Liberal Rights and Citizen Soldiers: 
A Rawlsian Treatment of the Rights of Soldiers

by

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ABSTRACT

This paper examines the question: how should soldiers be treated when they are entitled to equal rights and freedoms as citizens? The paper tries to reconcile the demands of discipline and political neutrality with the demands of Rawlsian equal liberty. It develops an institutional exemption that is directly related to the urgency of the military threat that a society faces. The apparatus of John Rawls' theory of justice is used to examine this issue.

Examiners

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References Given in Abbreviated Form

The following major works of John Rawls will be referenced parenthetically throughout the text. Any other references and abbreviations that are used will be restricted to particular sections and will be introduced there.


PL  *Political Liberalism*, (New York: Columbia University Press, 1996). References will be to Roman numeral lectures and then numerical sections.

LP  *The Law of Peoples*, (Cambridge MA: Harvard University Press, 1999). References will be to numerical sections and decimal subsections when applicable.

JF  *Justice as Fairness: A Restatement*, Erin Kelly, Ed. (Cambridge MA: Harvard University Press, 2001). References will be to numerical sections and decimal subsections when applicable.

CP  *Collected Papers*, Samuel Freeman, Ed. (Cambridge MA: Harvard University Press, 1999). References will be to the chapter number of the paper and, when applicable, to numerical and decimal sections of that paper.
**Introduction**

The examination of an image portrayed by the American essayist, Henry David Thoreau in his *Civil Disobedience*, leads to a puzzle about the kind of equality and respect that citizens owe to each other. Modern political and moral philosophy has ignored this puzzle. The dominant theme of liberal philosophy has been that each citizen/member of society is entitled to be treated with equal concern and respect. In Thoreau's polemic against unquestioning deference to state authority he describes the moral status of the nineteenth century American soldier:

> A common and natural result of an undue respect for the law is, that you may see a file of soldiers, colonel, captain, corporal, privates, powder-monkeys, and all, marching in admirable order over hill and dale to the wars, against their wills, ay, against their common sense and consciences, which makes it very steep marching indeed, and produces a palpitation of the heart. ... Now, what are they? Men at all? or small moveable forts and magazines, at the service of some unscrupulous man in power? ... The mass of men serve the state thus, not as men mainly, but as machines, with their bodies. They are the standing army, and the militias, jailors, constables, posse comitatus, etc. In most cases there is no free exercise whatever of the judgment or of the moral sense; but they put themselves on a level with wood and earth and stones. ... Such command no more respect than men of straw or a lump of dirt. They have the same sort of worth only as horses and dogs.\(^1\)

Modern moral and political philosophers sympathetic to liberal principles of justice would balk at a political system that puts ordinary citizens in a category equal with dogs. Yet, we expect soldiers\(^2\) to be citizens. Thoreau's description is clearly anathema to the liberal aspirations. A citizen ought not to be forced to sacrifice dignity (the ability to command moral respect) in order to comply with the state's laws. Thoreau is in no way

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2. I intend to use the term 'soldier' in order to refer to all those subject to military discipline. It should not be seen as a reference to any particular service or military occupation. This is done for simplicity of exposition - in order to avoid cumbersome terms and lengthy conjunctions. It is also done for reasons of gender neutrality.
suggesting that service in the armed forces of one's state necessarily involves foregoing dignity, rather, he is articulating an attitude toward soldiers that has been historically persistent in law. But is it possible that soldiers need not sacrifice dignity in order to serve and comply with just laws and orders? This thesis explores that possibility. It explores how a military institution ought to be structured if soldiers are to be treated as deserving the respect owed to citizens. It aims at developing a liberal account of the rights of soldiers. In order to meet the demands that the state asks of it, the military institution, traditionally conceived, has required soldiers to submit to the seemingly unlimited authority of military commanders. As a consequence, the basic rights and freedoms of citizenship have not always been extended to citizen soldiers. It is common for soldiers to be moved around from place to place and mission to mission as objects in Thoreau’s description. Citizens, however, are not objects to be moved about and controlled by the state. Citizens are free and equal participants in society. The puzzle, here, lies in the marriage of citizenship and soldiering and involves reconciling the idea of free and equal participation with both the institutional requirement of submission to authority and the dangers of a politically active armed force.

This puzzle has received little if any attention, either from Thoreau or modern political philosophers. I intend to examine this puzzle with ideas drawn from the celebrated liberal philosophy of John Rawls. Rawls has become the point of reference for most discussions of liberal philosophy. Though Rawls mentions that the military institution has a place in his theory at some level, seeking an account of the rights of soldiers exposes some gaps in his philosophy that need to be filled in. When the state fails to respect the rights and freedoms of soldiers, it fails to show respect for them as
persons. Rawls' theory is one that emphasises freedom and respect for the individual. In Rawls' words:

Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. (TJ §1)

This quotation comes from Rawls' early work, which was squarely aimed at the predominance of utilitarianism in the moral and political thought of the day. The implication seems to be that the rights of soldiers may not be sacrificed in the name of promoting the welfare of other members of society. The status of the individual in Rawls' work is that of an equal participant in a fair and co-operative venture for mutual benefit, or society. He anticipates the existence of the military as a basic institution yet, by reason of an assumption of his theory, it was unnecessary to deal with the military institution. He does not explain how a liberal society is to deal with soldiers who wish to exercise the freedoms they are entitled to as citizens.

This thesis draws on Rawls' idea of free and equal citizens cooperating for mutual benefit and examines how soldiers and the military institution can be brought into the theory. The initial problematic is introduced more fully in the first chapter. The problem of the rights of soldiers is particularly acute in the circumstances that Rawls characterises as 'favourable' and that hold for the kind of society he is primarily concerned with discussing. But it is later shown that Rawls' theory simply does not have the resources to deal with this problem satisfactorily or without some modification of his theory. In the third chapter it is argued that the military cannot function without some kind of restriction of the rights of soldiers. In order to treat them in the way that shows them respect
conditions must be articulated that protect the interests of soldiers despite the inequality that might be justified. The last chapter examines some less favourable circumstances that might befall a society and it is argued that as the times become more urgent the inequality of soldiers becomes more tolerable.
Chapter I - The Problem

In this chapter the puzzle surrounding citizen soldiers and their rights is examined in more depth. The first section justifies the attention given, in liberal theory, to assigning rights and freedoms to citizens. This is done by explaining the long standing tradition of linking freedom and rights in some way to respect for dignity. In the next section we turn to a sample piece of military legislation. Here, by comparing the freedoms and entitlements granted to ordinary citizens and to legislation pertaining to soldiers, it is shown that there is reason to infer that the rights of soldiers are significantly circumscribed when compared to the rights of citizens who are not soldiers. Though the puzzle is a theoretical one, and the aim of this thesis is purely theoretical, its potential applicability to parallel cases is real. The third section briefly looks at what has been written about the issue of the rights of soldiers, and rejects the two most common areas of 'military ethics' as unhelpful. Finally, the last section restates the problem and proposes a way to examine it from a Rawlsian perspective.

1 Dignity, Respect, Freedom and Rights

There is a long tradition of thought that links the rights and liberties of citizens to the respect they are owed as individuals. This thesis works firmly within that tradition. Historically the link can go back at least as far as Immanuel Kant who linked dignity, respect and freedom through different formulations of his categorical imperative.³ The nature of the link, of course, is a controversial subject, but some sort of link is commonly

assumed⁴ and is present in Rawlsian liberalism. The idea is that there is something about individuals that commands respect – that commands us to treat them in a manner that respects their dignity.⁵ One recognises an individual's dignity by granting them certain inalienable rights and freedoms.⁶ These are entitlements of individuals, not privileges granted by the sovereign. Rights and freedoms can be characterized as the conditions necessary to respect individuals. That individuals have these rights and freedoms is a sign that they are respected, and the scheme of rights and freedoms that they have is indicative of their status as individuals. Since individuals are respected as individuals, all individuals are entitled to the same respect. The rights and freedoms that all individuals are entitled to are basic. These ‘basic liberties’ are often given by a list similar to the list of liberties contained in the Canadian Charter of Rights and Freedoms or similar bills of rights. Rawls considers freedom of thought, conscience, and association, as well as the political liberties, and security of the person, to be basic liberties that all citizens have equally (TJ §11, JF §13.3). Differing schemes of rights and freedoms between individuals can be taken to be an indication of differing levels of respect that either individual commands. That is, differing schemes of rights can be interpreted to correspond to different statuses of individuals, or an individual's status in society can be inferred from that individual's scheme of rights. Liberal philosophy holds that individuals

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⁴ The first sentence of the United Nations Declaration of Human Rights, reads: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." United Nations General Assembly, Resolution 217 A (III), (10 December 1948).


⁶ One way of putting it is in terms of interests. That is, one must respect interests that all individuals share. Rights correlate to common interests in self-expression, security and free movement, for instance. See Jeremy Waldron's explanation "Introduction," Theories of Rights, Jeremy Waldron, Ed. (Oxford: Oxford University Press, 1984), pp. 9-11.
are entitled to equal freedom. What this all means is that any discussion of what kind of respect citizens owe each other will be made in terms of freedom and rights. The status of a citizen as equal or unequal will be made by the comparison of schemes of rights and freedoms (the amount of respect) those individuals can command or are shown.

2 Sample Legislation

In many liberal democratic states, there is a long tradition of respecting individual rights and freedoms. These traditions have often culminated by expressing these rights in charters and bills that list the entitlements that individuals have. The Canadian *Charter of Rights and Freedoms*\(^7\) lists the rights and freedoms to which Canadian citizens are equally entitled. A contrast can be drawn between the respect for dignity expressed in charters, and the respect that soldiers receive in legislation. This tension is mirrored in liberal theory. There is an affinity between the kind of respect found in Rawls' theory and fundamental legal rights recognised in most modern democratic states. For Rawls, the list of basic liberties – of speech, conscience, association and security of the person - is to be guaranteed equally to all citizens.

In Canada, the *National Defence Act* (NDA),\(^8\) is the act constituting the Canadian Armed Forces. In Part III of the NDA, the *Code of Service Discipline*, (CSD) the legal apparatus of the military disciplinary system is established and the offences that soldiers can be legally charged with are outlined. The CSD establishes a separate system of courts martial and summary trials where military law is enforced. Soldiers can be subject to legal prosecution under the NDA in addition to violations of any other Canadian

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statute or law including offences under the *Criminal Code of Canada*. The NDA can also prosecute Canadian soldiers breaking foreign laws and Canadian law while abroad.\(^9\)

Some of the specific military offences a soldier can be charged with are detailed in chapter 103 of the *Queen's Regulations and Orders* (QR&O)\(^10\) including "Disobedience of a Lawful Command" (QR&O 103.16). The following examples should serve to illustrate some ways in which liberal rights, including some charter rights are compromised in military law. Soldiers are not permitted to publish any military information, or express their opinions on any military subject to unauthorised persons (QR&O 19.36- 2 c). The *Charter* guarantees "freedom of thought, belief, opinion and expression" (Sec 2b) while "freedom of speech" (TJ §11) is one of Rawls' basic liberties. Soldiers cannot take an active part in the political affairs of a political organisation or party, make a political speech to electors, run as a candidate or prospective candidate for election to a provincial or federal legislature, or stand as a candidate for a municipal position without permission (QR&O 19.44 -7). This is despite the fact that the *Charter* guarantees "every citizen [a] right... to be qualified for membership" in the House of Commons and in provincial legislatures (Sec 3). Rawls also guarantees "political liberty (the right to vote and to hold public office)" (TJ §11) as a basic liberty. It is impermissible for soldiers to combine with other soldiers to bring about change within the service (QR&O 19.10). Yet the *Charter* insures, as Rawls does (TJ §11), "freedom of peaceful assembly [and] freedom of association" (Sec 2c,d). Soldiers face other

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\(^10\) The *Queen's Regulations and Orders*, are available online: http://www.dnd.ca/admin/docs/subjects/qr_o/intro_e.asp. The QR&O are orders issued by the governor in council.
restrictions of their rights and freedoms. Often the restrictions are not as immediately apparent but occur when they are required to follow orders that either put their lives in danger physically or the lives they desire to live are frustrated by obedience and an inability to leave the institution.

