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Decisions to abrogate personal liberty: ethics of conscription in the United States

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The Ethics of Conscription in the United States

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Abstract

The military draft in the United States has been a controversial public policy in the past. Conscription has been used for six different wars; each draft has differed from the others because of the circumstances of the war for which it was enacted and because of the way in which it was implemented. Today, because of the wars the United States is fighting in Afghanistan and Iraq, a new public policy has developed, called stop loss. Stop loss affects only those people who have already served in the military, forcing them to remain in military service after the originally contracted date of their retirement.

This paper looks at the draft historically and at the justifications posed for each draft in order to compile a set of criteria to judge when conscription in democracy is ethical. These principles are then applied to the current stop loss policy to determine whether or not it is ethically sound. The conclusion holds that stop loss is not an ethical public policy.

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Introduction

Wars are the most complicated and destructive occurrences in the history of the world. They destroy civilizations, economies, infrastructures, and lives. They alter courses of events, and they bend and morph individuals and institutions permanently. Wars devastate. And yet it is generally not the decision makers in war, not the politicians, not the leaders who pay the greatest price for their choices and reactions. The weight of war falls upon the shoulders of civilians. Often at great cost, sometimes at the ultimate cost of life, the common people pay. For this reason, for the cause of regular men and women, war and war policy must be examined scrupulously and in great detail. Death and destruction cannot be taken lightly, and responsibility must lie heavily on policy makers. Who is responsible and why matters a great deal. The safety, life, and liberty of people rest upon those decisions.

The draft, involuntary and forced service of civilians in the armed services, is in many ways the ultimate war policy. The United States, where respect for the rights to life, liberty, and the pursuit of happiness are the founding tenets, has, since the Civil War, conscripted its citizens, denying them those liberties in the name of the preservation of the nation. The legitimacy of draft policies is a question with both legal and ethical implications and, in important ways, stands at the nexus of ethics and politics, meriting careful scrutiny.[1]

Since conscription was first employed by the United States government during the Civil War, a formal draft has been issued during World War I, World War II, the Cold

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[1] Dennis Thompson, *Political Ethics and Public Office* (Cambridge: Harvard University Press, 1987), 11.

War and Korean War, and the Vietnam War. Today, though no draft is in place, all males are required to register at the age of eighteen in the event that a draft is needed.

For as long as the draft has existed in the United States, it has also been questioned and challenged. The appropriateness of the draft and the conditions under which one can remove oneself from the draft has been argued in the legal system in cases like *U.S. v. Seeger*, 380 U.S. 163 (1965), and *U.S. vs. Walsh,* 546 U.S. 888 (2005), each of which legitimized the concept of conscientious objection and extended C.O. to non-believers. It has also been debated as an ethical dilemma.   Is it right to force free citizens into compulsory military service without any recourse? Thus far the United States government has acted on the presumption and legal premise that conscription is both legal and morally permissible.

Today, we are faced with a new type of draft – one that may prove even more ethically complex than its predecessors. In the wake of the September 11, 2001, terrorist attacks, President Bush issued an executive order that allows the Pentagon to implement a "stop loss" policy on military personnel whose contracts are about to expire. Those who are stop lossed can be held active in the service, for periods potentially extending several years (U.S. Code: Title 10, Subtitle E, Part II, Chapter 1209, §12305). To date, an estimated 80,000 troops have been stop lossed.[2] Many of these are reservists and guardsmen and women who are losing their civilian jobs because of their extended absences from the U.S. and having their family lives disrupted and strained. With no end in sight to the military engagements in which the United States is currently involved and with the great shortage of troops and limited numbers of recruits to the armed forces, it is

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[2] Kirsten Scharneberg, "Battle rages over 'stop loss.'." *Newsday* :[NASSAU AND SUFFOLK Edition], June 3, 2007, Combined Editions. http://www.proquest.com/. January 8, 2008.

likely that even more men and women will be stop lossed in the months and years to come.

Many of the consequences of this policy have not yet been realized. The issues raised by drastically interrupting the lives of tens of thousands of men and women will indeed become concerns for which all of society bears responsibility. The specific question that arises out of the stop loss policy is whether or not the government can force its citizens into military service, regardless of whether they had initially enrolled voluntarily. This basic question has surfaced during each of the previous American drafts. Given the present policy, and the situations in Afghanistan and Iraq, I intend to examine the ethical principles of the draft, in theory and in the historical context, in order to explore ethical considerations of today's stop loss policy.

I. Issues and Questions to be Addressed

The first issue to be addressed is the matter of the relationship between the citizen and the state. If one deems that a government functions as a patriarchal institution in which the people must abide by its "benevolent" laws and policies because they are not sovereign enough to make their own choices, the argument against the draft does not exist. The government can, under these circumstances, decide when the good of the country is best promoted through a draft and implement it based upon the assumption that citizens will end up better off. One example of a type of rule based on this principle would be a monarch. In cases of monarchy, it is assumed by the king that he knows what is best for "his" people – indeed he claims to have divine rights. This introduces an

entirely new set of ethical questions, though because they do not pertain directly to the

military draft in a democratic society, I will not discuss them.

One could also approach the concept of statehood as a contract between the

people and the government itself, much in the vein of Jean Jacques Rousseau. He wrote

in *The Social Contract* in 1762:

> What then is the government? An intermediate body established between subjects
> and the sovereign for their mutual communication, and charged with the
> execution of the laws and the preservation of liberty, both civil and political.[3]

The citizens create the government, and in return it serves their purposes. This

relationship is found in representative democracies where citizens directly choose certain

people to represent them and their interests in the national issue arena. In this sense,

democracies are agreements where one's vote is an understanding with another where the

elected person speaks and acts in a favorable way for the voter in exchange for political

support and respect for the law. This theory is further supported by the U.S. Constitution,

which identifies the people as the most important aspect of American governance and

leaves all powers not directly given to the Legislature, the Executive, or the Judiciary to

the states or the people.

Given that this relationship is contractual, rather than patriarchal, how far does

that contract go? It is easy to say that a citizen must give up a small portion of his/her

capital for the improvement of society, as with taxes, but is being forced to give up one's

life overstepping the bounds of the state? Does making a citizen give up the rights

promised to him in the contract destroy the legitimacy of the state itself? Or does

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[3] Jean Jacques Rousseau, *The Basic Political Writings: The Social Contract*, trans. Donald A. Cress
(Indianapolis, Indiana: Hackett Publishing Company, 1987), Book III, Chapter I, 173.

conscription merely require some restriction of liberty and adoption of risk, much like taxation?

Another issue pertinent to the theory of the political contract is whether or not the terms of the contract apply to today's citizens – for they did not choose the system of governance under which they live but rather inherited it from the country's forefathers. However, as people achieve citizenship, they inherently choose to accept the rights that come with that claim including certain responsibilities to their fellow citizens. In doing so, people simultaneously accept particular obligations as well. Therefore, it is safe to say that in a democratic society such as the United States, citizens have both rights and responsibilities. This principle will be assumed throughout the remainder of the paper.

The second issue is over the ethics of war and whether or not the circumstances of war matter. Clearly, it would be unreasonable to assume that all wars must be judged equally. Though the devastation may be equivalent, it would be foolish to say that all wars are uniformly unethical and that, for example, wars of defense are no different from wars of aggression. One can apply Just War theory in order to determine the morality of a war. Looking particularly at Michael Walzer's rules, the morality of each American war in which there was a draft can be examined. Simplifying a complex analysis, I look at the criteria Walzer posits for a just war:

- just cause
- appropriate amount of intervention
- high chance of success
- last resort
- public debate.

The justness of the war would then be necessary, though not sufficient, condition to determine the justness of the draft. If the war does not meet the criteria of the Just War

theory, then a draft – which serves to augment that immoral endeavor – is instrumentally unethical.

The third and last issue is of the ethics of conscription in war. Conscription is perhaps the easiest and most pragmatic avenue for leaders to take when in need of a labor force, but so too was slavery. Easiest does not mean best, and it certainly does not necessarily mean just. In addition to the conditions of the morality of the war, one must address the amount and depth of the knowledge of the citizens in the circumstances of the draft which Michael Walzer touches upon in *Just and Unjust Wars*.

- While citizens in a democratic society choose the leaders who are responsible for war policy, whether or not they are given full disclosure to information is pertinent to their choices. The debate over conscription must be open and public so that citizens are fully aware of the risks and benefits. Citizens – or their representatives – must be a part of the decision making process.

- There must be significant consensus over the just cause of the war. Only then can the draft be considered as an option.

- Conscription must not be the easiest way, but rather the *only* way in which a war can be waged and won. If there are other options, they must be pursued to their fullest before drafting citizens is even considered.[4]

II. Literature Review and Theory

The modern military draft has been subject to debate since it first began during the French Revolutionary War. Many of the greatest philosophers and human rights

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[4] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, Inc., 1977), 300.

activists have spoken out about the practice of conscription and the great sacrifices that it requires of citizens. Indeed, there are strong ethical arguments that cover a wide range of principles both for and against the draft. Most, if not all, of these arguments are absolutist. Either the draft is always ethical, or it is never ethical. It is my belief that this is not so. If the draft were always ethical, civil liberties would be destroyed. If the draft were never ethical, then the nation could be destroyed. Rather, conscription in democracy can be moral, but only when it satisfies very certain and particular circumstances and principles. The absolutist positions, which are discussed below, are relevant to theory, but only in very limited ways to actual practice. Therefore, I have chosen to apply these theories to historical cases of the draft in the United States in order to determine how ethical theory meshes with practice. Functionally, this approach should demonstrate how and why ethics can and should be applied to the military draft in a democratic society.

In the following section, I will consider the absolutist arguments that have been made with respect to the draft. But, because the ethics of a draft are dependent upon the war for which it was enacted, it is necessary to look first at the ethical theory of just war.

Just War Theory

The premier political and social scientist in the field of ethics, Michael Walzer, has written extensively on what makes wars just or unjust. Walzer's criteria for Just War falls under two categories. First is *jus ad bellum,* and second is *jus in bello*. The first refers to the reasons for going to war. Admittedly oversimplifying Walzer's complex analysis, we see that the cause must be just, that the war must be pursued with the correct

amount and type of intervention, that a nation going to war must have a high probability

of success, and the war must be a last resort. The second set of criteria refers to the

method in which the war is waged. The military must only attack enemy combatants,

must respond with proportional force and no more, and must act in terms of military

necessity. Walzer writes:

> War is always judged twice, first with references to the reasons states have for
> fighting, and secondly with reference to the means they adopt. The first kind of
> judgment is adjectival in character: we say that a particular war is just or unjust.
> The second is adverbial: we say that the war is being fought justly or unjustly.…
> It is perfectly possible for a just war to be fought unjustly and for an unjust war to
> be fought in strict accordance with the rules.[5]

The third aspect of just war theory is that war is always just if its purpose is to come to

the defense of an attacked nation. "Aggression is singular and undifferentiated crime

because, in all its forms, it challenges rights that are worth dying for."[6] If the criteria for

just war are achieved, then the war can be considered ethically permissible. As this paper

will attempt to demonstrate, only when a war is just can the draft possibly be just.

Nevertheless, proponents of conscription argue differently.

The Case for the Draft: Utilitarianism and Consequentialism

The most basic and perhaps compelling argument for conscription is the principle

of utilitarianism. John Stuart Mill in his, *Utilitarianism*, defines utilitarianism as:

> The creed which accepts as the foundation of morals, Utility, or the Greatest
> Happiness Principle, holds that actions are right in proportion as they tend to
> promote happiness, wrong as they tend to produce the reverse of happiness. By
> happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and
> the privation of pleasure.[7]

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[5] Michael Walzer, *Just and Unjust Wars*, *21*.
[6] Michael Walzer, *Just and Unjust Wars*, 53.
[7] John Stuart Mill, *Utilitarianism* (London: Longman, Green, Longman, Roberts, and Green Publishing,
1864), 9-10.

In the case of the draft, this definition means that preserving the majority of citizens'

lives and therefore society as a whole far outweighs maintaining the liberty of the relative

few. Happiness, according to Mill, is not pure physical enjoyment but a form of self

realization and societal gain. Virtue is not just goodness, but rather takes on the classical

meaning of duty to one's fellow citizens and the state. Therefore, Mill believes that it is

not very often that one is asked to give up a significant portion of his or her liberty for the

benefit of society, but when one is, that person has the moral responsibility to do so. By

acting ethically on behalf of the state, the individual indeed accomplishes his or her civic

duty, which will then cause betterment of society as a whole. Ultimately, this type of

happiness is the goal that all men strive to achieve.

Mill's utilitarian argument can and is applied to the draft by its proponents. By

serving the nation on the rare occasion that military service is indeed required, the

citizen-soldier fulfills his duty to his countrymen. The implementation of a draft is, when

looked at through this lens, actually an ethical practice. Conscription allows the citizen to

achieve a new level of morality altogether by putting the good of society before himself.

Mill is not the only person to make the case that the overall good of the state takes

precedence over the liberty given up by a citizen during conscription. D.H. Monro

argues:

> Conscription may be justified… if the malefactors against whom it [conscription]
> is acting cannot be restrained without the assistance of civilians; if the necessity
> of restraining them is so great as to warrant very considerable sacrifices on the
> part of individuals, [and] if the sacrifice required of any particular individual or
> group of individuals is not disproportionately great.[8]

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[8] D. H. Monro, "Civil Rights and Conscription," in Martin Anderson, ed., *The Military Draft* (Stanford: Hoover Institution Press, 1982), 137.

Monro believes that if the cause is great enough, the means are justified. Therefore, if the need for troops is large enough, the way in which the troops are enlisted does not matter. By this logic, the rights of the individual are inferior to the rights of the group or the society.

A. John Simmons makes another separate argument for the draft. Unlike those who accept utilitarianism, he believes that the draft works on the assumption that citizenship is a contract between the individual and the state and that the rights of the individual matter. Because there is a mutual relationship between the two, there is an obligation on the part of each participant. For instance:

> The reason we are obligated to serve our government (or "country"), many argue, is that it so effectively serves us. It provides numerous and substantial benefits at low cost, and it is the duty of those who benefit from the labors of others to reciprocate.[9]

At a different level, this theory equates the function of military service with the function of taxes. With taxes, people give up a small portion of their capital – and therefore their liberty – to the state, and in return, the state provides services for the people. In the case of the draft, a conscript must give up a portion of his liberty in order to live and have his family live in a free society.

Rousseau makes a similar argument, except that he maintains that the responsibility is from one citizen to the other. This responsibility, he argues, is the primary difference between civil society and a crude state of nature. By serving the state through military service, the individual is only giving up the liberty that he or she would not have had in the first place, if not for the protection of the government.[10]

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[9] A. John Simmons, "The Obligations of Citizens," in Robert K. Fullinwider, ed., *Conscripts and Volunteers* (New Jersey: Rowman & Allanheld, 1983), 77.
[10] Jean Jacques Rousseau, *The Basic Political Writings: The Social Contract*, Book II, Chapter I, 153-54.

The Case against the Draft: Individualism

The case against the draft is much more complex, for it must prove both that the loss of liberty of a conscript is *never* outweighed by the gain of society and also that the contract that exists between the state and the citizen does not necessitate military service. In response to the second point, Hugo Adam Bedau wrote:

> I am concerned with whether that legal obligation [to render military service if ordered to do so] is in any sense a *moral* obligation… What I do not concede is (a) that this legal obligation is *ipso facto* a moral obligation, (b) that this legal obligation is decisive evidence that there is a concurrent, antecedent, or subsequent moral obligation, and (c) that the source of this legal obligation also causes the obligation to be moral.[11]

By separating the legality of the draft and the morality of the draft, Bedau makes an important point – the two are not coextensive and therefore must be weighed separately. The standards for what is legal and what is ethical are not and should not be considered equally.[12] In other words, what is legal is not always or necessarily moral. Bedau goes on to say, "It is even possible that a man's legal obligation to render military service to his country is contradicted by a moral obligation not to fight his nation's declared enemies."[13] Because the act of warring by definition means that one must fight and potentially kill others, an argument can be made that by killing someone, one is taking away one hundred percent of his or her liberty. Bedau is suggesting – though he does not explicitly make a case – that what is morally problematic is the requirement to kill by the state. To do this, according to this line of reasoning, is unequivocally unethical.

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[11] Hugo Adam Bedau, "Military Service and Moral Obligation," in Anderson, ed., *The Military Draft*, 184.
[12] Thompson, *Political Ethics and Public Office*, 41.
[13] Bedau, "Military Service and Moral Obligation," 184.

Another argument about the morality of the draft is that the United States is based upon the fundamental principles of life and liberty. Conscription takes these two fundamental constitutional principles away, and so the state cannot be justified in enacting a draft. The American government was created in order to guarantee those rights to American citizens. To take those rights away would be to take away the very justification for the state to exist. Therefore, the draft is inherently unethical – it automatically destroys that which it seeks to protect. This is the counterargument to Rousseau and Simmons' contractual case.

Alan Gewirth takes this argument even further. While he acknowledges that there may be validity to the idea that the preservation of the union is the ultimate goal of the nation, he says that to assume that citizens should be forced to give up their very lives takes that logic too far.

> The preservation of the state or nation is valuable and worthy only insofar as this benefits its individual members. The problem we have been considering is how the state, as but a means to an end, can justifiably act to remove or endanger the end itself… What is morally right must be assayed primarily by reference to the rights of each person taken severally, rather than by reference to the good of the collective whole.[14]

Gewirth argues that indeed if the state requires certain citizens to give up their rights to life and liberty, it is no longer a valid entity. Conscription passed to protect the good of the majority or society as a whole cannot be legitimate if individuals in that society are not free. If the consequentialist argument were the correct moral argument in the case of the draft and that the liberty of the few could be taken away to protect the liberty of the

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[14] Alan Gewirth, "Individual Rights and Political-Military Objectives," in Fullinwider, ed., *Conscripts and Volunteers*, 90.

majority, Gewirth says, it would follow that a minority of people could be enslaved if it would greatly benefit general society. This is not and cannot be considered ethical.

Finally, Gewirth also believes that the citizen does not owe the state anything because they do not choose whether or not they will receive the benefits that the state can offer. Unlike the American people in 1787, today's citizens have not had the privilege of choosing their government. And, while they may choose the people who operate the system and who make decisions based on the demands of their constituents, the actual institution of government remains untouched. Citizens are required, for example, to pay taxes and in return they get certain services – whether or not they want to pay or they want those services. In the case of the draft, however, no benefit that the state could offer would be equal to the worth of one's life.

One final moral argument against conscription is found in the "Anti-Conscription Manifesto of 1926." Signed by the Mahatma Gandhi and Albert Einstein among many other world leaders, the document was written by Runham Brown of War Resisters' International in hope of pressuring the newly formed League of Nations into outlawing conscription internationally. The ethical principles that Brown focuses on most stringently are those of value of individualism and the ruinous effects of war in general.

> Conscription involves the degradation of human personality, and the destruction of liberty… [All aspects of the military] undermine respect for the individual, for democracy and human life… The State which thinks itself entitled to force its citizens to go to war will never pay proper regard to the value and happiness of their lives in peace… By training for war men come to consider war as unavoidable and even desirable… [But] when governments have to depend for support upon the voluntary consent of their peoples, they must necessarily exercise caution in their foreign policy.[15]

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[15] Runham Brown, "Anti-Conscription Manifesto," in Franz Kobler, ed., *Violence and Non-Violence. Manual of Active Pacifism* (Zurich, 1928), 362-364.

