### What's Just—Drafting Soldiers or Hiring Them?

In the early months of the U.S. Civil War, festive rallies and patriotic sentiment prompted tens of thousands of men in the Northern states to volunteer for the Union army. But with the Union defeat at Bull Run, followed by the failure the following spring of General George B. McClellan's drive to capture Richmond, Northerners began to doubt that the conflict would end quickly. More troops had to be raised, and in July 1862, Abraham Lincoln signed the Union's first draft law. A Confederate draft was already in place.

Conscription ran against the grain of the American individualist tradition, and the Union draft made a striking concession to that tradition: Anyone who was drafted and didn't want to serve could hire someone else to take his place.[1]

Draftees seeking substitutes ran ads in newspapers, offering payments as high as $1,500, a considerable sum at the time. The Confederacy's draft law also allowed for paid substitutes, giving rise to the slogan "rich man's war and poor man's fight," a complaint that echoed in the North. In March 1863, Congress passed a new draft law that sought to address the complaint. Although it did not eliminate the right to hire a substitute, it provided that any draftee could pay the government a fee of $300 instead of serving. Although the commutation fee represented close to a year's wages for an unskilled laborer, the provision sought to bring the price of exemption within reach of ordinary workers. Some cities and counties subsidized the fee for their draftees. And insurance societies enabled subscribers to pay a monthly premium for a policy that would cover the fee in the event of conscription.[2]

Though intended to offer exemption from service at a bargain rate, the commutation fee was politically more unpopular than substitution—perhaps because it seemed to put a price on human life (or the risk of death) and to give that price government sanction. Newspaper headlines proclaimed, "Three Hundred Dollars or Your Life." Anger over the draft and the $300 commutation fee prompted violence against enrollment officers, most no
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against enrollment officers, most notably in the New York City draft riots of July 1863, which lasted several days and claimed more than a hundred lives. The following year, Congress enacted a new draft law that eliminated the commutation fee. The right to hire a substitute, however, was retained in the North (though not in the South) throughout the war.[3]

In the end, relatively few draftees wound up fighting in the Union army. (Even after conscription was established, the bulk of the army consisted of volunteers, prompted to enlist by bounty payments and the threat of being drafted.) Many whose numbers were drawn in draft lotteries either fled or were exempted for disability. Of the roughly 207,000 men who were actually drafted, 87,000 paid the commutation fee, 74,000 hired substitutes, and only 46,000 served.[4] Those who hired substitutes to fight in their place included Andrew Carnegie and J. P. Morgan, the fathers of Theodore and Franklin Roosevelt, and future presidents Chester A. Arthur and Grover Cleveland.[5]

Was the Civil War system a just way of allocating military service? When I put this question to my students, almost all of them say no. They say it's unfair to allow the affluent to hire substitutes to fight in their place. Like many Americans who protested in the 1860s, they consider this system a form of class discrimination.

I then ask the students whether they favor a draft or the all-volunteer army we have today. Almost all favor the volunteer army (as do most Americans). But this raises a hard question: If the Civil War system was unfair because it let the affluent hire other people to fight their wars, doesn't the same objection apply to the volunteer army?

The method of hiring differs, of course. Andrew Carnegie had to find his own substitute and pay him directly; today the military recruits the soldiers to fight in Iraq or Afghanistan, and we, the taxpayers, collectively pay them. But it remains the case that those of us who'd rather not enlist hire other people to fight our wars and risk their lives. So what's the difference, morally speaking? If the Civil War system of hiring substitutes was unjust, isn't the volunteer army unjust as well?

To examine this question, let's set aside the Civil War system and consider the two standard ways of recruiting soldiers—conscription and the market.

In its simplest form, conscription fills the ranks of the military by requiring all eligible citizens to serve, or, if not all are needed, by holding a lottery to determine who will be called. This was the system used by the United States during the First and Second World Wars. A draft was also used during the Vietnam War, though the system was complex and riddled with deferments for students and people in certain occupations, allowing many to avoid having to fight.

The existence of the draft fueled opposition to the Vietnam War, especially on college campuses. Partly in response, President Richard Nixon proposed doing away with conscription, and in 1973, as the United States wound down its presence in Vietnam, the all-volunteer military force replaced the draft. Since military service was no longer compulsory, the military increased pay and other benefits to attract the soldiers it needed.

A volunteer army, as we use the term today, fills its ranks through the use of the labor market—as do restaurants, banks, retail stores, and other businesses. The term volunteer is something of a misnomer. The volunteer army is not like a volunteer fire department, in which people serve without pay, or the local soup kitchen, where volunteer workers donate their time. It is a professional army in which soldiers work for pay. The soldiers are "volunteers" only in the sense that paid employees in any profession are volunteers. No one is conscripted, and the job is performed by those who agree to do so in exchange for money and other benefits.

The debate over how a democratic society should fill the ranks of the military is at its most intense during times of war, as the Civil War draft riots and Vietnam-era protests attest. After the United States adopted an all-volunteer force, the question of justice in the allocation of military service faded from public attention. But the U.S.-led wars in Iraq and Afghanistan have revived public discussion about whether it is right for a democratic society to recruit
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2. conscription allowing paid substi
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Most Americans favor the volunteer army, and few want to go back to conscription. (In September 2007, in the midst of the Iraq War, a Gallup poll found that Americans opposed reinstating the draft by 80 to 18 percent.[6]) But the renewed debate over the volunteer army and the draft brings us face-to-face with some big questions of political philosophy—questions about individual liberty and civic obligation.

To explore these questions, let's compare the three ways of allocating military service we have considered—conscription, conscription with a provision for hiring substitutes (the Civil War system), and the market system. Which is most just?

1. conscription
2. conscription allowing paid substitutes (Civil War system)
3. market system (volunteer army)

### The Case for the Volunteer Army

If you are a libertarian, the answer is obvious. Conscription (policy 1) is unjust because it is coercive, a form of slavery. It implies that the state owns its citizens and can do with them what it pleases, including forcing them to fight and risk their lives in war. Ron Paul, a Republican member of Congress and a leading libertarian, recently made this claim in opposing calls to reinstate the draft to fight the Iraq War: "Conscription is slavery, plain and simple. And it was made illegal under the 13th amendment, which prohibits involuntary servitude. One may well be killed as a military draftee, which makes conscription a very dangerous kind of enslavement."[7]

But even if you don't consider conscription equivalent to slavery, you might oppose it on the grounds that it limits people's choices, and therefore reduces overall happiness. This is a utilitarian argument against conscription. It holds that, compared to a system that permits