The Charter has provisions that might allow certain restrictions in the equality of the rights it provides. It permits its provisions to be limited when such limits are "demonstrably justified in a free and democratic society" (Sec 1). Rawls, however, is committed to guaranteeing his list of basic liberties equally and to insuring that they have what he calls priority. "The Priority of liberty... means that a basic liberty can be limited or denied only for the sake of one or more other basic liberties, and never for a greater public good understood as a greater net sum of social and economic advantages for society as a whole" (JF§32). Giving Rawls a way to deal with the military institution is one of the main goals of this thesis; another is coming to an understanding of how soldiers ought to be treated given this new approach. Throughout this thesis three test cases will be used to illustrate how the theoretical apparatus that is developed works. The cases used are those of the 'public freedoms' of association, political participation and expression; the 'private freedoms' of thought and security of the person; and 'command authority' or the freedom/lack of freedom associated with required obedience and the reciprocal ability of commanders to command with the authority of the state. It is important to begin by pointing out how these cases are treated in law. From what has been mentioned above, a soldier's public freedoms are restricted in so far as the soldier is not permitted to participate in public life by running for office or expressing a political opinion. Private freedoms are restricted by way of the restriction of soldier's right to
determine for him or herself the level and nature of the risks they are willing to expose themselves to in virtue of being subject to military authority. Both these sorts of restrictions contrast with the extent that an officer commands with the authority of the state. This authority is not directly tempered by either circumstance or the kind of order given.\footnote{Legislation requires obedience to all ‘lawful orders’ and requires disobedience only in cases of ‘manifestly unlawful orders.’ What a lawful order is, precisely, is not clear. The most discussed issue on this subject concerns orders in contravention of the Laws of Armed Conflict. How orders are to be legally interpreted with respect to the Charter or other pieces of domestic legislation is a new issue that is little discussed. Few court martial cases have ever been referred to the Supreme Court of Canada.}

It would be hard, at first glance, for Rawls to affirm the kind of restrictions in this legislation. There is a \textit{prima facie} problem since Rawls argues that all citizens are free and equal. Giving an account of how to extricate Rawls from this problem is not as simple as it may seem. A liberal theory of the rights of soldiers must be careful not to put liberal society in a position where it cannot perform socially necessary tasks because its armed forces are ineffective. It is the goal of this thesis to bring a principled basis to the kind of authority that officers may wield so that \textit{modulo} certain variables, such as urgency and the task being performed, legitimate authority can be exercised in such a way as to respect the individual rights that soldiers have as citizens.

3 Survey of Related Literature

There is a distinct lack of concern, in the current literature, for the question at hand. Two major areas of academic inquiry that involve ethics and the military are: the study of just war theory and the study of military professionalism.\footnote{Legislation requires obedience to all ‘lawful orders’ and requires disobedience only in cases of ‘manifestly unlawful orders.’ What a lawful order is, precisely, is not clear. The most discussed issue on this subject concerns orders in contravention of the Laws of Armed Conflict. How orders are to be legally interpreted with respect to the Charter or other pieces of domestic legislation is a new issue that is little discussed. Few court martial cases have ever been referred to the Supreme Court of Canada.} Neither area treats, nor is in a position to treat, questions concerning the status of a soldier in a liberal society. A third body of literature exists that is best characterised as a grab bag of commentary on the
failed American military expedition in Vietnam and its fallout. There are some interesting points made in this third area, particularly when conscription as a mechanism for building an armed force is addressed, but here too there is no systematic theory of the rights of soldiers.

The term 'military ethics' is most often used within philosophical circles to refer to just war theory. The tradition of this theory extends at least as far back as Saint Augustine. The most influential contemporary just war theory is Michael Walzer's *Just and Unjust Wars*. This kind of theory traditionally focuses on two dimensions. The first dimension is *ius ad bellum*. This aspect of just war theory deals with the question of when a state might have reason go to war and not when or how a state might compel its citizens to go to war. *Ius in bello*, the second dimension, is concerned with how soldiers ought to act while engaged in combat and has no bearing on issues internal to the society for which the soldiers are engaged in combat. Neither dimension's first concern is the respect owed to soldiers. Just war theory is concerned with the wartime actions of either states or soldiers.

Another area of academic discussion that might be considered relevant is military professional ethics. This is a vast and diverse area that is not often contributed to by philosophers. Here, the rules, principles, or virtues that ought to guide the behaviour of soldiers, and in particular officers are examined. The questions examined here are essentially internal to the profession and bear little relevance to how soldiers

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14 Military professional ethics often focus exclusively on officers and often place them in a different moral category. Samuel P. Huntington argued that only officers should be considered professionals. See the first
(commissioned and non-commissioned) ought to be treated by society. Where theories of professionalism determine what a soldier is required to do qua soldier, the question being asked here is what a soldier can be required to do qua citizen or the respect citizens owe citizen soldiers.

Academics responded to the Vietnam War in many ways. Much of the response falls under the categories of professionalism and especially just war theory. But some academics found that the way that the American draft was administered was problematic, and that the draft as a form of conscription was morally less preferable to volunteer methods of military recruitment. Others voiced concerns about how one ought to administer the existing rules that permitted some to be exempted from service for reasons of conscience. Conscription is an important topic since what is owed to citizen conscripts must figure into a theory of the rights of soldiers, such as this, that permits conscription. Conscription, however, is not a simple issue. First, it is related to the respect owed to citizens because citizens are conscripted to become soldiers. In that way it affects the rights of citizens and not soldiers. Second, conscription is associated with the rules of conscientious objection and their administration. These rules are a topic on their own, but one must be first satisfied with the antecedent issues of justifying conscription and finding a place for objection. The discussions that come from the Vietnam experience are not immediately useful. They amount to a series of critiques of

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now historical American legislation and do not treat the larger issue in any systematic way. The question of the method of recruitment is important, and I will follow most writers on the subject, including Rawls (TJ §58), and assume that in most circumstances the most appropriate way to raise a military force is by asking for volunteers.

4 The Problem

From this brief survey of what has been written about ethics and the military it should be apparent that little has been specifically written about how soldiers of a liberal state ought to be understood. That is, nothing has been written about how the rights of citizens might change, be suspended, or persist while that citizen serves in a society's armed force. The discussions that are often labelled as discussions about 'military ethics'\(^\text{17}\) are of little help.

Without any specific discussion of the issue of how to treat the rights of soldiers, one is at a loss. In these circumstances, where ought one turn? Liberal theory seems the most obvious choice because it offers the most systematic articulation of the rights of individuals entailed by the basic requirement of justice that individuals are to be treated with equal concern and respect. Contemporary liberal theory with John Rawls as its auteur par excellence would seem a natural place to begin. The question of how soldiers ought to be treated remains unresolved. There is very little room to manoeuvre because Rawls has left no room – he has no equivalent to the Canadian Charter section 1.\(^\text{18}\)

Without some way to relax the strict priority that he gives liberty, it would seem that one

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\(^{17}\) Henceforth I will not use the term 'military ethics' but refer specifically to just war theory and military professional ethics.

\(^{18}\) The full section reads: "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."
is doomed to walk down the road of either condemning much of what is currently practiced in many close to liberal states, or jettisoning the core of Rawls' theory for being unable to treat a fundamental social institution.

Further reflection, however, shows that these conclusions are premature. Up until only recently Rawls and most liberals have assumed, for the purpose of building a theory of domestic justice, that society is closed. This assumption held that society is self sufficient and isolated with no relations between it and other societies. Rawls was content to "formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies" (TJ §2). It is only recently, in *The Law of Peoples*, that Rawls dropped this assumption and then only to establish the principles that govern the relations between societies – not how the existence of other states affects the basic domestic institutions. With the assumption in place, the main function of the military institution is irrelevant to a theory of justice since borders are assumed to be secure. In Rawls' case, however, when the assumption was dropped, the basic structure of domestic society was not reconsidered. The foray into global justice established only that certain policies involving armed force were permitted and that a theory of justice for isolated societies was no longer complete. Now that Rawls has established the just functions of the military institution, it is important to see how those functions, or tasks, affect domestic justice by examining how one can accomplish these tasks and respect the rights of those who are to carry them out.

Perhaps there is a third option. Since Rawls' theory of domestic justice was developed assuming that society was isolated, it is understandable that Rawlsian liberal theory has not dealt with the military institution. Without giving Rawlsian theory the
chance to examine the institution, it would be premature to dismiss either current legal practice or Rawls' theory as they stand. By continuing with further inquiry, one might be capable of accounting for some of the current practice while at the same time developing a fuller account of Rawls' theory. That being said, it is not clear that all or any of the current practice will be justified, but jumping to the first conclusion would be unjustified without further inquiry and theoretical development. This thesis argues that Rawls must deal with the military institution and the most straightforward way to do that is to grant it an exception from the full force of the priority Rawls gives to equal liberty. This exception, however, is to be conditional. Priority can only be restricted if the interests that soldiers share with citizens are protected to the greatest possible extent, and only when demanded for reasons justified in the conception of justice.
Chapter II - Rawls, Liberalism and Liberty

Before showing how a Rawlsian military might be structured, it is important to examine Rawls’ theory in greater depth and establish the place the military already occupies in it. This chapter serves as an introduction to some of Rawls’ theory. This is a theory that treats society as a cooperative venture for mutual benefit and whose basic social institutions are to be governed, in favourable conditions, by the following two principles of justice:\(^19\):

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all.

(b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle). (JF §13.1)

The first principle is said to have ‘priority’ over the second so that liberty must be equal before distributing other values and goods. For Rawls, rights and liberties exist in order to establish for citizens the conditions where they can live the life of their choice and the priority of liberty protects this, their highest order interest. Society and the state are constructed in order to satisfy that interest.

There are two aspects of Rawls’ theory of justice that concern us. The first concerns how the military comes to be treated in Rawls’ theory. The second is how Rawls’ theory, in particular his account of the basic liberties and their priority, can be developed in order to determine what the rights of soldiers are and how the content of

\(^{19}\) There are two arguments that Rawls gives justifying these two principles. One is an appeal to a systematic ordering of considered judgements about justice that he calls ‘reflective equilibrium.’ The other is a hypothetical social contract type argument using Rawls’ idea of the original position. See Will Kymlicka, *Contemporary Political Philosophy: An Introduction*, (Oxford: Clarendon Press, 1990), pp. 50-52 and David Lyons, “Nature and Soundness of the Contract and Coherence Arguments” *Reading Rawls: Critical Studies on Rawls’ A Theory of Justice*, Norman Daniels, Ed. (Stanford: Stanford University Press, 1989), pp. 141-68.
these rights should reflect the different circumstances faced by a military institution. To this end, the chapter begins by identifying some of the justified military tasks. Next we examine Rawls' theory in greater depth in the hope of finding some way of accommodating the kind of inequality of soldiers that might reasonably be necessary. The vast majority of this chapter is concerned with examining this issue and the different avenues that might permit Rawls to treat soldiers differently. To examine this issue, one must first understand how Rawls conceives society as a cooperative venture for mutual benefit. The idea of primary goods is introduced in order to determine how benefit is measured. The original position is also examined as a procedure for establishing the rules of cooperation. An examination of the conception of the person follows and the arguments for the priority of liberty are laid out with appeals to that conception. Following these arguments, the procedure that Rawls gives for developing the basic liberties into one coherent set is examined. Then we turn to Rawls' claim that the priority of liberty is not operative in all circumstances. Finally, we examine why, after all of this, Rawls is still unable to find a place for a military institution that restricts the rights of soldiers. This foray into Rawlsian theory does, however, give us an idea of the concerns that we ought to have about a theory of the rights of soldiers. The ninth section is concerned with articulating three of these concerns.