For Brown and the signers of the Manifesto, the extension and/or maintenance of liberty is the ultimate objective of the individual. The government's role is to protect the liberty of its citizens because human life cannot prosper without it. If human life is not valued and individuals are expected to resign themselves to the authority of government institutionalism (in the form of the draft), then they have no incentive to form a democratic government in the first place. If people are only pawns in a greater bureaucratic machine, they would not have the right or capability to form a society that works for them. Because democratic governments are indeed formed by their constituents, citizens demonstrate their individualism and liberty, and, in doing so, prove that their liberty is of utmost importance.

However, conscription denies that liberty is of any value and therefore jeopardizes the fundamental principles of democratic governance. In addition, conscription produces a constant state of preparedness for war and death. Because the draft is legal, people will tend to accept it. The possibility of conscription is always present and so the militarism of daily democratic culture becomes perpetual. With militarism comes the strong prospect – even likelihood – of having to kill another individual which is certainly an immoral action except in direct self defense. Conscription, therefore, does not allow the individual a choice in his or her moral behavior. This is also inherently unethical.

For this paper I have studied each draft that the United States has had or is having. I weigh the moral arguments on each side and determine the circumstances under which those justifications apply. My goal, therefore, is to formulate a set of conditions under which conscription in the United States can or cannot be considered ethical. The first of these conditions is that the war for which the draft is enacted must be ethical. However,

even if the war is not deemed to be just, the draft can still retain certain moral elements. Conscription, if not absolutely just, can at least be more or less ethical if some but not all of the criteria are met. Each draft can be viewed independently of the war with which it is associated.

Summary

The following paragraphs summarize my review of the literature of the ethics of conscription.

First, I assume that in a democratic society, a contract between the people of that society and the government itself exists. Rousseau's theory that a government and the citizenry have a mutual stake in the other's existence and well being is the foundation upon which liberal societies have been formed. We assume the contract as a given – without it the U.S. would not exist and the question of the ethics of a democratic draft would have to be considered in an entirely different framework.

Second, philosophers have presented justifications for two opposing absolutist views on the draft. The first group argues that the draft is always ethical for the following reasons:

- The draft protects the overall society at the expense of a few in order to preserve the system of governance and citizenry.
- The draft is a way in which people can partake in the civic duty as members of a democratic society.
- The draft is only used when the cause is important enough to necessitate troops to defend society.
- The draft is part of the citizen's responsibility in the government contract.

The second group counters that a draft is always unethical because:

- The draft inherently carries the potential of murdering others.
- The draft takes away citizen's liberty.

- The draft can cause the death of citizens.
- The draft targets only a portion of the population.
- The citizen does not owe the government when they did not take part in the formation of the government.
- The draft encourages militaristic society.

It is my belief that the draft cannot fit comfortably into either of these absolute frameworks and that circumstances determine whether conscription in a democratic state is ethical, unethical, or partially ethical.

It is important to note that ethics are not black or white. The goal of acting ethically is ultimately to act in such a way as to satisfy all ethical and moral principles. But, in political life, this ideal is rarely met.[16] Ethics are often, if not always, grey. It is far more common that a decision to behave ethically in one way means that in some other way ethical principles are being violated. Therefore, while a draft can only be fully ethical if the war is ethical, it can retain an element of morality based upon the means through which it was enacted separate from the war itself. Thus, it is important to scrutinize the draft itself, even if just war criteria are not met in specific cases.

It is also important to note the temporal context in which I make my arguments. I believe that the morality of decisions must fundamentally be judged in hindsight. While it matters what a policy maker's moral beliefs are at the time of his/her decision, the effects of decisions are felt most heavily in its implementation and aftermath. The greatest consequences of decisions are felt most substantially during the transitional period in which policies are actively changing and being applied and in which the American people are being directly affected by them. Some people would argue that the moral intent of the policy maker is most important and therefore that this paper should

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[16] Thompson, *Political Ethics and Public Office*, 13.

examine how these leaders made their decisions. Other people would argue that the long

term effects of a decision – decades or centuries after it is made – are most important. I

do not believe that this is the case. In the first instance, decision makers are too close to

their choices and too subjective to offer real ethical analysis. In the second instance,

there are too many outside factors that could alter the outcome of a decision, upon which

morality is judged. Therefore, I look at each war and each draft beginning with the

implementation of the policy and ending roughly when the war or draft ended. It is my

hope that providing this temporal framework will allow the reader to recognize the moral

consequences of these policies on the people directly affected by them, rather than on the

intent of the decision makers or circumstance.

In order to get the following criteria, I have examined historical cases in the

United States when conscription was used and have derived certain principles from those

examples. These principles are then applied to stop loss in the final section of this paper.

They are based upon how each draft was justified at the time and whether or not those

justifications have proven true. The following is a summary of the principles that I have

laid out and will demonstrate throughout the paper.

(1) The draft can only be ethical if the war for which people are conscripted is

ethical. The government has no moral authority to send people to be killed for a

cause that is not just. A war can be ethical if there is just cause to go to war –

particularly if it is a war of defense, rather than offense, if the nation does not use

a disproportionate amount of intervention, if there is a high probability of success,

if the war is a measure of last resort, and if the war is the will of the people – most

often expressed by a vote of their representatives in Congress. A war can also be

just if it is for the defense of an innocent state, attacked by another state, where there is no international aid available. A just war is a necessary precondition for any draft to be without ethical taint. However, the draft can retain an element of morality even if the war itself is not ethical. Therefore, it is necessary to examine the draft both in the context of the war and on its own.

The draft can, in very rare circumstances, be ethical if implemented in a time of peace. The peacetime draft, however, should only occur when war is imminent and the threat of attack by an already warring nation-state is almost guaranteed and/or when a nation's avowed allies are already under threat. The draft must, in a time of peace, be for preparedness purposes only and should not then be used for any other function.

(2) It follows that the public and their representatives must be as aware as possible of the circumstances of the war. If the public and/or their representatives are misled or misinformed, opinion cannot be considered consent. Accurate information communicated freely by the press must be available in order for the public to consent ethically.

(3) Wars must also be voted upon by Congress. Though the president may use and direct the military, this power should not be sweeping. To hold a draft in response to a military action that the Congress, as representatives of the American people, did not choose, is immoral.

(4) The draft can also be ethical only if it is implemented with the public's

consent. Again, it is most morally justified if the draft is passed as a law in

Congress with the consent of an informed public.

(5) The draft must also be a measure of last resort to raise an army. Only after all

other means have been exhausted should conscription be an option.

(6) The decision to enact a war and a draft must also be based on hard, undeniable

facts. Assumptions and beliefs are not evidence upon which conscripting citizens

can morally rest. Congress and the president must be sure of the information on

which they base their decisions.

(7) In addition, the draft – particularly the peacetime draft – is made much more

ethical if a military conflict is already occurring elsewhere in the world. In

addition, the draft becomes more ethical (though perhaps not entirely) if the U.S.

is getting involved in a conflict to which it is tied by a treaty.

(8) Finally, in order for a draft to be considered ethical, it must be implemented

equally among citizens. The idea of conscription rests upon the principle that the

citizen has a responsibility to the state, given the circumstances laid out above are

satisfied. If each citizen reaps the benefits of the government, then so too must

they fulfill their responsibilities. To exempt or to postpone the service of some

citizens and not others shows preferential treatment which is inherently unethical in the public life of citizens of a democratic state.

III. The Ethics of the Civil War Draft

In the pre-Civil War period, the United States had a volunteer military system that allowed for a very small standing army of only a few thousand men.[17] Even this small standing army was viewed with a great deal of suspicion by the American people, who, in the post-colonial world, were highly suspicious of any indications of federal strength that could lead to oppression by the government. During the War of 1812 the size of the army rose to around 30,000 – but it shrunk again as soon as the conflict was over.[18] Yet, even with the increase in the size of the military during wartime, there was a vast shortage of troops during conflicts in the early nineteenth century and the organization of the armed forces left much to be desired. The national psyche did not yet tolerate any substantial national military strength.

But that changed in 1861. The national military culture was forever altered with the onset American Civil War. Though the war was ultimately about slavery and whether or not it would continue to exist in the United States, this legal argument was displayed as an argument of state versus federal authority. Did the states have the right to decide whether slavery could exist within their borders? Or could the federal government mandate territories to be free? These questions led to the secession of eleven states from the Union between late 1860 and mid 1861.

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[17] William G. Carleton, "Raising Armies Before the Civil War," in Anderson , ed., *The Military Draft* , 69.
[18] Carleton, "Raising Armies," 69.

The federal government, led by President Abraham Lincoln, held that it was illegal for states to secede – that it was against the fundamental nature of government to legally disband itself. Therefore, that by ratifying the Constitution in the first place, states were consenting to uphold that law and that government so long as the government itself remained legitimate. By framing the argument this way, Lincoln was able to invoke Article four, Section four of the Constitution, which says that the federal government will protect the states against domestic violence.

Lincoln's initial call to arms in 1861 asked for 75,000 troops, but volunteers showed up in droves, eventually equaling nearly 700,000 men.[19] Yet as the war continued long past its expected duration of only a few weeks, more and more people began to get war weary and as a result, fewer and fewer enlisted. In addition, there were tremendous numbers of casualties throughout the war, numbering from up to 20,000-40,000 per battle.[20] All of these factors combined meant that the initial 700,000 volunteers that came out to fight for the cause of the United States were not enough to suppress the rebellion in the South and to restore the Union. Lincoln was forced to make several more appeals for volunteers to enlist that were never fully filled.

> Response to Lincoln's July 2, 1862 call [for volunteer enlistees] was so feeble that in two weeks' time Congress was compelled to pass a new law drafting men for military service…. The limits of patriotism had been reached…. Conscription, unpopular as it might be, was the answer.[21]

Lincoln's initial plan to draft state militiamen largely failed. He called for 335,000 men for nine months and got only 60-70,000 people because of the huge opposition to the

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[19] Eugene Converse Murdock, *Patriotism Limited: 1862-1865* (Ohio: Kent State University Press, 1967), 5.
[20] John Whiteclay Chambers II, *To Raise an Army* (New York: The Free Press, 1987), 42.
[21] Murdock, *Patriotism Limited*, 7.

imposition that the militia-based draft had on states rights.[22] On March 3, 1863, Lincoln

signed into law the Enrollment Act, the first widespread national draft in American

history.

The Enrollment Act set off some of the most ardent draft resistance in U.S.

history. The New York City draft riots, which lasted four days and resulted in over one

hundred and twenty deaths, was the worst riot ever on American soil.[23] Ironically, the

majority of those killed in the uprising were blacks, who were not citizens and therefore

not eligible for the draft.

Lincoln eventually called for four drafts. A total of 776,829 people were drawn,

but only 206,678 or 26.61% of people were held to service.[24] Each of these people was

required to fulfill a three-year enlistment. As the Civil War drafts were the first in United

States history, they must be examined closely, for they set a precedent upon which other

American drafts would be based.

The question that must then be asked is whether or not the Civil War drafts met

the ethical criteria laid out above. To do so, the morality of the war itself must first be

analyzed. First, there was just cause for Lincoln to go to war. He held that the secession

of eleven states was unconstitutional and that the preservation of the government which

he had sworn to uphold was at stake. Furthermore, the South had attacked federal troops

at Fort Sumter in April, 1861. His use of the military to suppress a national rebellion was

directly proportional to potential power of a divided America. While there was not a

direct invasion into the North until the Gettysburg campaign, it can easily be argued that

by trying to leave the union and taking federal property with them, the Southern states

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[22] Murdock, *Patriotism Limited*, 7.
[23] Chambers, *To Raise an Army*, 53.
[24] Murdock, *Patriotism Limited*, 13.

were in a state of rebellion. Therefore, it was not just morally acceptable but required that Lincoln, as Commander-in-Chief, attempt to put down the insurrection. Assuming that this was the case, and that Lincoln had the responsibility as a democratically elected president to maintain the government as it was when he was elected, one can argue the Civil War was ethically just.

The North's chance of success was also good. With superior numbers of troops and more developed industry, both Lincoln and Congress believed the war would be short and decisive in the North's favor. Though this belief was clearly incorrect, leaders had fair cause to believe that it would because of the North's overpowering advantage in military, industrial, and personnel capabilities. Going to war was also a last resort option. Federal authorities saw no other way to reunite America and to reestablish the government in its entirety. Finally, as the war did continue, and Lincoln framed its cause around emancipation, the Civil War became even more just. The freeing of a subjugated people in one's own land is certainly just cause enough to go to war. Given that these tenets are correct, the Civil War is morally justifiable.

Having established that the Civil War itself was ethical, we can turn to assessing the Civil War draft. Without the draft, the war would not have been won by the federal government, and the nation would have fallen apart – which, as Lincoln argued, was a direct violation of the principles upon which the government was founded in the first place. Because the draft was used as a very last effort to win the war, because the Lincoln and Congress believed that their was no other way to achieve the moral purpose of maintaining the nation and freeing its people, and because there was a specific time

frame given to draftees during which they would have to serve, the United States draft during the Civil War must be considered morally just.

Draftees had three options; they could serve, they could hire a replacement, or they could pay $300.[25] Like the deferments that took place during the Korean War draft, the Civil War exemptions were limited. Therefore, the make up of the army was largely representative of the population. While this *does* detract from the morality of the Civil War draft, the rarity of the exemptions did not pose a large scale ethical problem.

Furthermore, the Civil War draft was not issued by executive order of the president but rather as legislation passed by Congress. Though there was definite and forceful opposition to the drafts, Congress ultimately believed it was in the best interest of their constituents. However, consensus about the draft is not possible. If it were, the army would have been full of volunteers who believed wholeheartedly in the cause. Nevertheless, the Civil War draft was publicly debated and was enacted through representatives of the people by a vote of 115-24 in the House of Representatives and without much resistance in the Senate.[26] (It should be noted that Congress was comprised almost uniformly of Republicans, as most Democrats were Southerners who were absent from Washington. This does not de-legitimize the draft, however. Southern Congressmen left the capital of their own volition and, in doing so, followed the will of the Southern people and forfeited their vote against the draft.) In other words, as traitors to the United States, Southerners sacrificed the opportunity to serve in Congress. Because of the openness of the draft debates and the fact that it was used as a last resort to reunite

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[25] Chambers, *To Raise an Army*, 52.
[26] Murdock, *Patriotism Limited*, 7.

the nation, the Civil War draft must be considered morally just. Nevertheless, the draft was not used again in the United States for about fifty years.

IV. The Ethics of the World War I Draft

Over one hundred Americans were aboard when German U-boats sank the British ship *Lusitania* in 1915. President Woodrow Wilson decided that those deaths did not constitute reason enough for the United States to enter the war with Europe, so instead he carefully mediated a discussion which he hoped with lead to the end of Germany's U-boat warfare. As the war dragged on however, the German cause became more and more desperate. Frantic to make one final offensive, Germany began using its U-boat again in 1917, in direct violation of the rules that had been laid down by Wilson's negotiations and military buildup two years earlier.[27]

With the United States on edge already, the Zimmerman telegram on January 16, 1917, gave Wilson the pretext he needed to push Congress for a declaration of war. Nevertheless, the telegram, supposedly from Germany to Mexico, advocated that Mexico invade the United States from the South in order to distract Americans from the war in Europe. In response, Wilson armed, by executive order, several Merchant Marine ships to patrol the Atlantic. These were sunk by the U-boats in the middle of March, 1917.

These acts allowed Wilson to make a three-part argument for going to war against Germany. First, the Zimmerman telegram and the attacks on the Merchant Marine ships allowed President Wilson to frame the war in terms of a direct attack on American ships. Congress has, as defined in Article I, Section 8 of the Constitution, the power to "declare war, to raise and support armies," and "to provide and maintain a navy." An attack on

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[27] Chambers, *To Raise an Army*, 129.

American ships would certainly constitute an act of aggression against the U.S. and an

offense against the Law of Nations because the American ships were not the aggressors

and were not officially instruments of the military. Second, Wilson argued that, "the war

was one of self-defense that had to be waged if free institutions were not to go down

under the rushing tide of militarism."[28] By framing the context of the war in these two

ways, which put the United States into a defensive position, Wilson could legitimately

ask Congress to declare war on Germany. They did so on April 6, 1917.

Wilson had decided to use conscription before Congress even approved the war.

Afraid that he would not get the volunteer troops that he needed to fight, the President

believed that the fairest way to acquire enough troops was to institute a draft. He argued

that the draft was a form of patriotism and to participate was the ultimate civic duty.[29]

> It is essential that the day [on which men had to register for the draft] be
> approached in thoughtful apprehension of its significance and that we accord it
> the honor and the meaning that it deserves… Carried in all our hearts as a great
> day of patriotic devotion and obligation, when the duty shall lie upon every man
> to see to it that the name of every male person of the designated ages is written on
> these lists of honor....[30]

A week long debate followed Wilson's request to Congress for draft legislation on

March 28, 1917. The bill finally passed with a vote of 397 to 24 in the House and 81 to 8

in the Senate on May 18, 1917.[31]

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[28] David Gordon, "A Common Design: Propaganda and World War," in John V. Denson, ed., *The Costs of War: America's Pyrrhic Victories*, 2nd ed. (New Brunswick: Transaction Publishers, 1999), 306.

[29] Some people argue that an army of draftees is more ethically just than a volunteer army because the burden of military service is random and shared throughout society, whereas a volunteer army is often – though not always – composed of the poorer members of society. I do not address this idea for two reasons. First, the draft has never proven to be as equal as supporters of conscription believe it is. Second, even those who ardently support conscription do not make their arguments for it based on fairness. They argue that it is most pragmatic and/or it is legal. Those who say that the draft is more representative make that argument based solely on theory and not practical consequences.

[30] Woodrow Wilson, "Call to Arms," as quoted in Mark Sullivan, "Conscription," in Anderson, ed., *The Military Draft*, 30.

[31] Chambers, *To Raise an Army*, 166.

President Wilson had been, on the whole, able to persuade the American public that the draft was good public policy. He used a widespread and relentless propaganda machine that bullied, browbeat, and convinced the American people of the patriotism of going to war and of conscription.[32] He implemented the draft in a new way as well. Aware of the unsuccessful attempts of the federal government to register people during the Civil War, Wilson made registration local. Community members registered their neighbors and friends, and the events were community based, not unlike voting. Wilson's goals were to "minimize conflict with local loyalties and to win popular acceptance."[33] This implementation strategy helped to make conscription more familiar and compelled people to believe that they were participating equally across the board. Indeed, ten million men reported to register on the appointed date.[34]

By the end of World War I, 2.8 million men had been drafted by the United States government; draftees constituted 72% of the total military used in the war,[35] and the Selective Service System, the registration bureaucracy that remains in place today, had been fully developed and very successful.

