council of Churches, and the World Council of Churches all support selective conscientious objection that relies upon Just War Theory to assess the morality of a particular war (Finn 1968, vii, x). Some Muslims believe that Muslims should not wage war against other Muslims (Kelsay 2007, 101; Koran 9:5). A Muslim might therefore legitimately seek SCO status because a particular war will involve fighting against other Muslims. Judaism teaches that only defensive wars are moral (Goldberg 2006, 35). A Jew might therefore object to fighting a war that he or she believes is not required for national defense (Peri 1993, 150-56). Free exercise of religion, to be meaningful, must allow individuals not only freedom of belief but also reasonable freedom to act upon those beliefs. Contending that an option for selective conscientious objection excessively entangles government with religion is not only false but also has the effect, hopefully unintended, of unnecessarily limiting religious freedom while, as already noted, creating moral inequality between objectors to all war and selective conscientious objectors (Capizzi 1996, 339).

This article has argued that nations have a moral obligation to establish a legal option for selective conscientious objection for both military personnel and civilians eligible for conscription. Persons may rightly object to a particular war because they believe the war's aims immoral, the war's conduct immoral, or the war's costs to exceed its benefits. Selective conscientious objection affords such objectors a meaningful opportunity to voice those objections and, with government concurrence, to refrain from direct participation in a morally repugnant war. Nations that create an option for selective conscientious objection, from a Kantian deontological perspective, honor and preserve the moral autonomy of warriors and potential conscripts. From the perspective of Rawls' concept of moral equality, nations that permit selective conscientious objection importantly maintain moral equality between warriors, between warriors and civilians, and between a CO and a SCO. Finally, selective conscientious objection, from the perspective of Mill's utilitarianism, benefits the common good by potentially ending an unprofitable war more quickly and avoiding the significant diminution of utility that disrespecting dissent causes. The several practical objections prior opponents to selective conscientious objection have raised all lack validity and are thus do not pose obstacles to nations establishing an option for selective conscientious objection. Moral arguments from a national perspective conclude, as do moral arguments from an individual's perspective, that selective conscientious objection is a moral imperative, underscoring the importance of nations providing warriors and conscripts with an option for selective conscientious objection.

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