1. The Military Tasks

In order to understand the rights of soldiers and how they might differ from those of other citizens, we need to consider the special function of a military in a liberal society. Rawls establishes the framework of an international system in which the militaries of states can be permitted to perform certain tasks in accordance with global justice. Rawls’
exposition is not complete, but it is sufficient to establish the broad outlines of what shall be referred to here as the justifiable military tasks, or simply the military tasks. The justification of these tasks is given in the book *The Law of Peoples*. In that work Rawls is concerned with global justice. He outlines a 'realistic utopia' that is to be a guiding vision of a system of global co-operation that is to instruct the foreign policies of liberal states.\(^{20}\) Since it is to guide liberal foreign policy, *The Law of Peoples* does not consider one of the traditional tasks of armed forces – aid to the civil power. This kind of task uses the military as a supplement to the agencies and institutions that are established to perform various domestic tasks. In such a situation, the military comes to the aid of civil organisations or sub-national jurisdictions in need of emergency assistance. The justification of such operations is made when the organisations are justified during the process of fully articulating a society's conception of domestic justice. Since the military is coming to their aid the tasks that the military would perform are already justified.

We can divide the military tasks into two areas of operation, domestic and foreign and each area into two tasks, defence tasks and tasks that arise out of political duty. The justification of defensive tasks remains the same, *ceteris peribus*, whether the threat is domestic or foreign. For Rawls, it is not who is attacking whom that is relevant, but the effect of attack on liberal institutions.

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\(^{20}\) Rawls uses the term 'peoples.' The distinction between the terms 'peoples' and 'states' is made in order to avoid the Westphalian associations of the term 'states'. Rawls seems to have something very similar to what most people consider a 'state' to be in mind. Charles Beitz seems to interpret the idea of peoples in a similar way. He writes: "The idea of a 'people' is not transparent, though for most purposes it can be interpreted as referring to a society with a common political culture organized as a state" in "Rawls's Law of Peoples," *Ethics*, 110 (4) (2000), p. 672 n. The characteristics that Rawls wishes to emphasise by contrasting states and peoples are important but affect little of import here, so, for clarity, the more familiar terms 'state' and 'nation' are used interchangeably with 'peoples.'
The kinds of tasks for which the military might be responsible, and which are justified with reference to political duty, are, domestically, aid to the civil power operations and, in the case of operations abroad, those tasks that stem from a state’s duty of assistance. Enough has been said about aid to the civil power, though some traditional examples of operations that would be classified as such are listed in Table II – 1. The duty of assistance is mandated by one of the principles that govern international cooperation. The principles are known as the law of peoples and those who abide by them are part of a society of peoples (LP §4.1). A liberal state discharges this duty in order to aid those societies living in unfavourable conditions that prevent them from developing into liberal societies (LP §§4.1, 13.2). Rawls calls such societies ‘burdened societies’ (LP §13.1). A society might be burdened because of its “historical, social, and economic circumstances” (LP §13.1). The duty a liberal society has towards such societies might be discharged within a framework of just international institutions, similar to the United Nations. The society and law of peoples work together to promote liberal justice, peace and cooperation. Coming to the assistance of burdened societies promotes these goals because Rawls argues that it is a fact of well-ordered liberal states that they do not war against each other (LP §5). Thus, in promoting this kind of regime one is also promoting peace. The duty of assistance also encompasses a duty to intervene in cases of gross human rights violations.

The second kind of ground that Rawls considers sufficient to justify a military task is a state’s right to defend itself. This right is given in the fifth principle of the law of peoples. “[States] have the right of self-defense but no right to instigate war for reasons other than self-defense” (LP §4.1). Defensive military tasks performed abroad might
include wars of self-defence, and in defence of one’s allies.\textsuperscript{21} Rawls is quite clear that a just liberal society goes to war only in order to secure the basic liberties of its citizens and the institutions that guarantee them. It cannot go to war for reasons of empire, wealth or any other self-interested reason (LP §13.2).\textsuperscript{22}

Table II - 1 The Justified Military Tasks

<table>
<thead>
<tr>
<th>Duty Based</th>
<th>Foreign</th>
<th>Domestic</th>
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<tbody>
<tr>
<td></td>
<td>Duty of Assistance</td>
<td>Aid to the civil power</td>
</tr>
<tr>
<td></td>
<td>• Humanitarian intervention</td>
<td>• Disaster relief</td>
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<td></td>
<td>• Peacekeeping</td>
<td>• Riot control</td>
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<td></td>
<td>• Aid, relief missions</td>
<td>• Search and Rescue</td>
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<tr>
<td>Defence Based</td>
<td>• Defence of allies</td>
<td>• Border patrols</td>
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<tr>
<td></td>
<td>• Defensive operation abroad</td>
<td>• Defence against invasion</td>
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</tbody>
</table>

2. Primary Goods

Rawls clearly has tasks for the military to perform. The key now is to examine his domestic theory in greater detail in order to understand how he might be able to accommodate an institution that can effectively carry out these tasks. Rawls conceives of society as a cooperative venture for mutual benefit. One of the keys to understanding Rawls’ conception of co-operation is to understand how he conceives individuals, how they might understand benefit, and how they distribute these benefits. In this section the measure of benefit is examined.

Rawls' principle of equal liberty, the first principle, does not give priority to liberty as such “as if the exercise of something called ‘liberty’ had a pre-eminent value

\textsuperscript{21} It is not immediately clear how this principle is to apply towards pre-emptive actions. Rawls seems to consider it possible that a state might ‘instigate war for reasons of self-defence.’ Such a right seems to be similar in effect to a right of pre-emption. Walzer, to whom Rawls often refers favourably, accepts a notion of pre-emption in \textit{Just and Unjust Wars}, pp. 82-85.

\textsuperscript{22} Presumably, this includes using a society’s armed force as a threat to these ends, even though the threat is never carried out.
and were the main, if not the sole, end of political and social justice” (JF §13.3). Instead, he gives priority to a set of liberties that he calls the 'basic liberties.' These are “freedom of thought and liberty of conscience; political liberties (for example the right to vote and to participate in politics) and freedom of association, as well as the rights and liberties specified by the liberty and integrity (physical and psychological) of the person; and finally the rights and liberties covered by the rule of law” (JF §13.3). The basic liberties are the most important subset of primary goods. Primary goods are the means by which benefit is measured in a Rawlsian society. They are all-purpose means needed for individuals to achieve and maintain their status as free and equal participants in an ongoing scheme of social co-operation (JF §17.3). These include, in addition to the basic liberties, other freedoms and rights, the powers and prerogatives of offices, income and wealth, and the social bases of self-respect (JF §17.2).

Rawls distinguishes between primary goods that can be distributed by society and those that cannot or between what he calls social primary goods and natural primary goods (TJ §11). Natural primary goods are such things as “health, vigour, intelligence and imagination” (TJ §11). The primary goods listed in the previous paragraph are examples of social primary goods. A Rawlsian conception of justice is concerned with the distribution of social primary goods. These goods are some of the benefits that arise from social cooperation. Society distributes these benefits through ‘the basic structure’, which is the set of basic social institutions and the way in which they interact. All those who participate in society have an interest in insuring that these goods are distributed in a

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23 It may have appeared in TJ that primary goods were not to have any normative associations – that they were goods required for human existence. Rawls is, in JF, clear that primary goods are part of the conception of justice and have some normative content. Compare TJ §11 and JF §17.1.
fair way by the basic structure. The military institution is part of this basic structure and plays a role in the distribution of social primary goods. The rules that govern cooperation, the principles of justice, establish the fair expectations that participants have from society, the basic structure, and the military as an institution in that structure. In order to insure that the rules governing participation are fair, Rawls develops a procedure for establishing the rules. This procedure, the original position, ensures that things that are irrelevant from a moral point of view do not affect the distribution of social primary goods. The problem with the traditional military is that it distributes a social liability, or burden, that is paid for by a distribution of unequal liberty.

3. The Original Position

The original position models a fair situation where representative individuals decide on the public rules that will govern their eventual cooperation. It is a hypothetical situation where individual representatives make decisions subject to certain restrictions on their knowledge; that is, they are subject to a veil of ignorance. The set up of this situation is supposed to model the intuitions that we have about fairness. The individuals in this situation, the parties, deliberate about public rules and agree to them. The principles and rules that emerge represent a fair contract because of the structural features of the original position. It is also a rational contract in virtue of the features of the parties. Though the original position seeks to find a place in the historical tradition of social contract, it has an added dimension. This is the second argument made in support of the original position for the so-called ‘coherence argument.’ The idea is simply that the original position is a procedure for bringing all of our intuitions about justice into coherence – its features model our intuitions. The restrictions that are placed on knowledge, for
example, model intuitions about reasonableness and reciprocity, while the deliberations of the parties are models of rationality.\textsuperscript{24} The principles of justice, with liberty given priority, and the principles of the law of peoples are argued for using original position arguments. The rights of soldiers are determined by these rules that emerge from the original position. Three aspects of the original position that we now turn to examine in greater detail affect these rules: the structure of the original position, the rationality of the parties, and the subject of deliberation or the subject of justice.

Rawls argues that the individuals in the original position are deliberating in fair conditions by virtue of their situation and the knowledge they possess. The individuals are equals and they are representatives who are deliberating for themselves and others. As representatives, the individuals must not only deliberate about their own good, but must also consider the good of the individuals that they represent. They are also put behind a 'veil of ignorance.' This means that in the original position individuals are not aware of certain features of themselves, the individuals they represent, and the society that they will be a part of. Rawls considers these facts to be irrelevant from a moral point of view. An individual's religion or comprehensive theory of life\textsuperscript{25}, race, and gender, for instance, are not known. The society's level of wealth is not known either. Rawls is trying to insure that the individuals are incapable of rigging the discussion in the original position to favour themselves or any group in society. In this way, nobody can say that a certain person or position is unfairly advantaged. The result of the way that the original position is structured is that the parties come to be situated symmetrically or that they come to have the same powers and capacities so that cannot dominate the deliberations.

\textsuperscript{24} See Kymlicka, pp. 50-52 and also Lyons, pp. 141-68.
The conditions of the original position, such as the limited knowledge and equality of the parties, represent what Rawls calls the reasonable. Given the way that the original position is structured, it seems difficult to believe that there is any way for soldiers to be singled out. That is, the original position is constructed in such a way as to insure that no one group can benefit from special treatment.

Subject to the conditions of the original position Rawls argues it is acceptable for the parties to pursue their own rational interest and the interests of those they represent. The parties are considered to be mutually disinterested and pursue their own good and the good of those they represent. The parties also understand that the society that they will inhabit is one that is subject to moderate scarcity. In this way, they are told that “natural and other resources are not so abundant that schemes of cooperation become superfluous, nor are conditions so harsh that fruitful ventures must inevitably break down” (TJ §22).