The ethics of the First World War are the most complicated in the history of American wars because the war both satisfies and does not satisfy just war theory. It is the quintessential grey area in ethics. Ultimately, the war was mostly just. The one caveat that Walzer makes to his just war criteria is that any war that is for the purpose of coming to the aid of a peaceful nation that has been attacked is just. He writes, "All

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[32] Sullivan, "Conscription," 31.
[33] Chambers, *To Raise an Army*, 180.
[34] Chambers, *To Raise an Army*, 184.
[35] Chambers, *To Raise an Army*, 200.

aggressive acts have one thing in common: they justify forceful resistance… Aggression

opens the gates of hell."[36] Walzer adds that the nation that has been attacked must be

entirely innocent in order to justify a second nation coming to its defense.[37] I would add

that the attacked state must be assailed by another sovereign nation, rather than an

internal group, to make this criterion just. Walzer defines the sovereign as, "the liberty of

states as their independence from foreign control and coercion."[38] What occurs within

the state borders, is, according to this definition, outside of international control.[39] These

conditions were satisfied in the case of World War I, and therefore the war is ultimately

just.

However, there are many problems with the means by which the war was

implemented at home and abroad which detract from the full ethical value of the war for

the United States and it is necessary to examine those separately because they are an

important part of what makes a war entirely ethical or unethical.

President Wilson's goal in entering the war in Europe was to make the world safe

for democracy. In his request for a declaration of war from Congress he said:

> It is a war against all nations. American ships have been sunk, American lives
> taken, in ways which it has stirred us very deeply to learn of, but the ships and
> people of other neutral and friendly nations have been sunk and overwhelmed in
> the waters in the same way. There has been no discrimination. The challenge is to
> all mankind. Each nation must decide for itself how it will meet it. The choice we
> make for ourselves must be made with a moderation of counsel and a
> temperateness of judgment befitting our character and our motives as a nation.

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[36] Walzer, *Just and Unjust Wars*, 52.

[37] For example, in the Arab-Israeli Conflict in 1967, Israel was technically the first to fire. Therefore, it would seem that another state would be required to come to the defense of Egypt. However, because the Israeli strike was preemptive, Egypt was not blameless and therefore, not entitled to aid from a third state.

[38] Walzer, *Just and Unjust Wars*, 89.

[39] I would also add that this is true only when an international institution is not accessible, reliable, or useful to come to the defense of the attacked state. In this case, the concept of international institutions had not yet been constructed. The League of Nations that arose from the Treaty of Versailles was the first such institution. Today, the international institution would be the United Nations.

> We must put excited feeling away. Our motive will not be revenge or the victorious assertion of the physical might of the nation, but only the vindication of right, of human right, of which we are only a single champion… to fight thus for the ultimate peace of the world and for the liberation of its peoples, the German peoples included: for the rights of nations great and small and the privilege of men everywhere to choose their way of life and of obedience. The world must be made safe for democracy.[40]

Indeed, he believed in this goal to the fullest and considered the end result would justify the means. But this is not so. In order for the cause to be just, the means must be as well.

World War I was a violation of just war theory with regards to the amount of interference used. If Wilson relied on the Zimmerman telegram to make his case for entering the war in Europe, he erred. Even as the telegram was handed to Wilson, its legitimacy was questioned. Even further, it was not an actual act by a declared enemy, but rather a potential – though not certain – threat. And yet he acted on it and used it as propaganda for his cause, frightening the American people into believing there was perhaps a greater risk to them by not entering the war than there was by entering the war. In order to put citizens in combat situations in an ethical manner, leadership must be positive of the truth of the claims that they make. While I concede that information can never be perfect, a policy maker should not gather intelligence with a particular agenda or goal in mind. Wilson did this, as is evidenced by the fact that he had already decided he needed a draft before he had officially gathered the information he needed that was pertinent to making a clear choice about whether or not to go to war. To make decisions based on biased information is a violation of democratic principles and the contract between the people and the officials who they choose to represent their best interests.

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[40] President Woodrow Wilson, "Address of the President of the United States Delivered at a Joint Session of the Two Houses of Congress," April 2, 1917, Washington Printing Office 1917. http://wwl2.dataformat.com/Document.aspx?doc=31668. Accessed April 10, 2008.

Finally, Wilson violated the principle of war as a last resort; by using the sinking

of the Merchant Marine vessels as proof that the U.S. should enter the war, his legitimacy

is also questionable. He actively armed merchant vessels which were trading only with

one side. This gave the German government the idea that the U.S. was already aligned

with Britain and France, if not officially, then practically. This act through an executive

order and not as Congressional legislation, sent the merchant vessels into a war zone in

the North Atlantic. It could easily be argued that he transgressed the boundaries of his

power to set up a situation which would likely end in bloodshed in order to rally

American patriotism and belief in defending honor and liberty. The President claimed

that the Germans were trying to disallow U.S.-British and U.S.-French trade to continue

through the attacks on the merchant ships and that this was a violation of our rights to

remain neutral. However, it could not have been a surprise that armed American ships

were attacked in hostile territories. To put American lives in harm's way without

consulting Congress, the representatives of the people, is a violation of basic democratic

and republican tenets.

Nevertheless, entry into World War I was ultimately moral, and it is important to

recognize that it was not Wilson who approved the war, and it was not Wilson who

implemented the draft. Both of those were a result of laws passed by Congress and

therefore the will of the people. Thus, the draft retains some degree of ethicality.

Because the members of Congress were elected by the people to represent the people, it is

sufficient to say that the American people endorsed the war and that there was open

debate about the draft. Though they were strongly influenced by the propaganda of the

Wilson Administration, they still had the free will and the liberty to choose their actions and to choose who would speak for them. They were not coerced in any way.

In this sense, the draft does retain an element of ethical legitimacy, even though the influence of Wilson and the federal government may have had a strong effect on the outcome. In addition, though the war itself was not a last resort, the draft was. Wilson and Congress had no other means of fighting the war in Europe than to conscript American men. Ultimately, though, to draft men to fight and die in an unjust war is immoral and so the World War I draft is also unethical. But, less than twenty years later, the draft was instituted once again.

V. The Ethics of the World War II Draft

With the end of the First World War, the United States entered a period of foreign policy in which isolationism was dominant. Nevertheless, the military still began to develop a plan for a future draft, if one were ever needed. With the outbreak of World War II in Europe in 1939, the government began to try to enlarge the size of the regular army through normal, voluntary means. Conscription was still not a viable option, especially given that the United States had not yet entered the war. General Douglas MacArthur captured the sentiment of the American people when he said during this era, "The traditions of our people [permit no] compulsory military service in time of peace."[41]

Nevertheless, less than a year later, on September 16, 1940, a draft law that put in place the first peace time draft in the United States was passed. Like the World War I

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[41] General Douglas MacArthur quoted in George Q. Flynn, *Conscription and Democracy: The Draft in France, Great Britain, and the United States* (Westport, CT: Greenwood Press, 2002), 58.

draft approach, this new system was implemented locally in order to cultivate a feeling of familiarity and community associated with military service. The registration system also developed quotas based upon the population of each designated zone. It was implemented with ease and cooperation between the War Department, which was a military agency, and the Selective Service System, which was a presidential agency and therefore not under direct military control.[42]

Registration day was October 16, 1940, and nearly sixteen million men aged 21-36 enrolled. Men were first selected after a national lottery based on age, then through local selection depending on men's "marital status, dependency, occupation, education, and physical condition."[43] The World War II draft was not met with the same opposition that the Civil War draft was in large part because it was a gradual process – people were given time for the idea of the draft to set in, then time to register, and finally time to be in the army without having to participate in any fighting. By summer of 1941 only about 10% of registrants had been conscripted.[44]   But by the time the World War II draft ended in the spring of 1947, the Selective Service System "had registered 49 million men, had selected 19 million, and inducted 10 million into the armed forces."[45]

The Second World War broke out in Europe in large part due to the circumstances that arose from the faulty peace agreement of the First World War, the Treaty of Versailles. The Treaty put total blame for the war on the German people and fully demilitarized and decolonized them. It ruined what little was left of the German economy, while simultaneously demanding reparations for damages caused to the Allied

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[42] Flynn, *Conscription and Democracy*, 57-60.
[43] Flynn, *Conscription and Democracy*, 101.
[44] Flynn, *Conscription and Democracy*, 103.
[45] Flynn, *Conscription and Democracy*, 104

nations.[46] The results of the Treaty of Versailles were devastating. The enormous social

and economic depression in Germany allowed for the rise to power of Adolph Hitler and

the Nazi Party. Hitler soon began consolidating his power across the continent of

Europe, thereby representing an enormous threat to most of the European countries.

Hitler's invasion of Poland finally caused Great Britain to declare war on Germany on

September 3, 1939. Great Britain was joined in its cause by the Allies, composed of

Poland, France, the Soviet Union, and eventually the United States, as well as many less

prominent nations in every occupied continent. Germany was joined primarily by Japan

and Italy, but also by many Slavic countries and by most of the countries occupied by

Germany, Japan and Italy in what is called the Axis Powers.

The United States tried for the first two years of the war to remain neutral,

following a policy in which the U.S. continued to trade with both the Allies and the Axis

Powers. Though President Roosevelt initially paid lip service to a policy of neutrality in

Europe, the U.S. implemented a program of aid distribution – called lend lease – to help

the Allies which drastically undermined that idea. As the war continued and the Allies

began to lose some ground, the President began increasing the amount of aid that the U.S.

supplied, ultimately even sending American ships to escort Allied boats across the

Atlantic Ocean. By aiding the Allies in this way, Roosevelt was slowly but certainly

preparing the United States for war by easing the American public into the conflict. This

tactic allowed Roosevelt to demonstrate the intimate involvement of the American people

with the Allied cause, thereby increasing support for the war and laying the groundwork

for direct American intervention.

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[46] John V. Denson, ed., *The Costs of War: America's Pyrrhic Victories* (New Brunswick: Transaction Publishers, 1999).

At the same time Roosevelt was mentally preparing the American people for war, he was also well aware that the United States was not equipped with the manpower it would need to fight in World War II. Though the plan originated in the army, Roosevelt formally declared his support for a draft on August 2, 1940.

> "For purposes of defense," [the president] continued, "we have to have men who are already trained beforehand. In doing that we save lives – we save human lives. That is the important thing….You cannot get a sufficiently trained force of all kinds at the front, in the output, you cannot get it by just passing an Act of Congress when war breaks out, and you cannot get it by the mere volunteer system."[47]

Roosevelt's logic rested on the assumption that the United States would inevitably be entering the war soon and that the draft was needed to defend the nation. The debate over a peace time draft raged throughout the third session of the 76th Congress. Those against the draft were ardent believers in the liberty of American citizens and their case rested upon their faith in freedom. In a radio broadcast from the floor of the House of Representatives, Congressman John C. Kunkel of Pennsylvania argued:

> My experience is that most people tend to overlook the very real dangers which are presented by either alternative [volunteer recruitment or conscription]. People who oppose peacetime conscription have a tendency to ignore or minimize possible future danger from Hitler. People who favor conscription tend to take the view that we can adopt totalitarian methods and shed them at will, yet history in man, many instances has indicated that this can rarely be done. Personally I feel that there is danger on both sides, but that the danger of going totalitarian at home, and thereby losing the rights and liberties we seek to preserve, in the very process of trying to preserve them, is greater and more certain… My own personal view is that this matter could be handled by voluntary enlistments as we are now doing… If a definite emergency or a definite war situation does arise, then selective service can and should be adopted immediately, as was done in England… Such a method would meet every defense need and yet not risk a military dictatorship.[48]

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[47] Franklin Delano Roosevelt, quoted in J. Garry Clifford and Samuel R. Spencer, Jr., *The First Peacetime Draft* (Kansas: University of Kansas Press, 1986), 171.

[48] Hon. John C. Kunkel, "Compulsory Military Service," *Extension of Remarks/Radio Address*, Appendix to the *Congressional Record*, 6221, 76th Congress, Session 3, Tuesday, October 8, 1940, Colby College Libraries, Microfilm Reel 241, Volume 86, Parts 16-18 App., Pgs. App 3601-7058.

Those members of Congress who were for a peacetime draft argued that preparedness for

a probable war was more important that individuals' liberty. Morris Sheppard of Texas

argued on the Senate floor in favor of the draft:

> [Today] we are at peace with every nation in the world. Nevertheless, it is the
> feeling of the War Department that the next 6 months include the possibility of
> being the most critical period in the history of this Nation. Ordinary common
> sense indicates that our preparations should be made accordingly… Today time is
> at a premium and modern arms and equipment must be provided by our own
> industries, not by allies. [If we are attacked] We must be prepared to stand alone.
> We cannot depend on others for protection during a prolonged period of
> preparation… We fail to realize two things: First, that the finest plane or tank or
> gun in the world is literally worthless without technicians trained as soldiers –
> hardened, seasoned, and highly disciplined – to maintain and operated it; and,
> second, that success in combat depends primarily upon the development of the
> trained combat team composed of all arms… The Selective Service Act has added
> the final touch of authority to enable America to go to work effectively at the
> business of preparing herself against the uncertainties, the threatened dangers of
> the immediate future… Given the time to prepare himself, the American makes
> the finest soldier in the world, and for the first time in our history we are
> beginning in time of peace to prepare against the possibility of war. We are
> starting to train and army of citizen soldiers which may save us the tragedy of
> war.[49]

After over a month of debates– both public and congressional – over a peacetime

conscription bill, the Burke-Wadsworth Act (also known as the Selective Training and

Service Act) passed on September 14, 1940, making it the first peacetime draft in the

history of the United States. Roosevelt and the pro-draft Congressmen and women were

able to make their case and convince the American people that a draft was necessary

based on the knowledge that America was not prepared for a war and would be at a

significant disadvantage if and when war came to the U.S. MacArthur's comment about

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[49] Hon. Morris Sheppard, "Selective Service Act," *Address by Gen. George C. Marshall, Chief of Staff*, Appendix to the *Congressional Record*, 5744, 76th Congress, Session 3, Thursday, September 19 (legislative day Wednesday, September 18), 1940, Colby College Libraries, Microfilm Reel 241, Volume 86, Parts 16-18 App., Pgs. App 3601-7058.

peace time conscription became obsolete when the public psyche believed in the purpose and intent of the war.

The Selective Service System was quickly implemented, but the war still had not come directly to the American people. More than a year after the draft was implemented and after nearly 950,000 men had been conscripted,[50] on December 7, 1941, the Japanese attacked the United States naval base at Pearl Harbor in Hawaii and several other Pacific American territories. The unprovoked attack gave Roosevelt, as Commander-in-Chief of the armed forces, the right and obligation to mobilize troops to defend America. The next day, Congress passed a declaration of war against Japan overwhelmingly – only one antiwar congresswoman voted against it. Three days later, Germany and Italy, Japan's allies, declared war on the United States and the U.S. responded in kind.[51]

Because in this case the draft came before the official entry into the war, we must look at the morality of the peacetime draft before we look at the morality of the war. First, conscription under these circumstances is ethical because it was done very publicly. Congress debated the draft for weeks before it was passed. It was eventually established on the idea that the current standing army was ineffective, which would have had devastating consequences if the war had come to the United States before it was fully prepared to fight. Liberty can be restricted in only a few certain and specific situations. The preservation of the nation is one such example because if the government is destroyed and the Constitution no longer exists, then the law that protects individual

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[50] Selective Service System Online, "Inductions (by year) from World War I to the end of the draft (1973)," *History and Records, Induction Statistics*, http://www.sss.gov/induct.htm. Accessed January 29, 2008.
[51] U.S. Congress, *Declarations of War with Japan, Germany, and Italy*, December 8, 1941 (New Haven, CT: The Avalon Project of Yale Law School, 1997), http://www.yale.edu/lawweb/avalon/wwii/dec/decmenu.htm, Accessed January 16, 2008.

liberty no longer exists. In this case, the defense of the nation, even though it was done before official entry into the war, was paramount to individuals' liberty and so this first peacetime draft was ethical.

Had Congress waited to pass a draft law until Pearl Harbor was attacked and America was officially at war, the nation would have been threatened far more than it already was. The liberty of all Americans (as opposed to a relative few draftees) would have been at stake simply because the military could not have come to its defense. It is likely that Japan's goal was not to invade the U.S., but rather to destroy the navy in the Pacific. However, had the military not been built up, that objective would have been much more easily reached and the defense of the whole western coast of the United States would have been significantly weakened.

> The Senate had tended all along to look mainly in terms of numbers, forgetting the vital consideration of efficiency. The primary justification for selective service lay in its ability to furnish the desired quantity of men to the armed forces. But the secondary justification, almost as important, came from its ability to furnish the right recruits, leaving in their civilian occupations those men who would be more valuable to the total defense effort at home than in the military service.[52]

In addition, the American people were given plenty of information on which to discuss and analyze their views on conscription. People were allowed to openly demonstrate against the draft if they so chose. Radio debates were held on Labor Day weekend to discuss conscription's merits and deficiencies. And, in the end, it was Congress, the representatives of the people, and not the President, who passed the Selective Training and Service Act in 1940 with full disclosure given to the American

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[52] J. Garry Clifford and Samuel R. Spencer, Jr., *The First Peacetime Draft* (Kansas: University Press of Kansas, 1986), 207.

people.[53] They were able to do so ethically because they were preparing for an imminent war – one for which Congress knew that the U.S. military was not prepared and which it knew the United States would lose without an appropriately trained and complete military – with devastating consequences around the globe. In the end, American adversity to a peace time draft took a back seat to our desire for preparedness.

The draft was also ethical in this case because it was, in a way, a last resort. Once it became clear to the President and the Congress that the United States was likely not going to be able to remain neutral much longer, they did not have the time to increase the size of the volunteer army through recruitment. Though they did not try other means of increasing the numbers of troops in the military, they also did not really have much of a choice. The war was coming quickly, and the Congress, the President, and the American people all believed that U.S. involvement would be inevitable. The government wanted to be as prepared as was possible in order to win the war as quickly as possible, thereby saving as many lives as possible. The best way to do that was to make sure that the military was at the highest state of readiness possible. That goal ultimately meant that a draft had to be instated to protect the American people.

Because the draft was done in a time of peace, it cannot be judged based on the morality of the war. Yet, it is important to look at the ethics of the war in any case, because the war is an indication of whether or not implementing the peacetime draft was an appropriate measure. American's entry into the Second World War is ethical because it follows the principles of just war.   First, there was a tangible cause. Japan directly attacked U.S. territory. Article IV, Section 4 of the United States Constitution says, "The

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[53] Clifford and Spencer, *The First Peacetime Draft*, 211.

United States shall… protect [each State] against Invasion." This sentence means that it is not just the right, but the obligation of the federal government to defend the people within its borders. Some people have argued that President Roosevelt knew that the attack on Pearl Harbor was coming and that he did nothing to stop it so that he could legitimately enter the war.[54] These critics would argue that the war was less justifiable on ethical grounds because of FDR's actions. That reasoning is flawed. Even if Roosevelt knew about the bombings in advance, and even if it was his personal moral duty as Commander-in-Chief to stop those attacks if possible, his decision bears no effect on the ethics of the war itself. That the Japanese attacked the United States is the bottom line. Fore-knowledge of an event does not impact the circumstances or intent of it. Certainly, the aid that Roosevelt and the United States were supplying to the Allies was not synonymous with direct involvement in the war – especially because of the supposed policy of neutrality. Therefore, the attack on Pearl Harbor was unprovoked and Roosevelt's response was perfectly morally legitimate.