The parties, then, are to establish the rules that best promote their own ends and those of the individuals that they represent (JF §25). Given the way that the original position is structured, the parties come to deliberate about the basic structure and how it distributes social primary goods. The basic structure comes to be seen as the primary subject of justice.

4. The Conception of the Person in the Original Position

In the original position the parties do not know their own set of final ends or those of the individuals that they represent. The ordered set of final ends of an individual is called, by Rawls, the individual’s conception of the good. Rawls argues that individuals come to be

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25 Rawls uses the term 'comprehensive doctrine' to cover religious, philosophical and moral theories and doctrines. The term should be considered similar if not equivalent to 'conception of the good.'
conceived as having a hierarchy of interests.\textsuperscript{26} There seem to be two categories of interests. An individual's highest order interest is in living a life according to his/her conception of the good. But, Rawls points out, an individual's conception of the good may not always be controlling. When an one's basic needs are not met it becomes difficult to develop and exercise one's conception of the good. The basic needs are the conditions necessary for an individual to develop and exercise a conception of the good. They are the needs that individuals must have met in order to become fully functional and are both social and material (TJ §82, PL I §1 & JF §13.3).\textsuperscript{27}

Individuals are assumed to have their basic needs met.\textsuperscript{28} With those needs met the parties assume that individuals are capable of engaging in social cooperation. In order to make that assumption the parties attribute to individuals two moral powers:

1. One such power is the capacity for a sense of justice: it is the capacity to understand, to apply, and to act from... the principles of political justice that specify the fair terms of cooperation
2. The other moral power is a capacity for a conception of the good: it is the capacity to have, to revise, and rationally to pursue a conception of the good: Such a conception is an ordered family of final ends and aims which specifies a person's conception of what is of value in human life or, alternatively, of what is regarded as a fully worthwhile life. (JF §7.1)

These two moral powers permit an individual to cooperate and to realise that individual's highest order interest. The principles of justice and, in particular, the priority of liberty is meant to facilitate the satisfaction of that interest.

\textsuperscript{26} This hierarchy represents a revision to the argument presented in the original TJ. See "Preface to the Revised Edition" TJ p. xiii and also PL VIII §14 n 84.
\textsuperscript{27} Based on Rawls' citation of R.G. Peffer, \textit{Marxism Morality and Social Justice}, (Princeton: Princeton University Press, 1990), in PL I §1 n. 7 and JF §13.3 n. 7, one might infer that basic needs might be specified more precisely as including one's "basic security and subsistence" needs. See Peffer p.14.
\textsuperscript{28} To put things in the terms used in \textit{LP} the parties are assuming that the society that they are deliberating for is not a 'burdened society.'
The parties in the original position become the model for the way that citizens are to be conceived in the conception of justice. That is, they are considered equals in the sense that they have, to the requisite degree, the two moral powers that are necessary for social cooperation. They are considered free because they have a capacity for a conception of the good. In other words they are free, since having a capacity for such a conception means they are not tied necessarily to any one determinate conception. They are free in another related sense. Individuals are conceived to be self-authenticating sources of valid claims, which is to say that they need not rely on anyone beyond themselves in order to authenticate claims about their conception of the good or to advance that conception (JF §§7.3-7.5). It is the priority of equal basic liberty that ensures this status of individuals. That status is guaranteed to individuals capable of cooperation. Soldiers meet this criterion, and cannot be assumed to have interests that differ from other individuals without introducing something new into the original position.

5. The Value of the Priority of Liberty

Rawls argues that the parties give liberty priority because in doing so their highest order interests are secured. Of course, the parties can only express the general form of those interests (TJ §82). Also, the priority of liberty refers only to the basic liberties. Rawls argues for the priority of liberty by making appeals to the two facets of individuals that are known to the parties. That is, he gives grounds for the priority of liberty by appealing to the two moral capacities of individuals. It is this priority of liberty that requires soldiers to have the same set of rights as civilians, and so an examination of the grounds for it is appropriate.
The Argument from a Capacity for a Conception of the Good

There are three basic grounds for giving liberty priority that appeal to an individual’s capacity for a conception of the good. Rawls only sketches the argument and only really defends one of the basic liberties – freedom of conscience. The three grounds are: an argument based on a determinate conception of the good, the interest in revision and the interest in rational affirmation. Essentially, the basic liberties as a set of primary goods are of such fundamental importance that the parties will only be satisfied with an equal distribution of them, and trade-offs with other primary goods do not compensate for an unequal distribution.

1. The Argument from a Determinate Conception of the Good

The first reason that Rawls notes is that the representatives in the original position have to recognise some sort of freedom of conscience. As representatives, these individuals do not know which comprehensive doctrine the individuals they represent adhere to. The representatives cannot gamble and hope their constituents hold the doctrine of the majority, or that a majority exists. Instead, they must ensure that the individuals can exercise their doctrine as a minority by ensuring freedom of conscience. As Rawls acknowledges, this simply follows from an examination of the conditions built into the original position, and is not really an argument. The reason for priority in this instance is that the place of a conception of the good in the life of an individual is non-negotiable (PL VIII §5).
2. The Interest in Revision

Another ground stems from regarding the capacity for a conception of the good as a means to an individual’s good. In this case, once it is acknowledged that individuals can fall into error, having the freedom to revise a conception of the good furthers one’s good by permitting improvements. When seen as an instrument, the capacity requires certain social conditions for its development. One of the conditions is freedom of association so that individuals can associate with other like-minded individuals in order to develop better conceptions (PL VIII §5).

3. Rational Affirmation

Freedom of conscience can be valuable in itself. The ability to say “this is what I chose, in freedom” is a good in itself and is only possible when individuals can make choices in accordance with their conscience or the dictates of free deliberation. An affirmation of this sort is what Rawls calls a ‘rational affirmation.’ Without the conditions necessary for establishing why a certain conception of the good is the one that one ought to choose, rational affirmation is impossible. One cannot say, without these conditions, that one’s conception of the good is in fact one’s own. In this way a capacity for a conception of the good “is not a means to but is an essential part of a determinate conception of the good” (PL VIII §5).

The Argument from a Sense of Justice

Rawls gives another set of grounds for giving liberty the priority that he does, but this second set is connected with the other moral capacity, the capacity for a sense of justice. These grounds, because they are related to an individual’s sense of justice, do not
motivate the acceptance of anything. Instead these grounds must, through augmenting an individual’s sense of justice, also further one’s determinate conception of the good in order to be effective. That is they must either be a means or a part of an individual’s conception of the good.

1. Stability

Giving priority to the basic liberties leads to a more stable regime, improving the lives and good that individuals choose. Individuals are given reason to follow the public rules and to cooperate because the liberty is given priority. The priority of liberty insures that the fundamental interests of citizens are not subject to calculations of social benefit or efficiency. In other words, because the priority of liberty so clearly favours the conception of the good of individuals they are given reason to follow the rules and stabilize the society (PL VIII §6).

2. Self-Respect

The importance of self-respect is that without it an individual’s life plans can seem pointless and little is worth doing. It is a virtue of a conception of justice that it promotes in individuals self-respect and the confidence to pursue their conception of the good. If the principles do not promote self-respect they cannot, in the end, secure the highest order interest of individuals. The principles of justice do promote self-respect, and they do this in two ways. First, the priority of liberty insures the secure development of the two moral powers. These are the two elements necessary for individuals to be full cooperating members of society. Second, the public nature of these principles affirms the capacity of individuals and recognises them as capable. Such recognition is a source of respect and confidence (PL VIII §6).
3. A Social Union of Social Unions

The final ground that Rawls gives for granting liberty priority is related to the idea of a social union of social unions. The idea is that the kind of society that results from the cooperation of free and equal individuals is a more comprehensive good than if individuals were left alone with their conceptions of the good. Social union provides individuals with the opportunity to develop many different human talents and thus individuals might do much more together than on their own. Finally when these activities are coordinated by a conception of justice that is honoured by all, it is the result of union. By insuring that individuals are treated as free and equal participants in society, the principles of justice insure that this more comprehensive good is transmitted to individuals. Because one need not know anything about the determinate conceptions of individuals in order to understand the good achieved by such a social union, and how it amplifies any conception of the good, it is open to the parties as a ground for accepting the principles of justice and the priority of liberty (PL VIII §6).

These reasons that Rawls gives for giving liberty such a prominent place emphasise the interest individuals have in directing their own life and participating in society. There is no reason to assume that soldiers do not have these same interests. The parties in the original position cannot assume that individuals who become soldiers would not be motivated by the same things as other individuals any more than they can gamble that they will end up with a majority religion. Indeed, soldiers are more than qualified to be treated as participants in society. One must assume that they have, to the requisite
degree, the capacity for a sense of justice and a conception of the good. So, it would seem, they must be granted the same equality of liberty as any other citizen.

6. Establishing the set of Basic Liberties

The basic liberties are given by a list of liberties and include: the political liberties or the right to vote and to hold office, freedom of speech and association, freedom of thought and conscience, freedom of the person as security of the person, the right to hold property, and freedom from arbitrary arrest (as defined by the concept of the rule of law) (TJ §11). Rawls argues that these liberties are to have priority and that they are to be distributed equally. He also says that they might conflict, and must be made into a coherent package of liberties. Perhaps the guidance that Rawls gives for the purpose of making liberty coherent can be used to find some space for the kind of restrictions of the rights of soldiers that have been traditionally necessary.

Not everything is established in the original position. The principles of justice are established there and are then applied in three subsequent stages that complete the four-stage sequence Rawls envisions. At each subsequent stage the constraints on knowledge are lifted. It is at the second stage, the constitutional convention, that most of the issues with respect to liberty are solved. Rawls argues that each liberty is to guarantee a “central range of applicability” (JF §32.2) and this range is established at the stage of the constitutional convention. Rawls gives criteria for establishing what the ‘central range of applicability’ of a particular liberty is, and also its relative significance to other liberties. “[T]he basic liberties and their priority are to guarantee equally for all citizens the social conditions essential for the adequate development and full informed exercise of their two moral powers” (JF §32.4) in two fundamental cases. The two moral powers attributed to
the parties in the original position each correspond to a fundamental case. The first case is connected to the political liberties and to freedom of thought. These freedoms are to "ensure the opportunity for the free and informed application of the principles of justice to the [basic] structure and to its [social] policies by means of the full and effective exercise of citizens' sense of justice" (JF §32.4). The second case concerns an individual's ability to 'form, revise and rationally pursue' a conception of the good over a complete life. To that effect, "liberty of conscience and freedom of association are to ensure the opportunity for the free and informed exercise of this capacity and its companion powers of practical reason and judgment" (JF §32.4).

None of this regulation permits any inequality. All it allows for is the fine-tuning of the basic liberties so that they do not become contradictory or self-defeating. Only consideration of the significance of a liberty to the two moral powers can serve as a reason for fine-tuning the liberties. The necessity generated by the military tasks does not fit into this reasoning. The central range of applicability is to insure that the moral-powers are adequately developed for everyone. Moreover, the fine-tuning is constrained by the principles of justice.

There is one other distinction that might be considered to be a way to justify the inequality of soldiers. Rawls makes a distinction between equal liberty and the equal worth of liberty. The worth of liberty is the ability to take advantage of the liberty one has. Formal equality, on the other hand, is only an equal entitlement to liberty in law (TJ §32). He points out that certain freedoms will be less valuable to some, but that his principles only guarantee formal equality, the fair value of political liberties and not the
equal worth of all basic liberties. But, it is not clear how useful the liberty/worth distinction is, since soldiers as traditionally conceived are denied formal equality.

7. Two Conceptions of Justice

One of the problems that Rawls' principles of justice face is that there might be many examples of times when the priority of liberty is unjustified. That is, there might be times of scarcity or war when liberty needs to be made unequal to meet basic needs. As a theory of justice, then, it is not an appropriate theory for all conceivable circumstances. The priority of liberty insures that society cannot trade liberty for other things such as efficiency, cultural homogeneity, material wealth or even security. When a state is subject to an ongoing bombing campaign, it might be appropriate to restrict freedom of movement and association with curfews, and to require people to report to shelters. Rawls acknowledges that the priority of liberty does not hold all of the time (TJ §82). He points out that his liberal theory is a special conception of a more general conception of justice. The circumstances or conditions in which a society finds itself determine which conception is appropriate. This avenue seems to be worth exploring, since the circumstances that soldiers find themselves in are often out of the ordinary.

Rawls assumes that his principles of justice, the ones we are familiar with, apply here and now. These principles are known as the special conception of justice. Rawls gives only a brief sketch of the general conception of justice that is meant to apply in less favourable conditions. For most of Rawls' work, the distinction between the two

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29 In Rawls' later work certain liberties are given guarantees of a minimum value – by emphasising the assumption that basic needs are taken care of. In JF Rawls argues that the fair value of the political liberties is in fact guaranteed (JF §45). At the same time, however, he denies that a guarantee of fair value needs to be extended to other basic liberties. Such a guarantee would be "either irrational, or superfluous, or socially divisive"(JF §46).
‘conceptions’ is a matter of background. The applicability of either conception is a matter of the conditions a society finds itself in. The general conception applies when the basic needs of citizens are not met. These are the needs that must be satisfied in order for individuals to be fully functioning. Basic needs can be either material or social. Rawls gives a general principle of justice that is meant to apply in these circumstances:

All social values - liberty and opportunity, income and wealth, and the social bases of self-respect - are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage (TJ §11).

There are two things to note about this principle. First, it permits inequality. Second it permits liberty to be traded with other values. If this principle is to be used in conjunction with the special conception, its goal is to insure that everyone's basic needs are met. It is not clear how this principle is meant to apply to the situation of soldiers. Certainly, it permits the inequality of soldiers if in times of war inequality is to everyone's advantage; the inequality must also advantage soldiers. But, that would permit inequality only in situations where a society is under concerted attack, since only under such circumstances could the principle be invoked. Tasks that are initiated by a society, such as those associated with a society's duty of assistance, would be unjust since they might deliberately put soldiers in a position where their basic needs were not met. Though the special/general conception distinction might prove to be useful, it is not immediately clear how useful it is for societies in favourable conditions that need an armed force.

8. Theoretical Continuity

It is becoming harder to see how Rawls' theory can accommodate the practices of traditional military institutions into his conception of justice without modification.
Moreover the more permissive principle operative in the general conception of justice is of little help. What seems to have happened is that tasks mandated by global justice were assigned without understanding what they would require of domestic conceptions of justice. Liberal societies, however, are bound by the principles of global justice. Rawls, unfortunately, makes no explicit attempt to achieve continuity between these two sets of principles. (Table II – 2 summarises Rawls’ domestic and global principles.) The result of this discontinuity is that an effective military institution is necessary, but unachievable. One other gap should be mentioned. The law of peoples guides the foreign policy of liberal peoples. There is no attempt on Rawls’ part to formulate principles to guide the foreign policies of just but non-liberal\textsuperscript{30} peoples, or burdened societies in unfavourable circumstances. Some peoples may be able to accept the law of peoples. Rawls calls such peoples ‘decent,’ and considers them \textit{bona fide} members of the society of peoples. There is, however, no global equivalent to the general principle of justice that is to hold when no liberal society exists.\textsuperscript{31}

Perhaps the chief source of discontinuity is that Rawls considers there to be three distinct spheres of justice. The domestic and global spheres are the only two he has commented on, leaving the third, local justice, unexamined. Local justice is to govern the conduct of associations and institutions within the basic structure (JF §4.2). The problem, however, is that there is no readily apparent way to integrate the spheres we are concerned with. The problem is the fact that the principles in question are developed in

\textsuperscript{30} By non-liberal I mean a society that is not governed by the principles of the special conception of justice. A society may be just and non-liberal if it is effectively governed by the general principle of justice and is in unfavourable circumstances.

\textsuperscript{31} A just society in the circumstances of general justice will be considered a decent society, and be admitted to the society of peoples. However, a society of peoples is only possible in a world with more than one liberal peoples. In the absence of a society of peoples there are no principles of global justice to fall back on in the way that a liberal society can fall back on the general principle of justice.
isolation of each other. Each set of principles has its own original position populated by
different parties. Domestically, the parties are representatives of individuals deliberating
about the rules of domestic co-operation while globally the parties are representatives of
liberal states who deliberate about the rules governing the behaviour of states. Continuity
cannot be achieved without accounting for how the deliberations of one original position
are to be reconciled with those of another.

Domestically, the parties have a hard time dealing effectively with the special
demands that the military needs to put on soldiers. In the domestic original position the
parties have no way to mark soldiers as exceptional or different from any other
occupation or way of life. Without such a mark, there is no reason to treat soldiers
differently or unequally. Part of dealing with the rights of soldiers must be reconciling
how the principles of the law of peoples are to impact domestic principles of justice.
Because the military institution straddles both spheres of justice, some sort of bridge
between the two spheres needs to be built beneath the feet of soldiers. It is on the lives of
soldiers that the impact of living in a world populated by other societies is most
dramatically felt. Though the problem of the rights of soldiers is clearly a problem of the
domestic sphere, the demands of global justice clearly make the military institution
necessary in societies where favourable conditions obtain.
Table II - 2 The Principles of Global and Domestic Justice

<table>
<thead>
<tr>
<th>General Conception</th>
<th>Principles Governing Domestic Justice</th>
<th>Principles Governing Foreign Policy (Global Justice)</th>
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<tr>
<td></td>
<td>All social values - liberty and opportunity, income and wealth, and the social bases of self-respect - are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage.</td>
<td>1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples. 2. Peoples are to observe treaties and undertakings. 3. Peoples are equal and are parties to the agreements that bind them. 4. Peoples are to observe a duty of non-intervention. 5. Peoples have the right of self-defense but no right to instigate war for reasons other than self-defense. 6. Peoples are to observe human rights. 7. Peoples are to observe certain specified restrictions in the conduct of war. 8. Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.</td>
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| Special Conception | (a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all. (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle). | |

9. Three Areas of Concern

Though Rawls’ theory, in the end, is incapable of permitting the kind of inequality of liberties that are traditionally found between soldiers and citizens, he does give a detailed account of the interests that individuals share. This account can serve as a foundation for identifying certain concerns that individuals and society might have. This section
establishes in more detail three areas of concern that will focus the discussion of the rights of soldiers.

The Concern for Command Authority

It has been argued that Rawls’ theory has difficulty incorporating the traditional military institution. This raises the first concern; it is a concern that there be sufficient justification of the authority necessary for military commanders to effectively accomplish the military tasks. This concern arises only when the domestic parties become aware of the need to have an institution such as the military.\(^{32}\) Traditionally it has been through an authority to command, that commanders accomplished military tasks, and one of the ways that the rights and freedoms of soldiers were made unequal. The authority to issue orders, including orders that place soldiers at risk of death or serious harm, that are actually followed is vital to the military’s ability to carry out the military tasks. The concern is that in respecting the rights of soldiers to an extent equal to citizens, it will become too difficult for military authority to accomplish the tasks they have been charged with. There are additional concerns beyond the practical ones. Soldiers have an interest in the effectiveness of commands. The safety of soldiers during the military tasks might often depend on co-ordinated action and planning, and without authority these things might be in jeopardy. For volunteer soldiers, accomplishing the military tasks might be part of their conception of the good, and insomuch as the authority of commanders to command is necessary to that end, volunteer soldiers have an interest in

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\(^{32}\) It is possible that this might happen in two ways. Either revelations made in the global original positions are brought to the domestic parties or the domestic parties realise the need for a military-like institution to deal with the domestic military tasks. The later possibility may not require a full military institution capable of engaging in protracted full intensity warfare. A well-equipped and well-prepared police force of last resort may be all that is required. In any event, the former possibility is the most theoretically important and its conclusions supervene.
maintaining that authority. Citizens who are not soldiers have an interest in the effectiveness of the command structure, because it is through that structure that legitimate authority asserts itself, and has its designs executed.33

**The Concern for Personal Freedoms**

Another area of concern is over personal freedoms. These freedoms are the ones that allow soldiers to pursue the life that they want to live and are related to the fundamental case that Rawls identifies and connects with an individual’s capacity for a conception of the good. The parties in the original position become concerned with these because these freedoms can be, and have been, lost in the functioning of an effective command structure. An individual’s freedom of conscience and security of the person, for instance, may not be specifically restricted. Instead, these freedoms are constrained by a soldier’s duty to obey. Being constrained in this way makes it difficult for individuals to develop and exercise their capacity for a conception of the good. For example, a soldier might not be permitted to refuse certain orders, even though they place the soldier in a dangerous situation or in a morally intolerable one. Take, for example, the increasingly famous case of a soldier’s right to consent to a medical vaccine.34 Soldiers might be required to follow orders to take certain vaccines in order to deny the enemy the use of certain biological weapons. This case might be strictly interpreted as one concerning security of the person, but personal freedoms often become so wrapped up in

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34 This case is becoming an issue in both Canada and the United States. Both armed forces have been requiring their soldiers to submit to a vaccine against certain forms of anthrax that might be used as biological weapons. The vaccine has an uncertain safety record and there are questions of its compatibility with other vaccines and toxins that soldiers might encounter. As a result of this uncertainty many soldiers do not wish to take the vaccine. Soldiers have been and continue to be compelled to take the vaccine or face harsh penalties.
associations with one’s conception of the good, that they become indistinguishable from freedom of conscience. Certain religions have strong beliefs concerning some medical procedures such as vaccines and blood transfusions. For these adherents, such procedures are matters of faith and conscience. Being put in situations where one cannot exercise one's personal freedoms because of the imperative of one's soldierly duties is perhaps the most common restriction of personal freedom in the military environment. For the individual, the freedom to live one's life according to one's conscience is clearly at stake and is most important. There are other concerns. A citizen's status might be affected by an inability to participate in the military institution. If there were too many rules that certain adherents of a certain comprehensive doctrine could not follow, for reasons of conscience, that group would be effectively barred from participating in an important social institution. Sharing in the process of social co-operation is what constitutes the status of individuals as participants. Citizens have an interest in insuring that their status as equals is maintained, by insuring that they can participate in all public institutions including the military.

The Concern for Public Freedoms

One other area of concern deals with freedoms that are of a public or political nature. These freedoms all involve freedoms to interact with others, and appeal to the fundamental case related to the individual’s capacity for a sense of justice. These freedoms can be used to change the present circumstances that individuals find themselves in. Some of these freedoms might also be personal, such as the freedoms of speech and association, but they are also important to the ability to participate in public political discussions and processes. Of these freedoms, the freedoms Rawls calls
'political freedoms' - to vote and hold office - are to be guaranteed fair value (JF §45, PL VIII §7). At stake for soldiers are the legal powers to influence and affect the political processes that govern their lives. A similar interest exists in being able to combine together to form unions or to lobby in order to change working conditions. One of the triumphs of modern liberal institutions is that they have moved violence out of the political process. Rawls argues that a well-ordered society is one where the conjunction of public rules and the individual sense of justice of each citizen is the source of order and justice (JF §3). There is a concern that soldiers exercising these public freedoms might negatively affect either the public rules or the sense of justice of citizens. There might, for instance, be a perceived threat from the public interactions of soldiers that would affect the way other citizens act publicly. Or, there might be concern over the public rules and public control over a politically active armed force. We might call this concern a fear of praetorianism. A praetorian military is inconsistent with a well-ordered society because of its tendency to subvert the equal status of the individual participants, and specifically, the proper functioning of the public system of rules.