Second, the United States entered the war with a just amount of force. Three major powers had declared war on America and had already proven their willingness to use numerous and brutal tactics to win against U.S. allies. Therefore, fighting within the range of normal tactics was reasonable.[55]

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[54] Some people also argue that the Lend-Lease Program, in addition to aiding the Allies, also had the goal of luring the German navy into attacked U.S. ships so that the U.S. would be more likely to enter a war that Roosevelt wanted to fight.

[55] The decisions to drop the atomic bombs on Hiroshima and Nagasaki were not, however, within the bounds of reasonable tactics and therefore are much more ethically questionable. Though I will not get into the full moral dilemma in this study, it is worth noting that this amount of destruction can and is perceived by many to be above the limits of just intervention which de-legitimizes the righteousness of the war itself. Others, however, see the atomic bombings as ethically just because they ended the war more quickly and put an end to the trans-national bloodshed.

The Ethical Issue of the Holocaust

Many people have judged World War II to be an ethical war as a means to

end Hitler's policy of ethnic genocide. However, the timing of our entry

into the war makes this justification of our entry problematic though not

necessarily wrong. As soon as it became undeniable that the Nazi party

was committing a full-scale genocide, against Jews and other minorities in

Europe, American entry into World War II became morally defensible.

The U.S. received concrete information from its consulate in Switzerland

in 1942 that confirmed the growing suspicions of many, including the

President, about the Nazi atrocities occurring in Europe.

> Informer reported to have close connections with highest German
> authorities who has previously generally reliable reports says that in
> Fuehrer's [sic] headquarters plan under consideration to exterminate at
> one blow this fall three and half to four millions Jews following
> deportation from countries occupied, controlled by Germany and
> concentration in east.[56]

This concrete knowledge was enough to justify American intervention

without even considering the attacks on Pearl Harbor for the following

reasons.

First, the right to national sovereignty – in this case the right of the

German government to rule its own people without foreign intervention –

becomes illegitimate when that autonomous government does not protect

the people with whom it has a contract and whose duty it is to protect. As

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[56] PBS Online, "U.S. State department receives information from Switzerland regarding the Nazi plan to murder the Jews of Europe," *America and the Holocaust*, http://www.pbs.org/wgbh/amex/holocaust/filmmore/reference/primary/newsusdept.html. Accessed January 29, 2008.

soon as that contract is violated by the government, officials give up their

claim to authority and interference on behalf of the people is tolerable.

Today, a non-state actor or international organization (like the United

Nations) would be responsible for the well being of those government-less

peoples but during World War II no such effective organization existed.

Therefore, it was the ethical responsibility of the United States to interfere

on behalf of the Jewish population who lacked any true political

representation.

Yet President Roosevelt did not formally recognize the authenticity

of the Holocaust until 1942 and even then he delayed his official support

of the Jewish people until 1944. This was immoral on his part – waiting to

give American assistance to European Jews caused millions of

unnecessary deaths.[57] But, though the President should have acted sooner,

the fact that American troops were inadvertently helping end the

Holocaust by simply fighting warrants the ethical legitimacy of the war.

It was the ethical responsibility of President Roosevelt to enter the

war for the express purpose of ending the Holocaust – and in that he

failed. He personally bears moral responsibility for not interfering earlier.

Yet, though he entered the war because of Pearl Harbor, he did end his

complacency and that of the American people in the Holocaust by going to

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[57] Adolph Held, "A report written by Adoph Held, the president of the American Jewish Labor Committee recounting President Roosevelt's 29-minute meeting on December 8, 1942 with a small delegation of American Jewish Leaders." *America and the Holocaust*, Public Broadcasting System, http://www.pbs.org/wgbh/amex/holocaust/filmmore/reference/primary/index.html. Accessed January 22, 2008.

war against Germany. He acted, regardless of what his reasoning was, on
behalf of the victims of the Holocaust and in doing so, gave the American
entry into the Second World War a moral foundation.

Third, there was a high chance of success upon entering World War II. The U.S.
became involved in the war when other nations had already been fighting for two years.
By bringing fresh supplies and troops to the Allies, Americans were able to tip the
balance of the war in the Allies' favor and to end the war more quickly than it would
have been without American support.

Finally, entering the war was a last resort for the President, the Congress, and the
American people. For two years Roosevelt tried to remain neutral, to no avail. The
United States was dragged into the war finally after having run out of alternative means
to affect the result that was most just. The World War Two draft officially ended in
1947, but it was not a year before a new one was being enacted.

VI. The Ethics of the Cold War and Korean War Draft

Within months of the end of the Second World War, the USSR and the US were
no longer allies but had become enemies. With no common goal, they were ideological
adversaries. The Soviets hoped to spread Communism across what was then called the
third world. The U.S. saw Communism as a threat to democracy both at home and
abroad and fervently intended to prevent its extension. The belief was that Communism
would spread with a domino effect – as soon as one country fell, the next would and so
on until the United States and democracy were threatened directly and at home. A new

foreign policy, dubbed containment, was developed to halt the spread of Communism; its

stated goal was to prevent the Soviets from expanding the area they controlled. By

seeking to limit the spread of the USSR's influence proactively, American foreign policy

took a direct turn from the isolationist policy of the pre-World War I and interwar years.

In the conflict between the conflicting ideologies of the United States and the Soviet

Union, the Cold War developed.

       The fear of a Soviet attack on the United States prompted fears of military

inadequacy and ill-preparedness. In response to those fears, Congress passed a second

peacetime draft through the Selective Service Act of 1948. This draft was run identically

to its predecessor, the Second World War draft, which officially ended in 1947. From

1948-1949, the years in which conscription took place during a time of peace, 35,000

men were drafted.[58] The Selective Service Act of 1948 allowed the government to draft

men between the ages of 19 and 26 for one year. The Congress passed this bill by a vote

of 78-10 in the Senate[59] and 283-130 in the House.[60] Though it passed with relative ease,

many members of Congress viewed the draft with apprehension.

> [V]oluntarism was abandoned only after a great deal of timorous uncertainty. The
> favorable House majority report on the new 1948 conscription bill stressed the
> "serious deterioration in the international situation" and the presumed inadequacy
> of voluntary recruitment. The minority report, on the other hand, found it more
> significant that peacetime conscription would be a "radical departure in American
> history," would "invade the family and disrupt its character," and eventually
> would become a permanent institution.[61]

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[58] Anderson, ed., *The Military Draf*, 365, Table 20.2: U.S. Draft Calls, 1948-1971.
[59] *The Congressional Record*, Daily Digest of The 80th Congress, 2nd Session, Volume 94 – Part 14
(Washington, D.C.: U.S. Government Printing Office, 1948), D456.
[60] *The Congressional Record*, Daily Digest of The 80th Congress, 2nd Session, Volume 94 – Part 14
(Washington, D.C.: U.S. Government Printing Office, 1948), D501.
[61] Richard Gillam, "The Peacetime Draft," in Anderson, ed., *The Military Draft*, 108.

The 1948 Selective Service Act was a hotly contested issue. Nearly all members of

Congress in both the House of Representatives and the Senate felt strongly about

conscription during this time, whether they supported it or not. Arguments for each

position were ardent and had some merit. Representative Norris Cotton (R., N.H.) argued

for the peacetime draft in June of 1948. He said:

> We, as a Nation… now find ourselves… living constantly in the shadow of
> possible aggression from powerful neighbors. It is hard for us to realize the full
> implications of this situation or to learn to live with that danger constantly before
> us. Even if compulsory military service were a new departure in American
> policy, it would be amply justified by the conditions under which we now exist…
> Should we ever be attacked, the new weapons of warfare require a more trained
> and ready defense than has ever been known before…When the attack came [we]
> would have to face the effects of atomic bombs, radioactive materials, biological
> warfare, and crop-destroying chemicals. Chaos would result, with
> communications disrupted, millions of persons sick, wounded, and dying, civil
> disorder, and sabotage… With these possibilities in mind, how can anyone say
> that it is not necessary to have trained disciplined forces… ready at all times to
> cope with the horrible conditions that would follow an attack? It seems clear to
> me that we must have such forces available and that we must further be in a
> position to strike quickly and effectively on the offensive should such an
> emergency arise. … I am convinced that selective service is necessary to maintain
> our forces… I am convinced that if we do not call upon young men for peacetime
> service now we are more likely to be compelled to call upon them for combat
> service soon.[62]

Congressman Cotton argued what most supporters of the Selective Service Act of 1948

believed – that, like the draft enacted before the Second World War, there was an

imminent threat to the American people and the only way to deal with that threat was to

preempt Soviet action.

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[62] Hon. Norris Cotton, "The Draft," *Extension of Remarks of Hon. Norris Cotton of New Hampshire in the House of Representatives*, Appendix to the *Congressional Record*, 4477, 80th Congress, Session 2, Friday, June 18 (legislative day Thursday, June 17), 1948, Colby College Libraries, Microfilm Reel 292, Volume 94, Parts 12-14 App., Pgs. App 4175-5334.

The argument against the draft, as with all opposition, focused largely on the fact that conscription takes away the liberty of citizens. Congressman Thomas E. Martin (R., Iowa) was one of the most ardent opponents of the 1948 draft.

> As was to be expected, the proponents of the draft at the Eightieth Congress have undertaken to portray the present international situation as closely analogous to that of 1940, but I firmly believe we are more nearly dominated today by the desire for power that will lift us to complete dominance of the world rather than for our defense only. The lust for unlimited power is the greatest single danger to a victorious Nation. That lust for power coupled with the concentration of unlimited powers of conscription and funds in the President, together with his duties as Commander in Chief of the armed forces thus created, not only rides roughshod over the very freedoms that made our Nation the promised land for all the peoples of this earth, but it can also lead us down the pathway of militarism to our doom and destruction. I think that the lust for power rather than the imminence of war is the controlling factor behind the enactment of the draft law. If war is as imminent as the proponents of compulsory military service say it is, how can they justify the following developments? First. The complete failure of the responsible officials to build a stock pile of strategic and critical materials. … Fifth. The barn-storming political junket of the President away from duties that should have kept him more than occupied if war is approaching. Sixth. The adjournment of Congress. Our Nation must exercise eternal vigilance if we are to avoid the unnecessary destruction of individual freedom in peacetime. The clamp of the steel jaws of militarism and the subjugation of individual freedom should not be established as a permanent peacetime policy. If we are successful in avoiding or preventing world war III, I sincerely hope that our great Nation can discard the shackles of compulsory military service by the repeal of the draft law long before its expiration date.[63]

Ultimately the opponents of the second peacetime draft lost. Congress passed the bill and only a year after the World War II draft had run out, a new one was implemented.

One of the problems that arose out of the Allied victory of World War II was Korea. The stated goal of the victors was ultimately to give Korea its independence from

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[63] Hon. Thomas E. Martin, "The Draft – Past, Present, and Future," *Extension of Remarks of Hon. Thomas E. Martin in the House of Representatives*, Appendix to the *Congressional Record*, 4395, 80th Congress, Session 2, Saturday, June 19, 1948, Colby College Libraries, Microfilm Reel 292, Volume 94, Parts 12-14 App., Pgs. App 4175-5334.

its thirty-five year occupation by Japan. The agreement was that the Soviets and the

Americans would divide Korea into two so-called trusteeships. Both were supposed to

help Korea with the transition to democracy. When the Soviets refused to allow a

democratic vote in Korea and with the news that they were consolidating military power

in the North, President Truman began to get worried, and for good cause. On June 25,

1950, the Soviets and North Koreans invaded South Korea, thereby realizing America's

fears.[64]

Truman believed wholeheartedly in containment and believed it was his duty to

uphold that policy and to defend the people of South Korea. He announced his decision

on June 27, 1950.

> In Korea the Government forces, which were armed to prevent border raids and to
> preserve internal security, were attacked by invading forces from North Korea….
> In these circumstances I have ordered United States air and sea forces to give the
> Korean Government troops cover and support.[65]

Though Truman conferred with some Congressmen, ultimately his decision to

involve the U.S. military was made without their approval. There was never a formal

declaration of war by Congress. Truman justified his policy by presenting the issue in the

context of the United Nations. When the U.S.S.R. refused to deny their involvement in

the North Korean invasion, the Security Council voted 9-0 (with Yugoslavia abstaining

and the Soviets absent) to force the North Koreans back to the 38th parallel. It was,

Truman argued, the responsibility of the U.S. to intervene because America was part of

the U.N. Security Council and the fighting was a police action rather than a military one.

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[64] Brian Catchpole, *The Korean War: 1950-53* (New York: Carroll & Graf Publishers, Inc., 2000), 13.
[65] President Harry S Truman, "Statement, dated June 27, 1950, by President Harry S Truman, announcing his order to send U.S. air and naval forces to help defend South Korea and explaining the rationale for his decision. Papers of George M. Elsey," *The Truman Library and Museum Online*, Online Documents, Korean War, Week of Decision, Documents.
http://www.trumanlibrary.org/whistlestop/study_collections/korea/large/koreav1.htm. Accessed February 12, 2008.

The President – through an executive order – sent ground troops to Korea on the 30th of June under the command of General Douglas MacArthur.

But, by the mid-fall of 1950, the US was no longer just defending South Korea at the 38th parallel but was fighting an offensive war and was actively trying to capture the North Korean capital, Pyongyang. The Chinese had joined the North Koreans and had attacked U.S. troops earlier in the fall. They overwhelmed the Americans and eventually pushed them back to a small inlet off the coast of Tongjoson Bay in the eastern part of North Korea[66] then back into South Korea.[67] The offensive action in which the United States troops moved north of the 38th parallel ended any doubt that the conflict was not about maintaining the established geo-political lines but was rather about defeating the Soviets in a proxy war. Truman and Secretary of State Acheson reiterated U.S. commitment to the conflict in Korea, and American forces (under the United Nations flag) began driving the Chinese troops back. By 1953, the lines that are still held today had been established. The conflict in Korea lasted until an armistice was signed on July 27, 1953. Nevertheless, the encounter has never come to a formal close. The United States still has troops stationed in South Korea.

The war in Korea had terrible effects on the Korean people with no immediate benefits coming out of the violence.[68] An estimated 1-2 million Koreans had died by 1953, and North and South Korea are still not reunited today.[69] The United States suffered terrible consequences as well: 54,246 soldiers were killed in action, 103,284

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[66] Catchpole, *The Korean War*, Map, 92.
[67] Catchpole, *The Korean War*, Map, 108.
[68] If, instead of looking at the immediate consequences of ethical decisions, I was to analyze the long term costs, this section might look different. South Korea is today far better off than North Korea. But during the actual fighting, and for the people who had to suffer the consequences of the war policy as it was being implemented, the conflict produced no immediate advantages.
[69] Catchpole, *The Korean War*, Chapter 19.

were wounded, 8,177 went missing in action, and 7,000 became prisoners of war for a combined total of 172,707 casualties for a war in which nothing was gained or accomplished by or for the United States.[70]

Though the original plan in Congress had been to preserve the draft system as it was, Truman's intervention in Korea convinced most legislators to extend the draft for two more years in 1950. The extension increased the age range several years and increased the time commitment to two years.[71] In 1951, Congress passed the Universal Military and Training Service Act with very little public resistance. This new legislation increased the age range again. Finally, in 1952, Congress passed the Reserve Forces Act, which compelled all draftees into 8 years of obligatory service, though once active duty had ended, service could be completed in reserve unites, except in the case of a war or other national emergency.[72] From 1950-53 – the years of the Korean Conflict – a total of 1,529,539 men were drafted.[73] The draft that came out of the conflict in Korea lasted straight through the Cold War into the Vietnam War. But, after the armistice, the number of draftees significantly decreased. By 1962, annual draft calls were down to 82,060 men.[74]

Oddly, after the initial debate in which there was a significant amount of dissent, conscription gained fairly high public support throughout the Cold War period. The limited opposition that the Korean draft met was perhaps because the wartime presidents,

[70] Catchpole, *The Korean War*, Appendix II.
[71] Gilliam, "The Peacetime Draft," in *The Military Draft*, 111.
[72] PBS Online, "Timeline of Conscription (mandatory military enlistment) in the U.S." *Online Newshour Extra*, http://www.pbs.org/newshour/extra/teachers/lessonplans/november01/military/timeline.html. Accessed January 28, 2008.
[73] Selective Service System Online, "Induction Statistics, Korea (June 1950-June 1953)," *History and Records, Induction Statistics*, http://www.sss.gov/induct.htm. Accessed January 28, 2008.
[74] Selective Service System Online, "Induction Statistics".

Truman and Eisenhower, were careful to frame the need for conscription in the context of preparedness for an inevitable conflict with the Soviet Union, and they used a barrage of propaganda indicating the Soviets would destroy America if the U.S. were not properly prepared.[75] This included weekly television briefings called "Battle Report, Washington" and downplaying the significance and consequences of the fighting, as well as a refusal on the President's part to use the word "war."[76] Truman and Eisenhower were also able successfully to blame the peacetime and Korean War drafts on the Soviets. "America judged herself free of guilt for the transition in value from voluntarism to coercion. The sin was not hers but that of Russian and Communism in general, an 'implacable adversary' which forced democracies into distasteful expedients."[77] Americans during the fifties categorically believed that there would be a war. The draft likely seemed one of the only ways in which they could prepare and defend themselves.

Though both the war and the draft benefited from high public support in the Cold War and Korean War years, the war was nevertheless unethical. According to Walzer's Just War theory, there must be just cause for the war. Soviet expansion on the other side of the world does not qualify as an attack on the United States. Though Walzer says that war is justifiable if it comes to the defense of an innocent nation, and though this was satisfied during WWI, the UN was in place during the Cold War. It was therefore the UN's responsibility to deal with the Soviet aggression rather than the responsibility of the U.S.

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[75] Catchpole, *The Korean War*, Chapter 14.
[76] Steven Casey, "*White House Publicity Operations During the Korean War, June 1950-June 1951*," Presidential Studies Quarterly, December 2005. www.blackwell-synergy.com, Accessed February 11, 2008.
[77] Gillam, "The Peacetime Draft," in Anderson, *The Military Draft*, 113.

The United States was relying on the domino theory – based on the assumption of an eventual threat – to involve its military. But that theory was based on assumption not empirical reality. There was no certain or particular evidence of a planned Soviet attack on U.S. soil. This idea had potential at most. Thousands of American and Korean lives were lost because America intervened in Korea. Those people would not have died if the U.S. military had not been employed. It is true that the North Koreans would have continued their invasion of the South without U.S. intervention, but the invasion would have united the country – which was the original goal of the victors of World War II. The United States only decided it did not want reunification after it realized how entrenched Communism was in North Korea. By intervening militarily to keep South Korea under the control of the Nationalists, America interfered with the sovereignty of the Korean people in an area in which we no longer had any true claim to power. President Truman based his defense of the military action as a response to an invasion of an American protectorate. But, though South Korea was a trusteeship of the United States, the connection was originally solely for the purpose of instilling a democratic government in Korea and helping to stabilize the country. The relationship between the two nations was expected to be like that of a mentor-student – the post-World War II agreement was never intended to have America be a colonial or military presence in Korea. Some people argue that the brutality of the North Korean regime was enough reason for which the U.S. should enter the war, as was the case with the Holocaust. However, humanitarian issues should be dealt with by an international institution where and when one exists. This was the UN's responsibility.

Second, according to Walzer, there most be a just amount of intervention for a war to be ethical. This criterion was also not met in this case. Again, America was neither attacked nor threatened and therefore had no legitimate claim to any retaliatory force at all.