10 Summary

This chapter began by establishing that within a Rawlsian framework there exist justified military tasks. In fact, some of these tasks are duties of liberal states and mandated by principles of global justice. The problem is that Rawls’ society is designed to distribute the benefits of social cooperation in a fair way, and the military tasks entail a burden. Because the burden borne by soldiers comes, traditionally, in the form of a mandated inequality in liberty, the principles of justice and the priority of the basic liberties have a hard time accepting this burden. The priority of liberty exists to protect interests that all
individuals have and soldiers share with civilians. Rawls' domestic original position, as it stands, has no way to mark soldiers and the burden they bear as requiring exceptional treatment. The mechanisms that Rawls gives for bringing the basic liberties into coherence at later stages are impotent to construct rules specifically for soldiers, since they are bound to respect the priority and equality of the basic liberties. When the priority of the basic liberties does not hold, in unfavourable conditions, the kinds of trade-offs that the traditional inequality of soldiers seems to make can be permitted in some circumstances. However, this does not seem to help the kind of society that has international obligations according to the law of peoples. It would seem that the problem being struggled with here is the result of a discontinuity in Rawls' theory of justice. It is a discontinuity between the two spheres of justice that is relevant here – the global and domestic spheres. Though the problem of the rights of soldiers is a problem of domestic justice, the inability of Rawls' theory to deal with the problem, without modification, is the result of the separate treatment of the spheres of justice with their own assumptions and without any mechanism to bring them into coherence. Be that as it may, we can bring out some concerns that need to be dealt with by any theory of the rights of soldiers. Concerns, dealing with how soldiers are to develop and exercise their capacity for a conception of the good, and to use their sense of justice to affect public rules and policy, stem from the highest order interests that soldiers share with civilians. Finally, there is the concern over the authority of military commanders to accomplish the justified military tasks. This is a concern over the effectiveness of the military institution. Given that certain military tasks are, in a sense, necessary for societies in favourable conditions,
the question that needs to be examined involves the necessity of the traditional inequality of soldiers. This question will be addressed in the next chapter.
Chapter III - The Military Institution and Liberal Justice

We have seen that Rawls' theory is unable to deal with the traditional inequality that military institutions have found necessary. But, before modifying Rawls' conception of justice, it must in fact be the case that this inequality is necessary. So, in this chapter we turn our sight to the military institution itself and examine the nature of its tasks as well its position in society. With that established the focus returns to Rawls' theory and 'the military question.' This is the question of what to do with the military institution, how to integrate it into the basic structure and how the principles of justice are to accommodate it. An answer to this question is essential to a treatment of the rights of soldiers. Since, it turns out, some special laws for soldiers are necessary for an effective military institution. Rawls' theory requires modification.

Since it is only in favourable circumstances that the rights of soldiers are problematic this chapter will focus on the institution in those conditions, which is in times absent of invasion and pressing emergency. Of particular significance are the circumstances where the armed forces of a society can be raised through volunteers. In times like this there are still tasks to accomplish. The tasks that the military performs are not so urgent that either the security of the state or the basic needs of citizens are in any jeopardy. It is in favourable conditions that the question of what to do with this necessary institution that requires inequality, what I call 'the military question' is most pressing and most problematic. A set of conditions, the conditions of the military exception are devised as a caveat to the priority of liberty. These conditions are then argued for following the kinds of arguments that Rawls uses to defend the priority of liberty. With the exception established, the remainder of this chapter applies the
exception in the most favourable conditions, the conditions that permit building an armed force through volunteers.

1. The Military Institution and Rawls

The military tasks present the parties in the original position with motivational and collective action problems. Military tasks are often dangerous and large scale. Either of these aspects of the military tasks when combined with soldiers who exercise the ordinary rights of citizens is sufficient to make the outcome of the tasks uncertain. The freedoms normally enjoyed by citizens include freedom of conscience and security of the person. These freedoms entail an entitlement to leave one’s employment when it becomes, in one’s own opinion, too dangerous or no longer of benefit without incurring unreasonable penalty. In dangerous circumstances individuals cannot be assumed to be willing to perform the tasks that the military needs to accomplish. The parties in the original position attribute to the individual a hierarchy of needs. In dangerous situations the desire to satisfy one’s basic needs can be safely assumed to be controlling over higher order desires. The parties cannot rely on the higher order commitments of the individual to keep the lower order interests in check. The military tasks are large-scale ventures that require a high degree of coordination; these general tasks in turn depend upon several individuals accomplishing smaller tasks in order to be effective. The minor tasks, however, cannot be assumed to always be in the interest of the individual. In both cases the parties cannot rely on an individual’s sense of justice to accomplish the necessary tasks. When these two aspects are combined the effectiveness of an armed force is entirely uncertain if there are no methods to supplement the natural motivation of soldiers.
Behind the veil of ignorance sufficient knowledge exists for the parties to come to the conclusion that the military requires these inequalities. Recall that representatives in the original position know general laws of human psychology, the laws and principles of war,\textsuperscript{35} and theories of social organisation (TJ §24, JF §25.2). These are sufficient to establish that individuals would be averse to facing violent death in combat. A complex and controversial theory of human psychology is not required. Rudimentary knowledge of war is sufficient to know that success and the minimisation of casualties present the parties with the basis of a complex collective action problem that requires authority to command and supplement the sense of justice of soldiers. Both the needs of discipline and command can become plain to those in the original position. These two requirements of the military institution are sufficient to establish the need for coercive discipline. It would be known that a set of rules is necessary to ensure discipline and command, and that those rules would not be required anywhere else.

Beyond the problem of accomplishing the military tasks with soldiers that have full access to their rights, explained above, there is another problem with the military institution that is apparent in the original position. The problem arises over the concern the parties have for public order. There are two dimensions to this problem – public authority and political activity. The first problem, regarding authority is that if soldiers are guaranteed the same liberties as civilians then soldiers might not serve in combat or in dangerous operations. The feared result would be that public rules, or directions, originating from legitimate public authority would not be carried out and the military institution would not be subordinate to legitimate authority. Such a situation cannot be

\textsuperscript{35} Rawls does not mention the laws of war as such. He says, among other things that the parties “are presumed to know whatever general facts affect the choice of the principles of justice.” (TJ §24)
tolerated in an institution with access to the state's instruments of violence. Second, there is a concern that if soldiers were to have access to the political process it would become difficult to establish consistent authority. By occupying two positions in a chain of authority the politically active soldier creates confusion and can skew the process of political deliberation with perhaps a perceived threat. These are both problems concerning the desired social order and require rules that are to govern only the military institution and may require the restriction of soldiers' rights.

Rawls emphasises that certain 'special psychologies' are assumed not to arise in the original position (JF §25.3). It is important to show that that these psychologies of envy, spite, high-risk aversion, and a will to dominate or exercise power are not responsible for concerns that the parties might have. The concerns over discipline and command authority do not arise out of any psychology in Rawls' list. Moreover, if the fear of violent death were removed from the psychology of the original position, then a key aspect of the rationality of Rawls' parties is lost. It is not clear how individuals can effectively pursue their own good if they are not afraid of their own violent destruction.\(^{36}\) Without such a fear it would seem, at first glance, that the deliberations in the original position cease to be balanced between the reasonable and the rational – they become skewed towards altruism. The concern over order arises out of a fear that the political procedure is not fair. There is no envy, spite or desire to dominate involved when soldiers exercise the rights that civilians have. Those soldiers are simply pursuing their conception of the good in the same way as civilians. Applying rules to this specific

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institution is done to ensure that there are no conflicts with more general rules. The special status granted to soldiers creates ambiguities that require rules to insure that civilians and soldiers have appropriate expectations and that these expectations do not conflict.

As we know Rawls argues that the principles of justice are to be developed and adjusted at various stages. Again, these stages are not helpful. The problems identified here involve issues of which liberties apply to which individuals. These issues question the very legitimacy and nature of the applicability of the first principle of justice. To assume that the military question is to be settled at a later stage is to assume that the question is already answered. What seems to be required are laws and rules that ensure that the military institution is effective and consistent with the social ideal of the parties in the original position.

3. A Coherent Military Exceptionalism and the Gap in Liberal Justice

An answer to the military question involves a modification of Rawls' theory. On the one hand, he is committed to the position that the principles of justice are the ones that will be accepted in the original position; on the other hand, he argues that in a similar original position liberal states will accept certain military tasks as permissible and in some instances as duties. He needs a military institution for the latter commitment and not the former. It has been argued that a military institution requires some restriction of liberal freedoms. The lack of an apparent answer to this dilemma seems to be a major gap in Rawls' theory. The gap requires two things in order to be filled in satisfactorily. First, it needs guidance from our considered convictions so that the answer can be confirmed and accepted after due reflection. Second, an account of how the military question arises in
the original position needs to be given so that its treatment by the parties can be understood more fully. This section will not try to deal with this gap from the perspective of the original position. Instead, important issues of intuitive plausibility will be addressed.

The answer to the military question is not ready made and its answer has strong repercussions. Since the military question does not arise with any urgency in Rawls' original theory of justice some latitude can be granted to how it ought to be treated. When the issue comes to the parties in the original position they have several options. Some of the options the parties have are:

1. They can accept the inequalities that the military requires and point out that the need for an armed force that restricts the rights of citizen soldiers is an indication that the society in question does not find itself in the conditions of the special conception of justice and so only the general principle of justice applies.

2. They might realise that the original principles of justice are inadequate and continue deliberating with the intent of fully developing new principles of justice that are capable of accommodating the military institution.

3. They can dismiss the military tasks as unjust since a just society would have to become unjust in order to carry them out.

4. They can accept the implications of fully equal citizen soldiers by creating an institution that is military only in name.

5. They can modify the priority of the first principle of justice to include a caveat for exceptional institutions such as the military. 37

Rawls must reject the first option. It must be rejected, not because it is an unacceptable option in the original position, but because it would discredit his entire project. Rawls considers his theory to be a 'realistic utopia.' This idea is that political philosophy ought to "prob[e] the limits of practicable political possibility" (JF §1.4). If option 1 is accepted, then the standards of full liberal justice are put so far out of reach as
to make them irrelevant. Only once the need for armed forces is eliminated would the conditions of the special conception of justice obtain. So, for the sake of realism it must be rejected. For the same reason, realism, Rawls argues that the fact of reasonable pluralism must be accounted for. Rawls argues that pluralism is a natural result of free and open societies and is a permanent condition of them, and is not necessarily to be lamented (PL I §6.2). As such, Rawls argues that it must be integrated into a theory of justice, in a way similar to option 2. The need for armed force, however, is not like that. It is thrust upon well-ordered societies and so cannot be considered essential or necessary to them. The military question, unlike pluralism, arises from a fact of the world, and not a fact of liberal society. Rawls is clear that the military tasks are not tasks that are valued for their own sake by liberal societies. There is no place for empire and military adventurism in the foreign policy of a liberal state. To be sure, Rawls argues a democratic peace hypothesis in The Law of Peoples which states that the more liberal a state is the more peaceful it will be with similar states (LP §5). The need for an armed force is not necessary, but is a distinct (perhaps unavoidable) possibility and as such it should be considered a lamentable contingency that the parties must be prepared for. Though the contingencies that require an armed force and require inequalities are just that, they are nonetheless fairly permanent. As such, this fact must be dealt with as a contingency by liberal institutions, and accepting the first option would artificially have the parties unrealistically avoid the question while accepting the second would not treat it as a lamentable contingency.

37 There might very well be other institutions that are exceptional in similar, thought not identical, ways to the military. Police, intelligence agencies, and the offices of senior civil servants come to mind as institutions that might be considered exceptional.
The third and fourth options are unacceptable for the reason that, in accepting them, the parties are failing to be rational representatives. Both options would leave the parties' society open to attack. The society would also be unable to meet its commitments as a member in good standing of an international society of peoples. The first reason, that these options leave the society vulnerable, is sufficient to reject it. The parties are required to promote the good of the individuals they represent. They cannot gamble that a military is not needed or that a military of equally free soldiers is sufficient to insure the conditions for the individuals that they represent to exercise their moral powers. To gamble in this manner would show that the representatives did not take the lives of those that they represent seriously. For these reasons no society would accept rules agreed to by hypothetical parties that left society vulnerable. Rawls points out that it is "a consideration against a conception of justice that, in view of the laws of moral psychology, men would not acquire a desire to act upon it even when the institutions of their society satisfied it," (TJ §24) and it seems, that a conception of justice that leaves a society defenceless, or nearly so, is such a conception.

The fifth option is the one that the parties would choose. They would choose this situation because it saves the realism that was reason to reject the first two options. It also allows the parties to protect the interests of those that they represent by allowing the conditions that are necessary for an effective armed force. The following section will deal with how a balance might be struck between the interests of the parties and the needs of an effective armed force more clearly from the perspective of the original position.
4. The Military Exception

The parties in the original position need to acknowledge the possibility of necessary but exceptional institutions that, by their nature, cannot fully comply with the principle of equal basic liberties. Such institutions represent deviations from the ideal that was set out in the domestic original position. The original position that will decide the rules of the military exception, however, is unique as far as original positions go. One might consider it to be a third, maybe fourth original position, or a reconvening of the original domestic position. This 'new' original position is presented with two faits accompli and asked to develop rules of applicability for a military exception.

The 'new' original position is presented the domestic principles of justice and the principles requiring the military tasks as faits accompli. This happens because of the discontinuity in Rawls' theory or its division of justice into three distinct spheres (only two of which are developed and concern us) (JF §4.2). We know both global and domestic justice have their own original position arguments. But, Rawls has not developed the kind of mechanism that seems necessary to bring his entire contract argument into one coherent whole as principles developed in one sphere might affect the others. Reconciling the spheres is initially problematic because the original positions are different. The principles of the law of peoples are decided by an original position made up of representatives of liberal states. Rawls makes it clear in his rejection of the cosmopolitan theory of global justice that the delegates to the two original positions that are at issue are not identical. The global original position, unlike its domestic counterpart, does not contain representatives of individuals but of states (LP §11.1). Even more importantly representatives of liberal peoples reach the decisions in the global
original position. This means that the issues of domestic justice are settled prior to the issues of global justice, and by different original positions.

The military exception becomes pressing because revelations from the global original position impact domestically. A new domestic original position needs to integrate these revelations. It cannot change anything at the global level because the law of peoples was developed and agreed to by a representative of the people for whom the domestic original position applies. There is no reason for the parties in the original position to give up on the original principles of justice, begin afresh and integrate the new revelations into new principles of justice that can accommodate it. The interests that led the parties to give the basic liberties priority have not changed and it is only the priority of liberty that has been called into question. The military exception is only a contingency in the event that a military is needed. If a military is not required then the original principles remain the most appropriate.

The original position that deals with the military question deals with it specifically, though there might be other issues that require similar treatment. Its job is to amend the priority of liberty, by adding a ‘military exception,’ so that the military tasks can be effectively carried out. The same individuals that constitute the domestic original position constitute this new one and the representative they sent to the global original position is assumed to be part of this new one. The parties therefore know of the decisions of the global original position and set out to develop what will be called the conditions of the military exception. This places the parties in a position that might be described as one of 'damage control.' The parties acknowledge the need for the military tasks, but are still committed to the ideal that the original principles represent. In the new
original position the parties are reacting to contingencies about which they previously knew nothing, and now know very little. Their goal is to develop rules that will insure that the military is effective but with as little corrosion to their interests as possible.

In the new original position the parties will agree to an exception for the military institution provided the following conditions are met.

1. The preference for voluntarism: A voluntary system of recruitment is to be preferred, when possible, to one of conscription.\(^{38}\)

2. The deviation condition: The rights of soldiers may deviate from the fully adequate scheme of basic liberties guaranteed to non-soldiers if such a deviation is necessary to accomplish the justified military tasks or is necessary in a well-ordered society.

3. The equivalent rules condition: Soldiers are entitled to institutional rules or arrangements that are functionally similar to the basic liberties; rules that provide soldiers the opportunity to exercise and to develop a sense of justice and a conception of the good to an extent equal to or functionally similar to non-soldiers whenever possible.

4. The exit condition: Soldiers are entitled to exit from the military institution whenever possible and the rules governing that exit are to be guaranteed to the equivalent non-military extent.

These conditions are simply a statement that the interests that led to the parties giving priority to liberty are to be protected as far as is possible while meeting the demands of the military tasks. The conditions of the original position simply demand these kinds of requirements be made. In Rawls' terms, individuals representing others that have

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38 This preference may not be necessary. Rawls expresses this preference in a roundabout sort of way. TJ §58, LP §13.2, and importantly JF §13 all argue that conscription can only be justified in order to secure a society's institutions of liberty — for self defence. A volunteer force must therefore be preferable since there are justifiable, though perhaps less important, military tasks. But, this preference is not so clear given Rawls' principle of fairness. The main idea of this principle is "that when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all, those who have submitted to these restrictions have a right to a similar acquiescence on the part of those who have benefited from their submission" (TJ §18). This principle would seem to imply that since soldiers must restrict their liberty for the advantage of everyone, everyone ought to be a soldier, at least once in their life. However, Rawls maintains consistently throughout his work that conscripting individuals into the military can only be done for the sake of national security. This preference for voluntarism is expressed in the first condition of the military exception.
determinate conceptions of the good would have to choose these principles since they minimise the impact that military service would have on that conception. The parties remain motivated by concerns over the ability to develop and exercise the two moral powers. The following three sections will explore the grounds for accepting these terms.

5. The Argument from a Determinate Conception of the Good

The parties can assume that the principles of justice that they developed are the ones that best secure the highest order interests of individuals. Since the parties are bound to these principles it follows that they are interested in a military exception that interferes with the interests protected by the original principles to the least extent. This section examines how the conditions of the military exception meet this stipulation with an argument from a determinate conception of the good.

The Preference for Voluntarism

Voluntarism does not solve the problem of the rights of soldiers. It simply dilutes some of the concerns of the parties. If an individual that the parties represent must become a soldier, then they would prefer that the individual's conception of the good be served by that individual being a soldier. That is, they would prefer that there be some coincidence between the individual's conception of the good and the good associated with soldiering. Without knowing what precisely the good in being a soldier is, and what the individual’s determinate conception of the good is, the only way to insure some coincidence is to prefer that soldiers volunteer. Voluntarism does not make soldiers free and equal since military specific rules are assumed to apply. The representatives would still want to know what would happen if they possessed a conception of the good that was not completely compatible with the good of being a soldier. They would, whenever
possible, hope to avoid a situation where their good was conscripted or overridden in favour of the good of the state. Rawls points out that the parties are averse to gambling. In this instance the aversion works in favour of securing conditions that protect the individual’s conception of the good to the greatest extent possible. This could be considered to be a preference for autonomy.

The Deviation Condition

The parties in the original position know that the interests of their constituents are best served by the principles governing the public conception of justice. This conception of justice defines the legitimate expectations of participants. Reasonable citizens are assumed to be able to endorse this public conception of justice. Soldiers, as citizens, can be assumed to endorse this conception as well. Consequently only reasons that are part of the public conception of justice can serve as reasons for restricting the liberty of soldiers. Only the justifiable military tasks and proper reasons of order can be such reasons. Again, this condition ensures that an individual’s determinate conception of the good is interfered with to the least extent possible.

The Equivalent Rules Condition

The principles of justice secure the interests that individuals have in developing and exercising their two moral powers. This is secured, in the main, by the priority of liberty. Should there be ways of securing these interests through institutional rules other than rights and freedoms, then the parties have an interest in insuring that these rules be implemented. An individual’s determinate conception of the good is affected less with this condition if such rules are possible and loses nothing if they are not. The parties must include this condition.
The Exit Condition

The fourth condition is necessary because a complete coincidence of goods cannot be guaranteed. Parties behind the veil of ignorance want to insure that the individual with the conception of the good determines whether the coincidence exists or not. The parties would not be taking the conception of the good of their constituents seriously if they permitted institutions to determine the status of the coincidence or ignore it. Rules of exit are the most obvious way to insure that the individuals who serve are always doing so in virtue of a determinate conception of the good. Again the determinate conception of the good is interfered with to the least extent with this rule.

7. The Military Exception and the Second Moral Power

What remains, now, is to argue in greater detail why the conditions of the military exception would be adopted and what kind of considerations the particular grounds for adopting them might bring to their application. This section and the next continue in the fashion of Rawls' exposition of the priority of liberty by considering the grounds that stem from the conception of the person maintained in the original position, which is from a conception of the person with two moral powers. Rawls argues that there are two interests that develop out of a capacity for a conception of the good, which the parties wish to protect by granting liberty priority. Since the military exception is an interference with that priority, it stands to reason that the parties wish to minimise that interference in order to protect these interests. The priority of liberty helps to insure two interests associated with individuals who can hold and exercise a conception of the good. The parties wish to ensure that individuals have the ability to revise their conception of the good and to rationally affirm it.
The Interest in Revision

The first interest, the interest in revision, is unconcerned with how an individual entered the service, but rather with what happens when a soldier’s conception of the good changes. This interest strengthens the last two conditions, the equivalent rules and exit conditions. An interest in insuring that a person’s decisions are revisable means that the parties seek rules that allow individuals to serve in the military on their own terms. No guarantees are given that soldiers will always be able to revise their decision to serve, or be able to serve in a particular way, but when exit is seen as an entitlement soldiers are treated as ‘self-authenticating sources of valid claims.’ This is an idea that expresses an important aspect of Rawls’ conception of how individuals are free. Individuals are free when they do not need someone else to validate the claims that they make. An entitlement to exit insures that, in the absence of pressing military tasks, soldiers will be able to at least revise their status as soldiers and be able to regain their status as full and equal members of society. This way, the impact that being a soldier might have on an individual’s conception of the good is judged not by the terms of the contract that an individual might be interpreted to have signed (actually or hypothetically) but by the soldier’s own interpretation of the conception of the good that the soldier holds actually. Moreover, should rules that facilitate revision be possible they are required by the equivalent rules condition.

The Interest in Rational Affirmation

The parties also have an interest in insuring that individuals are capable of rationally affirming the conception of the good that they hold. This means that they wish to insure that conditions are present for individuals to be able to affirm what they do and
what they believe as part of their own conception of the good. The conditions necessary for individuals to do this are established, in society, by freedoms of conscience, speech and association. In the armed forces they are best approximated by the rules that can be established by way of the third condition. This ground leads the parties to ensure that soldiers are able to consent, in circumstances as similar as possible to freedom, to the conditions that lead to the suspension of their rights. This means the parties are concerned to insure extensive rules of informed consent to missions and deployments are required when possible. Only conditions or principles that specifically mention an entitlement of soldiers to rules similar to the rights that are made unequal can guarantee the possibility that soldier might be able to rationally affirm the life they are to lead. These rules cannot be sacrificed by anything less than the need to accomplish a military task.