Third, just wars require a high chance of success. This was also not the case. The United States was fighting an offensive war in enemy territory where the North Koreans and their allies were more familiar with the landscape and resources and could wage a successful guerilla war. Therefore, the likelihood of failure at the outset of military action was high. It is the responsibility of the Commander-in-Chief to ensure that the plan of action is appropriate for the conditions in which the war is being fought. That Truman failed to recognize or even worse ignored the "home field advantage" of the North Koreans and Chinese is evidence of inadequately performing his role and leads to the conclusion that involving the United States in a war was unethical. In addition, the Soviets, who were supplying and aiding the North Koreans, had superior manpower upon which to draw and roughly comparable technological, industrial, and mechanical resources to use and distribute. The Chinese, also fighting on the side of the North Koreans, had unlimited manpower in addition to their ability to move quickly and efficiently through the familiar countryside. The outcome of the conflict was never certain in favor of the United States and South Korea, even at the outset of the military action.

Fourth, the war was not a war of last resort. Truman did not even look into alternatives to the involving American troops. He did not stop to question the legitimacy of the domino theory. He sent troops to Korea because he believed that it was best

instead of sending troops to Korea because he knew decisively that it was the only alternative.

Finally, the war in Korea was not ethical because it was not really a war. Truman sent troops to Korea without any public debate. He sent troops to Korea without any congressional debate. He sent thousands of men to their deaths without any declaration of war. Truman had, in effect, bypassed the democratic system that he had sworn to uphold. This cannot be considered ethical. Opponents of this argument would say that Congress authorized funding for the Korean War on numerous occasions and that giving money to a cause is essentially endorsing it. However, this is a tricky case to make, for President Truman had already sent troops when Congress gave them funding. It is difficult to expect Congress to deprive American citizens abroad, acting on behalf of the state (regardless of the ethics of the mission), of goods and services necessary to their survival.

The President also argued that the conflict was in our role as a member of the United Nations, yet he did not consult with Congress or the people to determine if the conflict was one in which they were willing to participate. Whether or not participating in a U.N. police action is ethical is not applicable in this case because the will of the American people was never taken into consideration. If a president is allowed to commit troops without the consent of the people, the limits on his power have essentially disappeared – a dangerous and volatile step for a democracy.

Like the Second World War draft, the Cold War draft began during peacetime, based entirely on the desire to be prepared in case of an attack. The high level of fear

caused by the tension with the U.S.S.R. made the American people and members of Congress believe that they were in enough imminent danger to pass another peacetime Selective Service Act. I have found that the pre-World War II draft was ethical, but there is one very important difference between the moral basis of the World War II draft and that of the 1948 draft- circumstances. The first peacetime draft took place when there was already a world war being fought in Europe and Asia. The Axis Powers had proven their aggression and willingness to be brutal and unforgiving, even to civilians, and to invade neutral countries. The United States had increasingly played a support role to the Allied nations throughout the war. This support aligned the U.S. with the Allies in everything but the most official sense, thus making it a prime target for an Axis attack. American leaders recognized this inherent threat and responded with knowledge of the likelihood of an attack and therefore a sudden need to enter the war. Because they were not prepared for that likelihood, they implemented a peacetime draft to prepare the country.

During the Cold War, however, there was no major military action occurring, especially in the early years when the proxy wars had not yet started. American leaders were not certain about the tactics that the Soviets would use, the weapons they had, or the support that they could muster, or even whether they would act at all. Congress implemented the 1948 peacetime draft largely based on fears and assumptions – rather than facts and reliable intelligence – about what was seen as a monolithic Communist bloc. The uncertainty of a direct attack on the U.S. as well as the lack of knowledge surrounding Soviet capabilities makes this peacetime draft entirely unethical. The debate about the draft was based on this very issue – and rightfully so. But those who wanted to

try alternative means of increasing the size of the army failed to convince the rest of Congress of the moral impropriety of a draft in time of peace. Their arguments for voluntary enlistment only further serve to demonstrate the immorality of the Cold War and Korean War draft – there was not even consensus in Congress. Both Congress and the President went on the assumption that the military would be unable to recruit the numbers of troops that it would need for a standing army without having tried volunteerism first. This assumption can not be made ethically when people's lives are on the line. The members of Congress who voted for this peacetime draft acted not on what they knew, but on what they believed. To do that is a violation of the rights of the people whose liberty was taken away by the draft and therefore inherently immoral.

The Korean War draft was arguably just an extension of the Cold War draft that was already in place. But the extension too is unethical, regardless of the fact that it was updated during a time of war. Because the Korean War itself was unethical, it is not possible for the draft to be ethical. One cannot logically say that men can be forced to give up their liberty for a cause that is not morally legitimate. Nevertheless, I will look briefly at why this particular draft would be unethical even if the war were itself ethical.

Though the draft was passed as an act in Congress and was therefore a public act (unlike the war), it only gained public support because people had been made to believe by the President that they were in terrible danger from the Soviets. It was a public debate in which the public was not given full disclosure to the information that they ought to have had to make an educated decision. The lack of information available could have been deliberate. It could also have been because that information was not available due to the lack of free press behind the Iron Curtain. Yet this only further serves as proof that

the United States had no place implementing a draft based on information that perhaps did not exist. Either way, this deception is not ethical. People's decisions on serious issues must be made only when they understand the consequences of each option available to them. Because even the President and Congress went into Korea and pushed for a peacetime draft without full knowledge of the costs that the war would have, they could not fully inform the public of the potential outcomes of drafting or not drafting men. Because the public was unaware of the circumstances about which they were making the decision to support or not support the draft, they did not necessarily make the right decision for them. The results of those ignorant decisions were devastating for many families.

It should be noted that the moral problem of student deferments during the Vietnam War also existed during the Korean War. These deferments, which allowed any registered student to defer from the draft, were most common during the Vietnam War era. The result was a conscripted army of mostly poor, black men. This issue, however, did not pose the widespread ethical problem during the Korean War that the exemptions did during Vietnam, only because the number of men going to college was so few. Only 2,134,000 men were in institutes of higher education in 1952 as opposed to 7,513,000 in 1968. This represents an increase greater than 200%.[78] But, nevertheless, because there was also no active and imminent threat against America at this time, the Cold War draft during this decade remains unethical. It was not, however, met with much resistance. The 1948 Cold War draft remained in place until 1973. The years after the armistice in Korea until the U.S. became involved in Vietnam in 1959 (and more seriously in 1961-

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[78] Historical Statistics of the United States: Millennial Edition Online, "Table Bc 523-536- Enrollment in Institutes of Higher Education, by Sex, Enrollment Status, and Type of Institution: 1869-1995. http://0-hsus.cambridge.org.library.colby.edu/HSUSWeb/table/jumpto.do?id=Bc523-536.

62) were, like the pre-Korean War period, years of peace for the United States.   But the peace was short lived. In 1962, the U.S. became militarily involved in Vietnam.

VII. The Ethics of the Vietnam War Draft

The end of the fighting in Korea did not mark the end of the Cold War. Rather it continued for the next few years in various capacities around the globe – indeed the conflict intensified. In the 1940s and 1950s, the Soviet Union began expanding rapidly across Eastern Europe, replacing the Nazis as an occupying power (with the one exception of Prague in 1956). Moscow, for all intents and purposes, ran the governments in that region and supported those governments with a military presence. In addition, the Soviets began manufacturing nuclear power at an alarming rate. American citizens and politicians alike believed there was a terrible and very real threat from Soviet nuclear capabilities. Air raid shelters were built around the country, and school children practiced nuclear attack drills in much the same manner as they do fire drills today.

In 1949, the Chinese Civil War had ended with a Communist victory. Mao Tse-Tsung forced the Chinese Nationalists, led by Chang Kai-shek, onto Taiwan. The United States, acting consistently with its anti-Communist policy, refused to acknowledge the new Chinese government, which would be one of America's foes in the war in Korea. Importantly, the U.S. did not recognize Mao's government because Americans believed that Communism was a single global entity that had to be defeated as a unit rather than as a social movement affecting many countries around the world.

Throughout the 1950s, various proxy wars popped up, almost as though the United States and the Soviet Union were trying to feel one another out militarily. In

Asia, skirmishes took place between "Red China" and Taiwan. The Communist Chinese threatened to take two islands held by the Nationalist Chinese – Quemoy and Matsu. Unwilling to let these fall, President Dwight D. Eisenhower sent American warships to help protect them. This standoff became one of the largest issues in the 1960 presidential campaign, as both Kennedy and Nixon touted their anti-Communism credentials.

The country of Vietnam, abutting the southern border of China, was seen as a part of this conflict. Since the late 19th century, Vietnam had been a colony of the imperial French, though the French were somewhat lax in their control of Vietnamese rulers. Many of the Vietnamese leaders had been educated in France and had applied the teachings of liberal western philosophers like Jean Jacques Rousseau and John Locke to their own cause. By the beginning of the twentieth century, many of those men were actively trying to free Vietnam from French rule.[79] But, during the Second World War, the Japanese occupied Vietnam and stripped the French of their rule.

For a period during the Second World War, the Viet Minh – the name of the Vietnamese Communist party led by party leader Ho Chi Minh – cooperated with the Allies because the Vichy Regime in France was aligned with Japan. Importantly, non-Communist anti-colonialists did not join him. In 1945, after the Japanese surrender, Ho formally declared Vietnam a free and independent state. A three-way civil war ensued among the French, who wanted to return to power, the anti-colonial, anti-Communist Vietnamese Nationalists, and the anti-colonial Vietnamese Communists led by Ho. The French eventually lost at Dien Bien Phu in 1954 and Great Britain, China, the Soviet Union, and the United States organized a cease fire and temporary division. The split

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[79] David Joel Steinberg, ed., *In Search of Southeast Asia: A Modern History, Revised Edition* (Honolulu: University of Hawaii Press, 1987), 357.

was along the 17th parallel into territory in the North, which was controlled by the Communists and territory in the South, controlled by Prime Minister Ngo Dinh Diem and the Nationalists. The separation was supposed to end after two years.[80]

The Communists easily consolidated power in the north under Ho; and the Nationalists, less successfully in the south under President Diem. The violence between the North and South went through periods of escalation and relative calm, but, by 1961, Diem could no longer manage the conflict, and he asked the U.S. for assistance in defending South Vietnam.[81]

The situation in Vietnam was viewed by American policy makers as an extension of the monolithic Communist movement and therefore as a direct threat to the United States. In response to this belief and Diem's request, President Kennedy began sending troops to aid the Nationalists in the south. He attempted to use the Southeast Asia Treaty Organization (SEATO) as a reason for intervening. The signers of SEATO wanted to limit the spread of Communism, and the treaty itself declared that the member states would help defend free countries from Communist incursions. However, this justification was unconvincing, as South Vietnam had not been allowed to participate or sign SEATO, and therefore the United States was acting outside the true bounds of the organization.[82]

For two years the political situation changed little. But in 1963, Diem's brother destroyed several Buddhist monasteries in South Vietnam, claiming that they were

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[80] Steinberg, ed., *In Search of Southeast Asia*, Chapter 33: "Vietnam."
[81] Bureau of East Asian and Pacific Affairs, "Background Notes: Vietnam, October 1998," U.S. Department of State, http://www.state.gov/www/background_notes/vietnam_1098_bgn.html. Accessed February 15, 2008.
[82] William Conrad Gibbons, *The U.S. Government and the Vietnam War: Executive and Legislative Roles and Relationships, Part IV: July 1965-January 1968* (Princeton, NJ: Princeton University Press, 1995), 813.

harboring members of the Communist party, which was by then called the National

Liberation Front (NLF). The attacks backfired. In protest, many of the Buddhist monks

burned themselves alive in the streets of Saigon. Not wanting to be associated with the

now very unpopular Diem administration, the U.S. advocated a coup. Diem was

assassinated three weeks before Kennedy in 1963.[83]

When President Lyndon B. Johnson took office, he was convinced that the U.S.

needed to become more involved in Vietnam so that the Communists would believe they

could not win a war with the United States. In August of 1964, two American ships were

supposedly attacked in the Gulf of Tonkin along the eastern coast of North Vietnam.

Recent analysis has shown that the second attack never occurred but was reported by the

Johnson administration for political purposes.[84] North Vietnam or the Democratic

Republic of Vietnam (DRV) leaders claimed that the attack was in response to American

espionage. The incident, especially the fabricated second bombing, was the primary

foundation upon which the Gulf of Tonkin Resolution passed in Congress. It read:

> That the Congress approves and supports the determination of the President, as
> Commander in Chief, to take all necessary measures to repel any armed attack against
> the forces of the United States and to prevent further aggression.
>
> Section 2. The United States regards as vital to its national interest and to world peace
> the maintenance of international peace and security in southeast Asia. Consonant with
> the Constitution of the United States and the Charter of the United Nations and in
> accordance with its obligations under the Southeast Asia Collective Defense Treaty,
> the United States is, therefore, prepared, as the President determines, to take all
> necessary steps, including the use of armed force, to assist any member or protocol

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[83] U.S. Department of State, "Outgoing Telegram – Department of State: Am. Embassy Saigon –
Operational Immediately, Eyes Only: Ambassador Lodge," 8/24/63,
http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB101/vn02.pdf.
[84] The Presidential Timeline, "Gulf of Tonkin Incident: Subsequent Controversy,"
www.presidentialtimeline.org. Accessed February 25, 2008.

state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

Section 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress.[85]

President Johnson framed his desire for the resolution in terms of containment and a demonstration of power that would intimidate the Communist world. He made his case in a Congressional leadership meeting in August of 1965. "We had to answer the attack…. We can tuck our tails and run, but if we do, these countries will feel all they have to do to scare us is to shoot the American flag."[86] The Resolution gave Johnson nearly unlimited power to do what he wished in Vietnam militarily without a formal declaration of war. It was passed in both houses of Congress with only two Senators casting dissenting votes.

In 1965, Johnson committed ground troops to Vietnam for the first time. By the end of the year, more than 200,000 American troops had been deployed.[87] By 1967, the ground and air wars had escalated beyond what any American had believed possible. Over 537,000 Americans in Vietnam were in Vietnam by 1968.[88] That same year the North Vietnamese in conjunction with the guerilla fighting force, the Viet Cong, began the Tet Offensive. Though they technically lost militarily, the impact of the fighting

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[85] The Avalon Project at Yale Law School, "1964 - Gulf of Tonkin Incident: August 5-7, Joint Resolution of Congress H.J. RES 1145 August 7, 1964" *20th Century: Indochina – Vietnam, Cambodia and Laos*, http://www.yale.edu/lawweb/avalon/tonkin-g.htm#joint. Accessed February 25, 2008.

[86] The Presidential Timeline, "Notes Taken at a Congressional Leadership Meeting 8/4/1964," Lyndon B. Johnson, Presidency, Gulf of Tonkin Incident, 3. www.presidentialtimeline.org. Accessed February 17, 2008.

[87] PBS Online, "American Experience: Vietnam Online," Timeline, 1961-1965, http://www.pbs.org/wgbh/amex/vietnam/timeline/tl2.html#b. Accessed February 17, 2008.

[88] Department of Defense, "Deployment of Military Personnel by Country as of 30 September 1968," Military Personnel Historical Reports, Military Personnel Statistics, www.fedstats.gov/cgi-bin/A2Z.cgi.

ultimately hurt the U.S. military far more and did significant psychological damage. At this point, 3,547,000 Americans were in the army.[89] Resentment and anger over the war in Vietnam were growing rapidly at home. The draft was extraordinarily unpopular, as were the tactics being used by the Pentagon. The My Lai Massacre only served to confirm most Americans' deepest fears about the immorality of the war. When President Nixon was elected in 1968, he immediately began planning to return the fighting to the South Vietnamese forces in a policy that would be known as "Vietnamization." However, it was not until 1973 that the last ground troops were pulled out of Vietnam. Only then was the Cold War draft allowed to lapse. The war in Vietnam is one of the most devastating foreign policy debacles in United States history.

The draft that took place during the Vietnam War had continued from the Cold War and Korean War without pause. From the years 1964 to 1973 – the years with the most U.S. involvement in Vietnam – 1,857,304 American men were drafted.[90] There are two unique problems with conscription during the Vietnam War years that was not present throughout the previous years of the Cold War draft. The first was the problem of equity.

In 1967, the Military Selective Service Act was passed, extending the draft of men between the ages of 18 ½ and 26 four more years and allowing college students to defer their military service.[91] Therefore, the socio-economic breakdown of the draftees

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[89] Joseph A. Califano, Jr., "Doubts About an All-Volunteer Army," in Anderson, ed., *The Military Draft*, 533.

[90] Selective Service System Online, "Induction Statistics," History/Records, www.sss.gov. Accessed February 17, 2008.

[91] Lt. Gen. Lewis B. Hershey, "Résumé of Recent Developments Affecting Selective Service," in Sol Tax, ed., *The Draft* (Chicago: Chicago University Press, 1967), 477.

was vastly unequal. But during Vietnam men could not directly buy their way out of the

service. Rather, exemptions were based on educational opportunity. Because men who

could prove that they were full-time students were allowed to defer from being drafted,

and because higher education was much more readily available to the well-to-do, most of

the men drafted during the Vietnam War were poor and black.[92] When President

Johnson addressed Congress on March 6, 1967, he criticized the education deferment

policy.

> Student deferments have resulted in inequities because many of those deferments
> have pyramided into exemptions from military service. Deferred for
> undergraduate work, deferred further to pursue graduate study and then deferred
> even beyond that for fatherhood or occupational reasons, some young men have
> managed to pile deferment on deferment until they passed the normal cut-off
> point for induction.[93]

Though Johnson made these comments, and though he issued an executive order

prohibiting postgraduate deferments (except for medical students), he made no strong

stance about undergraduate deferments and left that issue alone, to be debated in

Congress.

Senator Edward M. Kennedy (D., MA) was strongly opposed to educational

deferments as well. He objected to the conference report on the 1967 draft bill.

> There are two troublesome aspects of the conference bill's student deferment
> provisions. One is the mandatory provision for the deferment of undergraduate
> students, without any provision for apprentice or vocation students. In other
> words, those who have the means – intellectual and financial – to stay in any

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[92] As noted in the section on the Korean War, the 1967 act was not the first time deferments for education
were allowed. However, the issue was not nearly as widespread. In 1952, only 2,134,000 people were
enrolled in institutes of higher education. This represents only 13.8% of the population of Americans 18-
24 years old. By 1968, 7,513,000 people were enrolled in institutes of higher education, representing 34%
of the population of 18-24 year olds.
Historical Statistics of the United States: Millennial Edition Online, "Table Bc523-536: Enrollment in
Institutions of Higher Education by Sex, Enrollment Status, and Type of Institution: 1869-1995," http://0-
hsus.cambridge.org.library.colby.edu/HSUSWeb/table/jumpto.do?id=Bc523-536.
[93] President Lyndon B. Johnson, "The President's Message on Selective Service to the Congress, March 6,
1967," in Tax, ed., *The Draft*, 471.

college are assured of a deferment. Those without these means, who may be engaged in on-the-job training or vocational skill training, are subject to the draft. I would only point out that both groups are learning to become productive citizens – but one group, the less privileged, has no protection from exposure to the draft.

The other troublesome provision concerns graduate deferments, the subject of the sharpest criticism in the national debate of draft reform. The conference bill continues the President's authority to prescribe graduate deferments, and thus continues the loophole which has generated the greatest cynicism. The Bill contains a so-called "anti-pyramiding" provision, but it very plainly points out that the procession from college student to graduate student to occupational deferment, until the cut-off age of 35 is reached, will provide the means for many young men to beat the draft.[94]

The class issues that the President and Senator Kennedy addressed were not just abstract concerns but rather real problems. "Over 60 percent of the 27 million draft-eligible males found successful methods not only to lessen their chances of combat but of serving in the military altogether."[95] This ability to avoid service meant that for every one of the roughly 16,200,000 men who was deferred, a less privileged man had to be drafted.

Those in favor of the draft argued that, once again, the continued freedom of the United States was at stake. They argued that deferments were "given only when they serve the national interest."[96] Because the draft was not new (it was still in place from 1948), they did not offer any additional reasoning for having a draft in the first place. It was assumed that American security was at stake because of the Communist threat. Richard Nixon pointed out during his 1968 presidential campaign what supporters of the draft were assuming. He said:

We have lived with the draft so long, in fact, that too many of us now accept it as normal and necessary… Any major change in the way we obtain military

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[94] Senator Edward M. Kennedy, "Objections to the Selective Service Act," in *The Draft*, Sol Tax, ed., (Chicago: University of Chicago Press, 1967) 480.

[95] Frank Kusch, *All American Boys: Draft Dodgers in Canada from the Vietnam War*, (Westport, CT: Praeger, 2001) 69.

[96] General Lewis B. Hershey, "The Basic Purpose and Objective of the U.S. Selective Service System," *The Military Draft*, Martin Anderson, ed., (Stanford, CA: Hoover Institution Press, 1982), 524.

manpower must not keep us from maintaining a clearly superior military strength. In the short run we need to recognize the limits imposed by the war in Vietnam. However we might wish to, we can't stop the draft while we are in a major war."[97]

Though Nixon was actually advocating for the end of conscription during this speech, he made the point that draft supporters were basing their arguments for the draft on the fact that we had had a draft for thirty years. Supporters, Nixon argued, believed that international conditions had not changed dramatically from the Korean War years and that because we were fighting a war, we needed troops. That the government was no longer considering the ethicality of conscription does not make it suddenly moral. In fact, the lack of thought put into the immorality of this draft points to the lack of interest that the President and Congress had in the role that ethics should play in wartime policy.

That the ethics of depriving individuals of their liberty was not even a consideration for policy makers was a problem for people who advocated ending the draft because they were basing their arguments on fundamentally different principles than were draft supporters. They thought that the world conditions had changed enough so that military preparedness and troop levels could be relaxed. Therefore, the war was immoral and impractical and should not be occurring in the first place; if there were no war, no continuing draft would be needed. These contextual differences set the groundwork for the second major problem with the draft during the Vietnam War: a lack of consensus and widespread resistance.

Each American war has seen its own resisters and protestors but none have faced such stringent and long lasting dissent as the war in Vietnam. Opposition among

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[97] Richard M. Nixon, "The All-Volunteer Armed Force," in *The Military Draft*, Martin Anderson, ed., (Stanford, CA: Hoover Institution Press, 1982) 604.

civilians, soldiers, and veterans alike reached unprecedented levels during the sixties and early seventies. Many resisters were young people who were at risk of being drafted, but not all of the opposition stemmed from Johnson's conscription policies. People across socio-economic, age, racial, and regional lines began questioning the morality of the war in Vietnam – whether the United States had a right to be there, the relevance to American foreign policy – whether there was a discernable advantage to fighting a war at all in Vietnam, and the lack of progress coupled with the mounting number of American casualties.[98] Interestingly, the morality and relevance of American action in Vietnam were not widely questioned until it was perceived by citizens that the United States was not making any headway. The effects of the deep-seated dissent against the war and the politicians and generals who continued the fighting were exceptional numbers of draft evaders, conscientious objectors, and protesters.

One of the most public anti-war and anti-draft spokesmen at this time was the Reverend Martin Luther King, Jr. King was able to tie the Civil Rights movement directly to the draft and in doing so, tied the military to social unrest in a unique way.

> Perhaps the more tragic recognition of reality took place when it became clear to me that the war was doing far more than devastating the hopes of the poor at home. It was sending their sons and their brothers and their husbands to fight and to die in extraordinarily high proportions relative to the rest of the population. We were taking the black young men who had been crippled by our society and sending them eight thousand miles away to guarantee liberties in Southeast Asia which they had not found in southwest Georgia and East Harlem. So we have been repeatedly faced with the cruel irony of watching Negro and white boys on TV screens as they kill and die together for a nation that has been unable to seat them together in the same schools. So we watch them in brutal solidarity burning the huts of a poor village, but we realize that they would never live on the same

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[98] Chambers, *To Raise an Army*, 256.

block in Detroit. I could not be silent in the face of such cruel manipulation of the poor.[99]

His words had an enormous impact on American society and his subsequent death, exactly one year after this speech on April 4, 1968, martyred him and established his message into the American psyche permanently.

Another important event dealing with the war took place during the 1968 Democratic National Convention in Chicago. The effects of Vietnam took their toll on President Johnson, who chose not to run for a second term of office in 1968. Taunts of "Hey, Hey, LBJ, how many kids did you kill today?" as well as the social and military turmoil of the 1960s took a grave toll on Johnson. Anti-war candidates dominated the 1968 Democratic presidential nominating contests, with Senator Robert F. Kennedy (D., NY) and Senator Eugene McCarthy (D., MN), winning primary after primary. However, Kennedy was assassinated after his primary victory in California, and McCarthy's wins had garnered few delegates. Vice President Hubert Humphrey, who won no primaries and was closely tied to the Johnson policies, was set to be given the Democratic nomination at the Chicago convention, because the process at the time was dominated by the party organization, controlled by the White House.

While the deeply divided Democratic Party debated about the war inside the convention hall, protesters gathered outside. The demonstrations led to riots, brutal police intervention, and the arrest of eight protestors for inciting the violence. The rioting, bloodshed, and subsequent arrests were widely covered by the media, further serving to align the unpopular war policies with the Democrats. The Humphrey

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[99] Reverend Martin Luther King, Jr., "Beyond Vietnam: A Time to Break Silence," Speech given at a meeting of Clergy and Laity Concerned at Riverside Church in New York City, April 4, 1967, http://www.informationclearinghouse.info/article2564.htm. Accessed February 19, 2008.

nomination and the convention rioting also intensified the belief of many people that the political system was not legitimate in that popular dissatisfaction could not end a war initiated by rich, white men in which poor, young people, many of whom were black, should not be dying.

Protesting was perhaps the most common way of demonstrating dissatisfaction with the Vietnam War, and the most ardent protestors were college students and college aged students. They showed their dissatisfaction with the war in many ways, such as by burning their draft cards. The first student protests took place at the University of California at Berkley in 1964. Thousands more occurred throughout the next decade. The most famous of these was the Kent State Riots in 1970. Students met on May 4th to protest President Nixon's decision to invade Cambodia to suppress the Viet Cong and supporters there. The tension during the rally led to confrontations with local policemen and in response, the Ohio National Guard was called. When students ignored the orders of Guardsmen to disperse, the Guard fired on the crowd, killing four students and injuring nine more. This tragedy represents the extraordinary amount of tension between civilians and the military during this time. In addition, the backlash for the killings further served to increase resistance to the war and President Nixon.[100]

Distaste for the war in Vietnam was by no means limited to private citizens. Debates over the appropriateness of the military action as well as the ways in which it was being conducted raged within the halls of the Capitol. Numerous Congressmen tried to get legislation passed that would change or end the war. The best example is perhaps the Cooper-Church Amendment sponsored by Senators John Sherman Cooper (R., KY)

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[100] Kent State University Libraries and Media Services, "May 4 Collection," *Department of Special Collections and Archives*, http://www.library.kent.edu/page/11247. Accessed February 25, 2008.

and Frank Church (D., ID). The amendment sought to do several things, the most

important of which were an end of financial support of troops in Vietnam by 1970 and

end military support outside of South Vietnam. The amendment passed in the Senate 58-

37 after six months of debate,[101] but it failed in the House of Representatives by a vote of

237-153.[102] Though the amendment passed only in a much weaker form in 1973, it

demonstrates that the war and the draft were not supported or opposed along partisan

lines but were very controversial issues upon which there was no congressional

consensus.

For the purpose of evaluating the draft during the Vietnam War, it is necessary to

look more closely at the morality of the war itself. In the case of Vietnam, Walzer's just

cause criterion certainly was not met. The North Vietnamese never posed a direct threat

to the United States. The U.S. was still following a policy of containment in order to

limit Soviet power in Southeast Asia. Those opposed to the war argued that we

intervened in a civil war in Vietnam, imagining a monolithic Communist expansionist

plot where none existed.

In many ways, with one crucial exception, the Vietnam War was not substantially

different from the Korean War. In the case of Korea, the United States was legally acting

as a protectorate to the South Korean people after the conclusion of the Second World

War. In the case of Vietnam, no such protectorate relationship existed. Rather, the U.S.

was asked to aid Premier Diem, who was running a government about as tyrannical and

[101] *The Congressional Record*, Daily Digest of the 91st Congress, Volume 116 – Part 35 (Washington, D.C.: U.S. Government Printing Office, 1970), D386.
[102] *The Congressional Record*, Daily Digest of the 91st Congress, Volume 116 – Part 35 (Washington, D.C.: U.S. Government Printing Office, 1970), D408.

oppressive as the one being run by Ho Chi Minh in North Vietnam. The United States was under no legal or moral obligation to intervene, even though Congress used SEATO as a legal justification. This was a weak argument at best, as South Vietnam was not included in the SEATO treaty.

In order to be a just war, there must also be a just amount of intervention used. This is also not the case. America used unprecedented weaponry in hopes of defeating the North Vietnamese troops and Viet Cong. One particularly devastating weapon was Agent Orange, a chemical that the Air Force sprayed across the Vietnamese jungles, killing thousands of people including civilians, destroying millions of acres of land and crops, and giving the next generation of Vietnamese children terrible birth defects.[103] This response is in no way a reasonable reaction to the guerilla warfare of the Viet Cong.

Wars must also have a high chance of success to be just. This was also not the case in Vietnam. The United States entered the war without understanding the convictions of the people against whom and with whom it would be fighting. Americans were unable to comprehend the unfaltering and deep-seated roots for which the Vietnamese on both sides of the conflict willing to fight. This basic misunderstanding probably meant that the United States had no chance of success in Vietnam from the start.

Fourth, war must be a last resort to be just. Yet as I have said before, it is only the responsibility of a third state to interfere when an international organization exists. In this case, the UN existed and was functioning capably. In addition, the case could be made that the conflict in Vietnam was really an internal one and therefore Walzer's rule of aggression would not apple. If the case were made that this was a humanitarian issue, the

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[103] Pulitzer Center on Crisis Reporting, "Vietnam: War's Lasting Legacy," World Security Institute, 2006. http://www.pulitzercenter.org/showproject.cfm?id=31. Accessed February 19, 2008.

UN should also be responsible. Thus, there was no just cause for going to war, and this condition is consequentially untrue.

Finally, in order for a war to be just, there must be a public debate and relative consensus. It is clear that the war in Vietnam was up for public debate after it was already transpiring – whether that debate was official and had an initial effect on policy makers is much less apparent. More importantly, the initial decision to go into Vietnam by Kennedy and to escalate U.S. involvement by Johnson largely flew under the radar screens of most Americans. Nevertheless, by the mid-late 1960s, people were fully aware of the circumstances and conditions of the war. There was, however, no consent or consensus of the public to enter or to continue fighting. Yet Presidents Johnson and Nixon and the United States Congress continued their mission in Southeast Asia in full knowledge that they were acting without any sort of mandate from the American people. The disregard of the will of the American people by Kennedy, Johnson, Nixon, and Congress was perhaps the most egregious violation of democratic government that had existed to date. To act without the approval of the people one seeks to represent in a democratic society is to act above the law and to act with disregard for the societal moral code. Though these men were elected, and therefore meant to implement policies that they believed were best for the country, their responsibility was also to act in accordance with the will of the public. To ignore the citizenry in a democracy is always unethical but is even more so when the policy which is at stake is one where the liberty of hundreds of thousands of citizens is being abrogated and tens of thousands are being killed after having been conscripted into service.

I have already determined that the peace time draft enacted at the beginning of the Cold War and continued during and beyond the conflict in Korea was unethical. Since the Vietnam draft was technically just a continuation of the Cold War draft, it must also be unethical. In addition, because the Vietnam War itself was unethical, the draft must also be unethical. Nevertheless, I will break down further the particular reasons that conscription during the 1960s and early 1970s was independently unethical.

First, the draft was not the last resort for the army. Once again, it was assumed that voluntary recruitment would not yield the number of recruits needed to support the war. However, no efforts toward voluntary recruitment were ever made, and it was not until the number of draftees had been increased dramatically for several years that congressmen and women began looking seriously for alternatives to the draft. This movement was made in conjunction with Richard Nixon's 1968 presidential campaign, when he outwardly rejected the 1967 Military Selective Service Act, but until then, little was done to seek alternatives.

Second, the draft during the Vietnam, though debated publicly, did not have consensus. Like the public debate over the war, discussions and actions about the draft were overwhelmingly divided. The public debate was a good ethical practice – but again, like the decisions regarding the war, it was inherently unethical for policy makers to ignore the massive demonstrations and public protests against conscription. It was a violation of the rights of citizens to have leaders who ignored their political voice in a democratic society. Some would argue that many laws are controversial and that they are still valid, and that the demonstrations therefore mean nothing. But the large numbers of opponents coupled with the fact that the draft is such a dramatic policy – people were

literally dying because of it – means that extra attention should be paid to policies of conscription.

Finally, the draft was unethical because it was so vastly unequal. The last draft to have been so unequal was during the Civil War, when the wealthy were able to buy their way out of the service. This was certainly problematic, but at the same time, so few people were able to actually pay that it did not make an enormous difference in the overall morality of the war. Both World War drafts treated citizens equally with little class division among those who were conscripted. The Korean War draft, like the Vietnam War draft, had educational deferments, but, like the Civil War draft, so few men attended college that they did not pose an overwhelming problem in the United States. However, by the time the Vietnam War was at its height, the education deferments meant that mostly poor and black men were being put in the army. The tremendous costs of the war were paid mostly by those who could afford least to pay them and the draft, a public policy, helped to perpetuate a class system in a supposedly class-less society. This economic inequality, which often paralleled racial inequality in practice, represents a vital and incorrigible violation of American civil rights. The whole premise of a democratic government and then of selective service is that all citizens have equal opportunity, equal representation, equal responsibility, and equal potential, and that their liberty could be constrained equally were that necessary to preserve the society. If this is not the case, as it was not during the Vietnam War draft, then the very basic tenets of democratic – and more specifically American – society are violated.

VIII. The Ethics of Stop Loss

The Cold War and Vietnam War draft officially ended in 1973 and the registration requirement, in 1975. In 1980, President Jimmy Carter reinstated the registration requirement, reacting to the Soviet invasion of Afghanistan. This requirement remains in place today for all males when they turn 18 years of age. The goal of registration was and is to provide the government with the number of available American men and their age, marital status, and other personal information should another draft need to be instated.[104] Still, to date the United States of America has not officially used conscription since the last 646 men were drafted in 1973.[105]

On September 24, 1983, Congress passed a law in response to the problems that had stemmed from the aftermath of the conflict in Vietnam and the problem – or at least perceived problem – of troop shortages during that war. The law, U.S. Code Title 10, Subtitle E, Part II, Chapter 1209, Section 12305, says, "the President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to the national security of the United States."[106] This law, which legalizes a policy option that is now called "stop loss" means that the President can, at his discretion, decide that the military needs additional forces and compel servicemen and women to remain in the service even

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[104] Selective Service System Online, "History/Records: Background," http://www.sss.gov/backgr.htm. Accessed March 9, 2008.
[105] Selective Service System Online, "History/Records: Induction Statistics," http://www.sss.gov/induct.htm. Accessed March 9, 2008.
[106] Office of the Law Revision Council, U.S. House of Representatives, "U.S. Code Title 10, Subtitle E, Part II, Chapter 1209, Section 12305, (a)," http://uscode.house.gov/uscode.

after their contracts have formally expired. Congress passed this law based on the idea that in certain extreme circumstances it can be devastating to the war and to the cohesiveness of a military unit to have people retiring from and/or being added to a unit during in the midst of a conflict. The initial goal of the policy was to allow the president to keep combat groups together and to retain people with certain and specific skill sets that would assure success and consistency for a short period of time.[107]

Though enacted during President Ronald Reagan's administration, the law was not utilized until President George H.W. Bush sent troops to Iraq in the First Gulf War. Executive Order No. 12728 was signed on August 22, 1990,[108] just twenty days after Iraq invaded Kuwait and nearly five months before any U.S. military action.[109] It was invoked only on a select few service members who were directly involved in theater operations or who had skills critical to the success of the mission. Because the mission was so short and there was a definitive and achievable goal, the original purpose of stop loss was met in this case. A few critical servicemen and women were retained and contributed to a quick victory.[110]

The next time stop loss was authorized was on April 27, 1999. President Clinton issued Executive Order No. 13120 and gave all three branches of the military the authority to use stop loss. However, only the Air Force employed it, and, as during the Gulf War, stop loss was used in a very limited way. "Personnel most affected are pilots,

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[107] Lawrence Kapp, CRS Report for Congress, "Operations Enduring Freedom and Noble Eagle: Questions and Answers About U.S. Military Personnel, Compensation, and Force Structure," March 19, 2002, CRS-6. http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-7021:1. Accessed April 3, 2008.
[108] The Federal Register, "Executive Orders Disposition Tables: George Bush – 1990," http://www.archives.gov/federal-register/executive-orders/1990.html. Accessed March 9, 2008.
[109] William M. Arkin, "Masterminding an Air War," *Washington Post Online*, http://www.washingtonpost.com/wp-srv/inatl/longterm/fogofwar/wargoals.htm. Accessed March 10, 2008.
[110] Jim Garamone, "Stop Loss Program Provides Authority to Keep Key People," *American Forces Press Service*, May 21, 1999. http://www.defenselink.mil/news/newsarticle.aspx?id=42052. Accessed March 14, 2008.

air crews, aircraft maintenance personnel and those in other critical specialties."[111] These

services were critical to the success of a mission that had an explicit and short-term goal.

Stop loss was not authorized again until three days after the September 11, 2001

terrorist attacks on the World Trade Center in New York City and the Pentagon in

Washington D.C.. With Executive Order No. 13223, President George W. Bush became

the third U.S. president to implement stop loss.[112] Under the current stop loss policy, the

President delegated his power to directly stop loss troops to the Secretary of Defense,

Donald Rumsfeld at the time of the order. Rumsfeld, in turn, further delegated that

power to each individual branch of the military so they could stop loss troops as they saw

fit. All of the services have implemented skill-based stop loss programs like those used

during the 1990s. The Army (including the National Guard and Army Reserve) has also

implemented a unit-based stop loss program which:

> Delays the departure of personnel from units deploying to Iraq and Afghanistan
> until 90 days after the unit returns from its deployment… Soldiers are affected
> from 90 days prior to their unit's mobilization/deployment date through their
> demobilization/redeployment date, plus a maximum of 90 days.[113]

In other words, if a soldier is supposed to retire on a specific date and his unit was

scheduled to be deployed within 90 days of that retirement date, he or she can be stop

lossed, deployed for another tour (usually a year although tours are often extended), and

then required to stay in the military for at least another 90 days after he or she returns

from his or her deployment. Soldiers who have already been stop lossed are not

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[111] Jim Garamone, "President Calls -up Reservists, AF Authorized Stop/Loss," *American Forces Press Service*, April 27, 1999. http://www.defenselink.mil/news/newsarticle.aspx?id=41618. Accessed March 14, 2008.

[112] The Federal Register, "Executive Orders Disposition Tables: George W. Bush – 2001," http://www.archives.gov/federal-register/executive-orders/2001-wbush.html. Accessed March 13, 2008.

[113] Charles A. Henning and Lawrence Kapp, "Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers about U.S. Military Personnel, Compensation, and Force Structure," *CRS Report for Congress*, January 27, 2006. Order Code RL31334, CRS – 7.

exempt.[114] Interestingly, Congress passed a law on January 6, 2006, requiring the armed

services to make recruits more aware of the possibility of being stop lossed, should they

sign up.[115] This recognition that this requirement was necessary points to the ethical

issue of awareness and openness that will be discussed later.

The 9/11 attacks provoked Congress to pass a law authorizing the president to use

all necessary force to suppress terrorism. The authorization was incredibly broad. "We

are authorizing the President to use force against the terrorists who attacked America on

September 11, and any nation, organization, or person that aids or harbors them."[116]

President Bush utilized this authorization only three weeks later with the U.S. invasion of

Afghanistan on October 7, 2001. The goal of the military action was to remove the

Taliban (the political group controlling the country) that had supported and abetted the

terrorist group responsible for the attacks, Al Qaeda. President Bush formally announced

his military action to the nation, saying:

> On my orders, the United States military has begun strikes against al Qaeda
> terrorist training camps and military installations of the Taliban regime in
> Afghanistan. These carefully targeted actions are designed to disrupt the use of
> Afghanistan as a terrorist base of operations, and to attack the military capability
> of the Taliban regime.[117]

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[114] United States Army, "MILPER Message Number: 04-169, AHRC-EPO-P, Implementation of Active Army (AA) Stop Loss/Stop Movement Program for Units Scheduled to Deploy OCONUS in Support of OIF and OEF," Issued June 6, 1004. http://www.nlgmltf.org/stop_loss/june_2004_stop_loss.html. Accessed March 19, 2008.

[115] Charles A. Henning and Lawrence Kapp, "Operations Noble Eagle, Enduring Freedom, and Iraqi Freedom: Questions and Answers about U.S. Military Personnel, Compensation, and Force Structure," *CRS Report for Congress*, January 27, 2006. Order Code RL31334, CRS – 7.

[116] *Congressional Record* Online, "Use of Force to Defend America Against Terrorist Attacks," *Library of Congress: THOMAS*, September 14, 2001. http://thomas.loc.gov/cgi-bin/query/D?r107:199:./temp/~r1071JlY19. Accessed March 18, 2008.

[117] President George W. Bush, "Presidential Address to the Nation," The Treaty Room, 1:00 P.M. EDT, October 7, 2001. http://www.whitehouse.gov/news/releases/2001/10/20011007-8.html. Accessed March 13, 2008.

Though initially regarded as successful, the invasion of Afghanistan – now called Operation Enduring Freedom – wavered. By the summer of 2002, less than a year after the initial U.S. invasion, the Taliban had begun to regain strength and support by waging an underground propaganda and guerilla assault.[118] The United States quickly lost much of the ground it had gained and was forced to ask the North Atlantic Treaty Organization (NATO) for help.[119] NATO had been involved with anti-terrorist activities directly following the attacks on September 11, primarily through lending radar systems called AWACS, which patrolled the skies over the United States and through access to NATO members' bases and air fields rather than with direct ground fighting in Afghanistan.[120]

Several months later the White House introduced its plan to add a second front to the War on Terror. In February, 2003, President Bush announced that the country of Iraq, led by Saddam Hussein, was also harboring Al Quaeda operatives and weapons of mass destruction (WMDs) that posed a significant threat to the United States. The President and his staff announced that Hussein, with his close ties to terrorist networks, had the capability to supply these organizations with an arsenal that could devastate the U.S. When United Nations (UN) weapons inspectors failed to find any weapons in Iraq, Bush chalked this failure up to the fact that Hussein was not allowing the inspectors to inspect all potential caches fully, even though the Chief Weapons Inspector, Hans Blix, stated that Hussein was being increasingly cooperative.[121] Still, the Hussein regime had a history of hiding weapons and had been on the radar screen as a potential threat to the

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[118] The Associated Press Online, "Leaflet War Rages in Afghan Countryside," February 14, 2003. http://www.intellnet.org/news/2003/02/14/16788-1.html. Accessed March 13, 2008.

[119] NATO Online, "NATO in Afghanistan," http://www.nato.int/issues/afghanistan/index.html. Accessed March 13, 2008

[120] NATO Online, "NATO and the fight against terrorism: Chronology of events following 11 Sept. 2001," http://www.nato.int/issues/terrorism/chronology.html. Accessed April 1, 2008.

[121] BBC News Online, "World, Timeline: Iraq," 6 March 2008, http://news.bbc.co.uk/1/hi/world/middle_east/737483.stm. Accessed March 17, 2008.

United States since at least the early 1990s. Congress passed the Iraq Liberation Act of

1998 formally to recognize the threat that Iraq posed to the United States and to assert

that, "It should be the policy of the United States to support efforts to remove the regime

headed by Saddam Hussein from power in Iraq and to promote the emergence of a

democratic government to replace that regime."[122] With significant bipartisan support,

Bush announced his intention to oust Hussein on February 26, 2003.

> In Iraq, a dictator is building and hiding weapons that could enable him to
> dominate the Middle East and intimidate the civilized world -- and we will not
> allow it. This same tyrant has close ties to terrorist organizations, and could
> supply them with the terrible means to strike this country -- and America will not
> permit it. The danger posed by Saddam Hussein and his weapons cannot be
> ignored or wished away. The danger must be confronted. We hope that the Iraqi
> regime will meet the demands of the United Nations and disarm, fully and
> peacefully. If it does not, we are prepared to disarm Iraq by force. Either way, this
> danger will be removed.
>
> The safety of the American people depends on ending this direct and growing
> threat. Acting against the danger will also contribute greatly to the long-term
> safety and stability of our world. The current Iraqi regime has shown the power of
> tyranny to spread discord and violence in the Middle East. A liberated Iraq can
> show the power of freedom to transform that vital region, by bringing hope and
> progress into the lives of millions. America's interests in security, and America's
> belief in liberty, both lead in the same direction: to a free and peaceful Iraq.[123]

On March 17, 2003, President Bush formally issued a declaration stating that the

United States would intervene militarily in Iraq if Saddam Hussein did not step down

from power within forty-eight hours. The authority to do so was given, at least in part, by

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[122] Iraq Liberation Act of 1998, Section 3, H.R. 4655, 105th Congress, Second Session, 27 January 1998. http://thomas.loc.gov/cgi-bin/query/z?c105:H.R.4655.ENR. Accessed April 1, 2008. It is important to note, however, that Section 4 of the act indicates that this policy was meant to support and assist democratic movements within Iraq's borders by Iraqi people attempting to oust Saddam Hussein themselves. It was not meant to give the American military the go-ahead to depose of Hussein itself.
[123] President George W. Bush, "President Discusses the Future of Iraq," Washington Hilton Hotel, Washington, D.C., 7:22 P.M. EST, February 26, 2003. http://www.whitehouse.gov/news/releases/2003/02/20030226-11.html. Accessed March 17, 2008.

Congress in the *Authorization for Use of Military Force Against Terrorists*. On March 19, 2003, President Bush ordered the military to begin bombing Iraq. The army was instructed to send in ground troops soon afterwards.[124] It took the U.S. military only two weeks to capture Baghdad. President Bush declared the end of combat on May 1, 2003. The United States then occupied – with temporary UN approval – Iraq until June 28, 2004, when power was officially handed over to an interim Iraqi government. On January 30, 2005, elections for the permanent government took place, and, while millions of Iraqis voted, officials were elected largely based along sectarian lines.[125] On December 14, 2003, Saddam Hussein was captured hiding in a fox hole in the countryside. He was subsequently tried for crimes against humanity in the fall of 2005, sentenced to death in November of 2006, and hanged on December 30, 2006.[126]

On the surface, the war in Iraq looks like a complete success. However, it is necessary to examine the war in more depth and to look more closely at the goals of the war and the success America has had in attaining those goals.

President Bush said on March 19, 2003, the day the U.S. invaded Iraq, that the goal of the United States was to "achieve a united, stable, and free [Iraq],"[127] as well as to ensure the defense and safety of the United States. Overthrowing Hussein and capturing Baghdad were means to that end – but it is important to note that those feats were not supposed to be the ends in themselves. Because the goal in Iraq was to ensure unity,

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[124] Presidential News and Speeches, February –April, 2003. http://www.whitehouse.gov/news/releases/2003/04/. Accessed March 17, 2008.
[125] BBC News Online, "Timeline: Iraq after Saddam," 20 March 2007, http://news.bbc.co.uk/1/hi/world/middle_east/4192189.stm. Accessed April 2, 2008.
[126] BBC News Online, "World, Timeline: Iraq," 6 March 2008, http://news.bbc.co.uk/1/hi/world/middle_east/737483.stm. Accessed March 17, 2008.
[127] President George W. Bush, "President Bush Addresses the Nation," March 19, 2003. http://www.whitehouse.gov/news/releases/2003/03/20030319-17.html. Accessed April 2, 2008.

stability, and freedom for Iraqis and safety for the American people, to judge the success

of the war, it is necessary to examine the standing of these goals to date.

By the summer of 2003, insurgent groups were fighting the U.S. in a ground war

across the country. Operation Iraqi Freedom, the military operative name given to the

war in Iraq, began to disintegrate. The central government that was put in place by the

United States was too weak to regulate the sectarian violence that was rapidly escalating

between the two factions of Islam, the Sunnis and Shi'a. In addition, the ethnic Kurds in

Northern Iraq and the political group of Saddam Hussein – called the Baathists – had

become participants in the now multi-faceted fighting.

In January, 2007, the war was looking worse than ever for the United States and

for the Iraqi government, which though democratically elected, was divided along

sectarian lines from within and threatened by sectarian groups from the outside. The

National Security Council issued a status report on the War on Terror, particularly the

Iraqi front. It came to the following conclusions:

- The primary challenge [to the U.S.] is violent extremists from multiple communities; the center is eroding and sectarianism is spiking
- While political progress, economic gains, and security are intertwined, political and economic progress are unlikely absent a basic level of security…;
- Iraqis increasingly disillusioned with Coalition efforts;
- …Many Iraqis are also advancing sectarian agendas – as hedging strategies, pursuit of narrow interests, and due to history;
- Dialogue with insurgents has not improved security and may not produce strategic gains in current context.[128]

In response to these issues, President Bush began a troop surge in hopes of quashing

resistance and reenforcing troops already present in Iraq. Five additional brigades were

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[128] National Security Council, "Highlights of the Iraq Strategy Review," January 2007, *Summary Briefing Slides*, http://www.whitehouse.gov/nsc/iraq/2007/iraq-strategy011007.pdf. Accessed March 17, 2008.

recommended for deployment to Baghdad alone.[129] In addition, the National Guard and
Reserves have been relied upon even more heavily in the last year.

Since last summer's surge, the violence in Iraq has dropped, though the
significance and the extent of that decline is disputed. The country of Turkey has gotten
involved in Kurdish territory in Northern Iraq. As of September 30, 2007, the United
States had 218,500 troops deployed in Iraq, 25,240 troops deployed in Afghanistan, and
21,800 awaiting deployment to Iraq or Afghanistan in Germany, Italy, Japan, and the
United Kingdom.[130] As of March 11, 2008, there had been 3,975 American deaths in
Iraq and 29,395 reported incidents of wounding; Operation Enduring Freedom worldwide
(though mostly in Afghanistan) had claimed 482 American lives and 1,894 incidents of
wounding.[131] As of April 5, 2007, no fewer than 70,000 military personnel had been stop
lossed.[132] Importantly, this estimate is the most recent authoritative one available. The
Department of Defense has kept the exact number of troops being stop lossed under
wraps. There is currently no end in sight to the wars in Afghanistan and Iraq nor to the
stop loss policy.

It seems, therefore, that at the very least, whether or not our initial goals of unity,
freedom, stability, and security have been reached, is debatable. It is impossible to say
that the war in Iraq has been a total success. After all, the ends that we hoped to meet
have not yet been met. There is a weak democratic government, there is still an

[129] National Security Council, "Highlights of the Iraq Strategy Review," January 2007, *Summary Briefing Slides*, http://www.whitehouse.gov/nsc/iraq/2007/iraq-strategy011007.pdf. Accessed March 17, 2008.
[130] Department of Defense, "Active Duty Military Personnel Strengths by Regional Area and by Country (309A)," September 30, 2007. http://siadapp.dmdc.osd.mil/personnel/MILITARY/history/hst0709.pdf.
Accessed March 17, 2008.
[131] Department of Defense, "Casualty Reports: Operation Iraqi Freedom and Operation Enduring Freedom," March 11, 2008. http://www.defenselink.mil/news/casualty.pdf. Accessed March 17, 2008.
[132] Mark Thompson, "America's Broken-Down Army," *Time Magazine Online*, April 5, 2007, http://www.time.com/time/nation/article/0,8599,1606888-1,00.html. Accessed March 17, 2008.

enormous amount of violence taking place, there is still factionalism, and, while there has

not been another terrorist attack on American soil, there have been thousands of

American casualties. Therefore, it is safe to say that while the war in Iraq has perhaps

not been a total failure – free elections have taken place – it has not been a success

either. It is difficult to find sources outside the Bush administration that are willing to

deem this war a victory.

With that information in mind, I will now turn to the ethics of the stop loss policy.

First and foremost is the question of whether or not stop loss is a draft. Conscription is

defined as "the legal obligation to join the armed services."[133] The key difference

between opting to serve in the military and being drafted is that during a draft, service to

the military is involuntary. It is a legally required obligation of citizens by the state to

serve the state.

Therefore, stop loss is a draft because it is also involuntary service to the military,

required by the government with no way in which the individual can opt out. The

military maintains that stop loss is in the contract and that soldiers are informed of this

possibility in full when they enlist. Therefore, the military argues, the soldiers are in the

stop loss program voluntarily. They were fully aware of stop loss and accepted that

possibility when they signed on. Then Secretary of Defense Donald Rumsfeld discussed

the issue of volunteerism on the CBS show *Face the Nation* on March 14, 2004. He said:

> Everyone – everyone in the service is there who's—is [sic] a volunteer. And the
> idea of equating that to cons-conscription [sic] or a draft is—is [sic] inaccurate
> and –and [sic] miss the point entirely. Everyone there is there as a volunteer…

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[133] Credo Reference Online, Dictionary of Politics and Government, "Conscription," Bloomsbury
Publishing Plc 2004, http://0-www.xreferplus.com.library.colby.edu/entry.jsp?xrefid=6503660&secid=.-
&sub=0. Accessed April 2, 2008.

> I—I [sic]am telling you that the fact is that everyone serving on active duty is a volunteer and they volunteered knowing precisely what the rules were. And they've known that stop loss has been a part of that policy or rule throughout a—a [sic] very long period of time… It is nothing new.[134]

However, in a personnel order that was supposed to provide "procedural guidance for the implementation of …[Stop Loss]… Program,"[135] the following appears:

> Retiring AGR [Active Guard and Reserve] soldiers who began transition leave prior to publication of the unit alert order by HQDA [Headquarters, Department of the Army] will continue to process for separation. *All other soldiers will be involuntarily retained* [emphasis added].[136]

It is clear from this message distributed to Army officials that there is, at least within the halls of the Department of Defense and the Army administration, an acknowledgment that stop loss is not voluntary, regardless of Secretary Rumsfeld's public stance.

In his remarks on *Face the Nation*, Rumsfeld also makes the case that stop loss is in the enlistment contract of all the military branches and therefore people knew about it when they signed up for the service. However, the contract (before 2007) itself was convoluted and unclear. Nowhere does it say that service can be extended. The only time stop loss is even hinted at is in Section 9, b, which reads:

> Laws and regulations that govern military personnel may change without notice to me. Such changes may affect my status, pay, allowances, benefits, and responsibilities as a member of the Armed Forces **REGARDLESS** of the provisions of this enlistment/reenlistment document.[137]

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[134] Donald Rumsfeld, debate moderated by Bob Schieffer, *Face the Nation*, CBS News, March 14, 2004. http://www.cbsnews.com/htdocs/pdf/face_031404.pdf. Accessed March 19, 2008.

[135] United States Army, "MILPER Message Number: 03-040, TAPC-PDT-PM, "RC Unit Stop Loss Procedures for the Army National Guard," Issued November 11, 2002. http://www.nlgmltf.org/stop_loss/june_2004_stop_loss.html. Accessed March 19, 2008.

[136] United States Army, "MILPER Message Number: 03-040, TAPC-PDT-PM, "RC Unit Stop Loss Procedures for the Army National Guard," Issued November 11, 2002. http://www.nlgmltf.org/stop_loss/june_2004_stop_loss.html. Accessed March 19, 2008.

[137] Armed Forces of the United States, "Enlistment/Reenlistment Document; DD Form 4," Section 9, b, January, 2001.

This clause says nothing, however, of the length of service being extended. In 2006

Congress recognized this language as a problem with the enlistment contract and one

which made stop loss involuntary. Section 546 of the National Defense Authorization

Act for Fiscal Year 2006 says:

> The Secretary of Defense shall submit… a report on the actions being taken to ensure that each individual being recruited for service in the Armed Forces is provided, before making a formal enlistment in the Armed Forces, precise and detailed information on the period or periods of service to which the individual may be obligated… The report [shall include] a description of how the department informs enlistees in the Armed Forces on the so called "stop loss" authority and the manner in which exercise of such authority could affect the duration of an individual's service on active duty in the Armed Forces.[138]

By 2007, the Armed Forces enlistment contract had changed dramatically.

The agreement now says that enlistees will "serve a total of eight (8) years, unless [they

are] sooner discharged or otherwise extended by the appropriate authority."[139]

Furthermore, involuntary extension of service is mentioned explicitly throughout the

contract and is stated directly in Section 10, g:

> The President may suspend any provision of law relation to my promotion, retirement, or separation from the Armed Forces if he or his designee determines I am essential to the national security of the United States. Such action may result in an extension, without my consent, of the length of service specified in this agreement. Such an extension is often called a "stop-loss" extension.[140]

That Congress passed this law indicates that it saw stop loss as a legal problem of

involuntary service in a time when a draft did not formally exist. By attempting to fix the

problem of an involuntary service policy, Congress admitted that a problem existed in the

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[138] Public Law 109-163, National Defense Authorization Act for Fiscal Year 2006, January 6, 2006, Sec. 546. http://www.dod.mil/dodgc/olc/docs/PL109-163.pdf. Accessed March 19, 2008.

[139] Armed Forces of the United States, "Enlistment/Reenlistment Document; DD Form 4," October, 2007.

[140] Armed Forces of the United States, "Enlistment/Reenlistment Document; DD Form 4," October, 2007. Section 10, g.

first place. Thus, stop loss, at least for people who signed up for the Armed Forces before the 2007 contract was implemented, is a form of conscription.

Because I have determined the stop loss is, indeed, an involuntary draft, I will now examine the ethics of the wars in Afghanistan and in Iraq in order to explore the ethical justification of stop loss. First, I will look at the war in Afghanistan.

After the September 11, 2001, attacks on the World Trade Center and the Pentagon, United States intelligence correctly identified Afghanistan as a primary supporter of Al Qaeda. The terrorists receiving aid from the Taliban and being harbored within Afghan borders had proven themselves to be direct and very deadly threats on the American people. They had attacked primary economic and military centers and had successfully killed thousands of people on American soil. For this reason the United States acted ethically in beginning a war in Afghanistan. Thus, the first criterion of the Just War theory, Just Cause, is satisfied.

The war in Afghanistan also used an appropriate amount of force. The initial success of de-rooting the Taliban while limiting civilian casualties indicates that the action taken by the Armed Forces was acceptable and as humanitarian as possible. The subsequent failures of Operation Enduring Freedom and the reemergence of the Taliban is most likely because the number of soldiers in Afghanistan has been limited since the United States began fighting in Iraq as well.

Third, the probability of success was high. U.S. intelligence was good, thorough, and reliable. There were specific goals of the operation – to oust the Taliban and to

prevent the support of Al Quaeda. With these goals in mind, specific and targeted plans

were put in action. These factors all indicate that the chance of success of the mission

was likely.

Fourth, it is difficult to say whether or not the war in Afghanistan was a war of

last resort. The most peaceable tactic in resolving conflict is negotiation. However, a

new and distinct problem with diplomacy arose in 2001. The enemy was a non-state

actor, a group of transient and fluid people with nothing to gain from talking with the

U.S.. The U.S. also lacked any leverage on which to negotiate since the enemy could not

be pinned to a particular place or any official international actor. Because of these issues,

it is logical and ethical to say that military action was, perhaps, the only available tactic

that would ensure some form of immediate safety to the American people.

Finally, Afghanistan is a just war because there was an overwhelming amount of

support from both the American people and Congress to destroy Al Qaeda. This is best

demonstrated in Public Law 107-40:

> That the President is authorized to use all necessary and appropriate force against
> those nations, organizations, or persons he determines planned, authorized,
> committed, or aided the terrorist attacks that occurred on September 11, 2001, or
> harbored such organizations or persons, in order to prevent any future acts of
> international terrorism against the United States by such nations, organizations or
> persons.[141]

The bill passed as a joint resolution by a vote of 420-1 in the House of Representatives[142]

and by a vote of 98-0 with two Senators abstaining.[143] The overwhelming support that the

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[141] Public Law 107-40. September 18, 2001.

[142] Library of Congress, "H.J.RES.64: Title: To authorize the use of United States Armed Forces against those responsible for the recent attacks launched against the United States," http://thomas.loc.gov/cgi-bin/bdquery/z?d107:HJ00064. Accessed March 19, 2008.

[143] United States Senate, "U.S. Senate Roll Call Votes 107th Congress - 1st Session," http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00281. Accessed March 19, 2008.

war in Afghanistan garnered is an indication that the American people stood behind military action.

The war in Iraq, however, is an entirely different case. Because stop loss (except for perhaps in very limited instances dealing with those in specific specialized jobs) would not be needed in Afghanistan if not for the war in Iraq, I will look more critically at the Iraq war as the conflict that has "caused" stop loss.

First, the cause for which the United States invaded Iraq was not just. The assumption made by the Bush administration was that Iraq was directly intertwined with Al Qaeda in the same sense as Afghanistan was. President Bush said on March 6, 2003, "He [Saddam Hussein] has trained and financed al Qaeda-type organizations before, al Qaeda and other terrorist organizations."[144] In addition, the administration relied on the belief that Saddam Hussein was hiding WMDs from UN weapons inspectors. Administration decision makers logically put these fears together and determined that were WMDs to fall into the hands of a terrorist organization, as it seemed possible, the U.S. would be at far greater risk than it had been to date. In addition, President Bush feared that Hussein himself would use WMDs or obtain nuclear weapons to use against the United States.

However, the evidence that was used to reach these conclusions was faulty. Before the U.S. even became involved in Iraq in 2003, Hans Blix had formally stated that there did not appear to be any WMDs in the country. There were also no terrorist camps actually within Iraq's borders. The photography and intelligence gained before America

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[144] President George W. Bush, "President George W. Bush Discusses Iraq in National Press Conference," The East Room, March 6, 2003. http://www.whitehouse.gov/news/releases/2003/03/20030306-8.html. Accessed April 2, 2008.

invaded Afghanistan showed actual terrorist training camps there. Those simply did not

exist in Iraq. Furthermore, the fear that Iraq might someday acquire nuclear capabilities

is certainly not enough cause upon which to base a military invasion. Iraq had been

subject to international sanctions since the 1990s, which, by 2003, were, according to the

Bush Administration, steadily weakening. Yet most of the rest of the world, including

the U.N., disagreed with this assessment. Because this issue was not one of national

interest, but rather international interest, it ought not to have been one nation that made

the decision to invade, but rather a multi-national organization – in this case, the U.N.

The Administration also alleged that the Hussein regime was continuing its weapons and

missiles programs. This assertion, however, is also disputed. Then Secretary of State

Colin Powell stated on April 2, 2004, during a hearing at the NATO headquarters in

Brussels, that there was no evidence of those existing programs.

Finally, the Administration rested its case for war on the need to end the human

rights violations that were abundant during the Hussein regime. Yet this justification

would not have been enough to get a Congressional vote to go to war. In addition, as I

point out in the section about the Second World War, where an international organization

exists and is fully function, in this case the U.N., it is not the role of an individual nation

to intervene in another state's sovereignty. Though a government cedes its claim to

authority as soon as it violates the liberties of its citizens, it is the responsibility of a non-

state actor or actors to intervene on the behalf of victims of a regime, not another

sovereign. Again, we conclude that Administration claims were not sufficient to justify

the invasion of Iraq as an ethical incursion into a sovereign state.

Second, the correct amount of intervention has not been used in Iraq. Initially, perhaps, there was an effort to limit casualties and make the war quick and effective. However, when Operation Iraqi Freedom did not go as planned, and the Iraqi people did not welcome Americans as liberators as was expected, the amount of force needed to repress warring factions escalated rapidly. Suspicion and fear of Iraqi rebels has led to terrible humanitarian and human rights violations on the part of the American Army. This consequence was, perhaps, because there were not enough troops sent to deal with the complex military situation that suddenly presented itself and so troops tried to compensate by using excessive violence and force. The best known example of this is the prison of Abu Ghraib, where soldiers tortured and humiliated dozens of Iraqis being held there. This event exemplifies how the use of force against the Iraqi people has been above and beyond what is necessary and what is moral during times of war.

Third, the probability of success for the war in Iraq was not and is not very high. Because the military action was based on false premises, and because there was no particular care taken to the cultural norms of the Iraqi people, the mission's goals – to bring unity, freedom, and stability to Iraq – could not be achieved. Operation Iraqi Freedom is based upon the concept that the Iraqi people would be open and excited at the prospect of living without the dictatorship of Saddam Hussein. However, when the operation was designed, insufficient consideration was given to the multiple political and ethnic groups living in Iraq and to the hatred between the two factions of Shi'a and Sunni Muslims. The long-term, deeply rooted prejudices between these groups were ignored when the military operation in Iraq was designed. Former U.S. Ambassador Peter Galbraith met with the President and his advisors before the invasion of Iraq. In 2006 he

published a book called *The End of Iraq: How American Incompetence Created a War without End*, in which he criticized the Bush Administration for its lack of foresight in going to war in Iraq. He wrote:

> President Bush met with three Iraqi Americans…. As the three described what they thought would be the political situation after Saddam's fall, they talked about Sunnis and Shiites. It became apparent to them that the President was unfamiliar with these terms…. The president of the United States did not appear to know about the division among Iraqis that has defined the country's history and politics…. He could not have anticipated U.S. troops being caught in the middle of a civil war between two religious sects that he did not know existed. I recount this anecdote not to illustrate the president's ignorance, but because it underscores how little the American leadership thought before the war about the nature of Iraqi society and the problems the United States would face after it overthrew Saddam Hussein. Even in 2006, with civil war well underway in Iraq, the president and his top advisors speak of the Iraqi people, as if they were a single people.[145]

This anecdote was given to Ambassador Galbraith by two separate participants in that meeting.

Fourth, to go to war in Iraq was a logistical option rather than a last resort. Unlike the war in Afghanistan, the war in Iraq was not a direct response to a direct attack on the United States. It was a well thought out and premeditated military action that did not begin until a year and half after the 9/11 attacks. In addition, neither the country of Iraq nor its inhabitants had attacked the United States. The invasion was, according to the U.N. and many U.S. allies, a violation of state sovereignty. The U.S. had tried to coerce Hussein into making certain concessions by threat of invasion. When Saddam failed to recognize these threats, the U.S. felt it needed to invade to prove its point. This

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[145] Peter W. Galbraith, *The End of Iraq: How American Incompetence Created a War without End.* (New York: Simon and Schuster, Inc., 2006), 83.

justification can not be accepted as a morally legitimate reason to invade a country, even if it is the most pragmatic.

Finally, though there was still popular support for war in Iraq, there was no mandate. The President went to war based on the sweeping authority to go to war against terrorists given to him in the *Authorization for the Use of Military Force Against Terrorists* as well as the *Authorization for the Use of Military Force Against Iraq Resolution of 2002*. However, the vote was much closer in the latter, indicating significantly less support for the war in Iraq than Afghanistan. A roll call vote in the House passed the law 296-133 with 3 abstentions.[146] A roll call vote in the Senate passed the law 77-23.[147] Thus, the consent of Congress, and therefore of the American people was at least in some sense behind the war in Iraq, giving it a limited element of ethical legitimacy. With what we now know, however, one can argue that many of the votes cast were done so because of inaccurate information given to the Congress by the Administration. One need not argue that the Administration deliberately misrepresented the situation on the ground, only that they believed so strongly in their desired outcome that they did not give the Congress accurate objective information on which to base its judgment.

Overall, however, with the terribly poor intelligence reports, the unjust amount of intervention, the low probability of success, and the aggressive nature of the war in Iraq, the Iraqi War fails to meet the standards of a Just War. This claim is best supported by a resolution introduced in the House of Representatives by Congressman Sam Farr (D-CA)

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[146] House of Representatives Clerk's Office, "Final Vote Results for Roll Call 455," http://clerk.house.gov/evs/2002/roll455.xml. Accessed March 19, 2008.
[147] United States Senate, "U.S. Senate Roll Call Votes 107th Congress – 2nd Session," http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=2&vote=00237. Accessed March 19, 2008.

which would repeal the *Authorization for the Use of Military Force Against Iraq*. H.R.

1292 states:

> (7) Public Law 107-243 authorized the President to use force to `defend the national security of the United States against the continuing threat posed by Iraq'. (8) Currently, United States troops are not facing a military force or direct threat to the United States in Iraq, rather they are facing both a Sunni insurgency against the United States occupation of Iraq and a violent, long-standing struggle between Sunni and Shia Islam on the streets of Baghdad—neither of which pose a `continuing threat' to the United States.[148]

Representative Farr has been in Congress for fourteen years and was present for the vote

for the AUMF. Though he was one of the Congressmen to vote against the original bill,

and though this repeal never reached the floor for a vote, the text of the bill indicates the

dissatisfaction many members of Congress had with vast differences between the

purported goals of the Bush Administration, which they believed the AUMF was for, and

the actual purposes for which it was used.

I have determined that the war for which stop loss is being used is unethical, and

therefore that stop loss must inherently be unethical because it is being used for an unjust

war. While some may argue that the United States now has a moral obligation to help the

Iraqi people regain stability, this argument is superfluous. It has no bearing on the

morality of the original intents and purposes of the war, nor on the way in which that

period of the war in Iraq was fought. Nevertheless, I will look now at the particular

ethics of the stop loss policy, for, as I commented in the previous section, the draft can,

under certain and particular circumstances, retain an ethical element (though it can never

be a fully moral practice), even if the war itself is not ethical.

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[148] H.R. 1292, 110th Congress, 1st Session, March 1, 2007, http://thomas.loc.gov/cgi-bin/query/D?c110:1:./temp/~c110LCJodq. Accessed April 3, 2008.

First and foremost, stop loss has not garnered any public support demonstrated by the mere fact that most of the American people are unaware of it. Public support is particularly important in the case of the draft because a draft has such a drastic effect on the American people. Not only does a draft impinge on the lives of the soldiers and their families, but countless other sectors of American life are affected as well. Conscription directly or indirectly affects each and every citizen in ways in which other public policies do not. It is impossible to say whether or not stop loss would be acceptable to the citizenry, because the Bush administration and the military have gone to such great lengths to conceal its existence. It is difficult to find information on the policy, and as I mentioned before, though the statistics exist as to how many people have been stop lossed, they are not available to the public. This obfuscation is inherently unethical. To conscript a group of people, an open and honest debate about the validity and morality of the policy is required. This debate has not occurred, and the resulting policy is therefore unethical.[149]

Second, stop loss is not genuinely a last resort for the army. It is true that the military has continuously come up short of its recruiting goals in the last several years. However, the recruiting goals would not need to be so high if not for the unjust second war in Iraq. The military also makes the argument that the purpose of stop loss is to facilitate the cohesiveness of units. These units, they say, must remain intact in order be operational. But this is also not a just or moral cause for involuntary service. The liberty of one or a few of the individual soldiers in a unit should not be compromised for the

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[149] There is a movie that came out on March 28, 2008 called *Stop Loss* about this exact policy. It will almost certainly raise the level of awareness about the stop loss policy. When this happens, it will be interesting to see whether or not there is public discord pertaining to stop loss. This section should be reevaluated after public awareness has been raised.

sake of expediency. If nothing else, the case that the Pentagon makes for stop loss as a tactic for keeping units together certainly proves that the policy is not one of last resort, but rather one of calculated and aggressive planning.

Third, the draft could remain partially ethical if it were in response to a previously existing military action, such as was the case before the Second World War. The Bush administration has argued that the Al Qaeda attacks constitute previous military action as did Operation Enduring Freedom in Afghanistan. However, the 9/11 incidents and the beginning of the war in Afghanistan took place nearly two years before the war in Iraq began and stop loss was needed. The lag time between the two indicates that there was not a direct correlation between them. The administration also argued that Afghanistan was an example of a previously existing warfront. However, unlike in the case of World War II, when the would-be enemy that was already fighting was likely to attack the United States directly, Iraq was neither already engaged in combat nor likely to attack the U.S. imminently. Furthermore, this theory only works if there is a threat from the already existing enemy, in this case, the Taliban and Al Qaeda. During the Second World War, it was clear Hitler posed a direct threat to the United States. No evidence suggests that because of the war in Afghanistan, the Taliban and Al Qaeda would have attacked the United States on American soil if the U.S. military had not invaded Iraq. The connection between the two wars simply does not exist.

It would be perhaps more viable to say that the U.S. could have used stop loss in a war to which it was bound by treaty. But this justification is not present in the case of Iraq. Not only did the U.S. not have any legal obligation to go to war, but it actually ignored the wishes of the United Nations Security Council in doing so. U.N. Secretary-

General Kofi Annan said at the time, "I have indicated it [the war in Iraq] was not in conformity with the U.N. charter from our point of view, from the charter point of view, it was illegal."[150] The distinct disapproval of Annan, who reflected the view of most of our allies as well as nations who oppose our policies, demonstrates that the war in Iraq did not have any international legal standing or support.

Finally, I return to the issue of equal participation of citizens in the armed services. The last American draft was during the Vietnam War, and it proved the fundamental importance of having a draft be as equal as possible because of the social and political backlash that accompanied the generally poor and black army. However, today we are again faced with a draft of utterly and entirely unequal proportions. The stop loss policy affects only a very few citizens. Its costs are felt only by those who initially signed up for the military, rather than a random selection of the populace. For a draft to be ethical, it absolutely must be indiscriminate. Yet stop loss is applicable only to those who have chosen a particular career path. This selective application violates the intent of the Constitution to secure liberty and equality for all Americans and it violates the very nature of moral choices and behavior.

On June 3, 2004, Democratic presidential candidate John Kerry said, "[The Bush Administration has] effectively used a stop-loss policy as a backdoor draft."[151] Stop loss represents a policy of involuntary service in the military. It has been implemented because of a shortage of troops needed to fight an unjust and unethical war in Iraq, in

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[150] BBC News Online, "Iraq War Illegal, Says Annan," September 16, 2004. http://news.bbc.co.uk/2/hi/middle_east/3661134.stm. Accessed March 20, 2008.
[151] John Kerry quoted in Associated Press, "Kerry Says U.S. Now Has 'Backdoor Draft'," June 3, 2004. http://www.msnbc.msn.com/id/5129079/. Accessed April 3, 2008.

which over 4000 American men and women and tens of thousands of Iraqi people are dead because of a poorly planned policy. Stop loss as a draft has not been judged by the American people, is not a last resort, was not for direct defensive purposes, and is drastically unequal. For these reasons, the stop loss policy must be considered entirely immoral and unethical.

Conclusion

The study of political ethics – how decisions are and should be morally made for the public, of the necessary interplay between politics and ethics in a democracy – is important.[152] It is important because the outcomes of political decisions have real and substantial consequences on citizens and because elected officials in a democracy act not only for us but also inherently on our behalf. Therefore, it can be argued that we as citizens bear moral responsibility for our rulers' actions.

Conscription in a democratic society is a policy that can have particularly dire consequences. Therefore, the ethics of the draft are particularly noteworthy. As I have argued throughout this study, the draft is not always unjust and can be needed and ethically justified on occasion, to guarantee the safety and defense of the people or of others who are victims of aggression. Conscription is not a black and white ethical issue. In this paper I have suggested criteria for when a draft is or is not ethical, and I have made clear the circumstances in which conscription can be made more ethical, even if it is not ultimately a wholly moral policy. It is therefore my hope that the reader is not left with a sense of the draft as absolutely good or absolutely bad, but rather with the belief that conscription is, at its very core, an ethical issue which should be debated openly with

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[152] Thompson, *Political Ethics and Public Office*, 2.

these criteria in mind. The importance of the debate is tantamount to the justness of the policy itself.

Stop loss is, without a doubt, a backdoor draft. The policy is involuntary military service and there is no recourse for those affected by it. If a country is at war, as the United States is today in Afghanistan and Iraq, that war must be supported by the people. One way in which that support should be demonstrated is by raising an army. Whether through volunteer forces or through an appropriately ethical draft, the citizenry will support a war policy in which they believe. Stop loss satisfies neither. It does not satisfy any of the just draft criteria, any way those criteria are applied. Should this policy be revisited and should the American people agree to it after an appropriate public debate, then the ethical circumstances of stop loss would change. For now, stop loss as a public policy is not only a poor one and one that deserves to be reassessed for the sake of the men and women affected by it every day, but it is also an unethical use of political power, one that implicates all of us in unfairly abrogating the liberty of fellow citizens.

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