Basing the conditions of the military exception in utility, social welfare, military necessity or professional obligation cannot accommodate the parties’ interests to the same extent as the four conditions. Only rules that affirm a soldier’s entitlement to the respect they would ideally have can assuage the concerns of the parties - conditions such as the third and fourth. These conditions seek the good of soldiers up to the point where that jeopardises the possibility of completing the military tasks.

8. The Military Exception and the First Moral Power

Grounds for accepting the conditions of the military exception that are related to the first moral power, the capacity for a sense of justice, have an added complexity. Rawls points out that grounds that promote this capacity for its own sake do not move representatives
in the original position. Rather they are "rationally autonomous representatives and as such are moved solely by considerations relating to what furthers the determinate conceptions of the good of the persons they represent" (PL VIII §6). Again, the reasons that gave the parties grounds for giving priority to liberty also provide grounds for accepting the conditions of the military exception. Rawls gives three reasons, connected to a sense of justice, for the priority of liberty. They are: stability, self-respect and social union.

Grounds Related to Stability

For stability to be an appropriate ground for accepting the conditions of the military exception, it must be shown that the representatives see them as the best way to "stabilize just social cooperation and thereby to advance the determinate conceptions of the good of the persons they represent" (PL VIII §6). That these conditions are the best is beyond the scope of this paper to prove. However, it is a mark of these conditions that they are directly concerned to promote the good of the soldiers who are called on to carry out the military tasks, and affirms them as persons worthy of concern. In being so concerned, the military and the society it serves are made more stable. This gives soldiers reason to follow the rules beyond any reasons internal to their conception of the good. The conditions are also the ones most concerned with that conception. Moreover soldiers know that their rights are only to be interfered with for reasons that are part of the public conception of justice.

Grounds Related to Self-Respect

The next ground that Rawls considers is that of self-respect. Rawls argues that self-respect is rooted in the confidence that individuals have in themselves to be fully co-
operating members of society, and thus presupposes the two moral powers including a sense of justice. If the conditions of the military exception did not protect self-confidence to the greatest possible extent, then soldiers would have less reason to cooperate and follow the rules. The ideal of voluntarism recognises that individual volunteers are capable of making their own decisions and following the rules on their own. Witness the emphasis placed on consent and exit. Institutions that demand the greatest possible voluntarism respect individuals to the greatest extent possible. They recognize them as capable and trustworthy. Recognition of this sort is a powerful source of confidence. The life plans that motivate individuals are affirmed by the institution as valuable in themselves – not just valuable when they generate co-operation with the institution. By insuring appropriate exit, the institution affirms the value of these life plans by interfering with these plans to the smallest extent possible.

Grounds Related to Social Union

Finally, we come to the idea of a social union of social unions. This kind of union of unions occurs when society is the result of co-operative effort for everyone's good. A society of this nature becomes a good in itself. It occurs because individuals are cooperating together according to the rules of cooperation and becomes a motivation for participating in society. It can also be seen to amplify the good that individuals seek (PL VIII §6). In this way, it appeals directly to conceptions of the good while giving reasons to comply with public rules. He gives two desiderata that the public rules of a society need to satisfy in order to foster such a union. First, the rules must emphasise the status of individuals as free and equal citizens; and, second, they must contain a notion of reciprocity. These are satisfied to the greatest extent possible by the conditions of the
military exception. The first *desideratum* is satisfied by the emphasis placed on voluntarism and the associated requirements for consent and exit. The conditions of the military exception express reciprocity by being concerned with the good of soldiers. These two related ideas of respect and cooperation that are at play with the idea of social union can be brought to light by contrasting the idea of soldiers as participants with that of soldiers as servants. The latter is inconsistent with the idea of social union. First, the emphasis that the parties place on the coincidence of goods means that they see that the military institution can, whenever possible be used as an instrument for the good of soldiers. This means that individuals are engaged in soldiering in order to pursue their own good in the same way as anyone else. Soldiers are contributing to the good of society by pursuing their conception of the good as freely and as equally as possible. In this way they are respected as capable of pursuing a conception of the good and being capable of planning and living a life. They are treated as individuals who exist to support the lives of others. Second, unlike servants, soldiers have access to the society in which they live. Soldiers have as much access as possible to the tools, the rights and freedoms of citizenship, that are necessary to be a full co-operating member of society. That means that soldiers can enjoy and participate in the society that they protect. They are not servants looking through a keyhole into a world of privilege from which they have been barred except only to service it with their labours. By insuring that soldiers are, as much as possible, free and equal participants, the parties insure that soldiers feel as though they are part of a greater project where their good is related to the good of others.
6. Denied Rights and Suspended Rights

Before moving on to explain how the conditions of the military exception are to apply in close to ideal conditions, it is worth examining in greater detail how the justification for the two kinds of permitted restrictions of a soldier’s rights proceeds. The two kinds of justification proceed by way of appeal to the need to accomplish a justified military task and the need to maintain the social ideal. Thus, we can distinguish rights suspended for military reasons and rights denied for social reasons. The terms ‘suspended’ and ‘denied’ will be used for simplicity.

Suspected Rights

It is clear to the parties in the original position that in order to solve the motivational and complex collective action problems that the military tasks present, some sort of hierarchical and authoritarian structure is required. As a group, soldiers must defer their judgement to an appointed authority. In order for this structure to function effectively, certain rights, such as, rights to determine risk and the freedom to move cannot be exercised by most members of an armed force. Officers commanding units make decisions about how the unit ought to fight, and where it should be located. Those in authority exercise certain capacities that soldiers have, and would exercise as a matter of right were they not soldiers, in order to more effectively carry out the military tasks. The military institution’s ability to coordinate the effort of soldiers is compromised when soldiers are not discouraged from free riding, being counterproductive, or leaving. However, there are two levels of justification that must be made before any rights are restricted and commands can be authoritative. For a right to be restricted two levels of justification must be passed. First, the right must need to be restricted in order to achieve
a necessary command structure and mission coordination. Second, the institutional structure and coordination must be required in order to carry out the military tasks. It is not sufficient for a soldier's rights to be made unequal that the inequality is required in order to achieve a particular institutional ideal. In the absence of any requirement that stems from the military tasks the institutional ideal is meaningless. Because it is only the justified military tasks, that give force to a restriction in this case, rights are only suspended when called for by a military task. It is not inconsistent, then, for soldiers to have more or less extensive rights depending upon the need to carry out the military tasks or whether or not they are in a theatre, defined as that place where a military task is being carried out.

Denied Rights

The rights of soldiers are treated differently when they are seen to be incompatible with the kind of society that the parties in the original position desire. Paradigm instances of this kind of treatment might be the restrictions of a soldier's political freedoms, freedom of association, and freedom of speech. These are denied rights. What is important about these rights, again, is what justifies them. They arise, principally, out of concerns about praetorianism or the political neutrality of the military institution. That is, the desired nature of society demands that no soldier *qua* soldier, of whatever rank, be permitted to exercise certain freedoms. These freedoms largely correspond to the public freedoms mentioned above (II §9). Again, there are two levels of justification. In this instance, the restrictions are permanent so long as an individual remains a soldier. Here it need not be shown that the restriction in question be directly related to the military tasks. It is sufficient to show that the restriction is necessary in
order for the military institution to achieve compatibility with a well-ordered society and that the existence of a military institution is necessary. Rights which, when exercised by soldiers, are incompatible with a well ordered society must be denied to all soldiers so long as they are soldiers and soldiers are required.

9. Volunteers and the Original Position

The parties in the original position would prefer to see soldiers volunteer than see them be conscripted. As was pointed out previously, voluntarism does not solve the problem of the rights of soldiers, since soldiers must be made unequal. Soldiers must still be subjected to inequalities in rights and freedoms that do not reflect the level of respect that soldiers are entitled to as fully equal participants in an ongoing venture of cooperation. The concern that the parties express for the interests of soldiers demonstrates that soldiers garner concern and are respected in the same way as citizens. That is, soldiers and citizens are shown respect by having their interests protected by rules established in the original position. Expressing a preference for voluntarism is one way that the parties protect the interests of the individual soldiers. An interest that soldiers have, as we have seen, is the interest in revision. The decision to volunteer and become a soldier cannot be given any special status that alienates soldiers from the rights and freedoms they had as citizens since, from the perspective of the original position, that decision must considered to be revisable.

Though the parties would prefer to see individuals volunteer, there is nothing that guarantees to them that there will always be enough volunteers in society to fill the ranks of an armed force. What attracts the parties to voluntarism is the prospect that the military institution can work to further the determinate conceptions of the good of some
citizens. This is the idea that the good that some citizens seek and the good associated with the military might coincide, that there be a coincidence of good. There are two ways that this might be achieved. One might try to insure that only those selected to be soldiers hold a particular conception of the good that is compatible with, and fostered by, the military institution. Then again, one might try to ensure that it is rational to be a soldier, and that the institution can accommodate the widest range of conceptions of the good that are compatible with the public conception of justice. The latter is more consistent with the interests of the parties.

Institutions can come to be associated with certain conceptions of the good. Whether through the final ends that the military promotes, or the virtues it inculcates in soldiers, some set of final ends is at least tacitly endorsed by the military institution. The concerns that the parties have for rational affirmation, revision, and social union require that the military’s conception of the good be as thin as possible, and the features that attract and keep volunteers be expressible as social primary goods. By insuring that social primary goods are the goods that attract volunteers, and the conception of the good is as thin as possible, the parties insure that being in the military is rational for as many individuals as possible. This permits greater social union, but it also permits the greatest chance for individuals to revise their conceptions of the good while remaining consistent with the institution. In addition, rational affirmation is fostered. Individuals are more capable of affirming their conception of the good as their own when it is informed less by the conception endorsed by the military institution, or when that conception is as similar to the conception already endorsed by the public conception of justice.
The parties must prefer to have a military institution that projects a conception of the good as similar to the one associated with the public conception of justice as possible. In this way, the parties need not rely on individuals with a particular conception of the good constituting the supply of potential volunteers. Instead, the parties see the opportunity to be a part of an institution that is part of the conception of justice, that tries to protect the interests of its members, that is as inclusive as possible, and that might offer certain social primary goods as incentives to be the reason that individuals would volunteer.

10. The Case of the Political Freedoms

In this section and the two that follow the emphasis shifts to the application of the conditions of the military exception in ideal conditions. That is, we will examine a military institution in conditions where the preference for voluntarism is appropriate. This will be done by examining cases within the three areas of concern introduced earlier.

Rawls fully insures the rights of citizens to engage in the political process. They have the right to vote, the opportunity to be eligible to hold political office and to participate in the political process by, among other things, joining parties, making speeches and publishing their opinions. Rawls goes so far as to guarantee what he calls the fair value of these freedoms. That means that citizens are to be treated as more than just formally entitled to these freedoms. However, it is argued that soldiers cannot exercise some of these freedoms lest the political neutrality of the military be compromised. In other words, having soldiers exercise some of the political freedoms is sometimes claimed to be inconsistent with a well-ordered society.
The idea of a well-ordered society plays an important role in Rawls' theory. Indeed, it is one of his 'fundamental ideas.' This idea conveys the ideal of society where individuals are aware of the rules of co-operation and follow them. There are three main ideas. First is the idea of a public conception of justice where everyone is aware of the rules, everyone accepts the rules and everyone is aware that everyone is aware of the rules. Second, the basic institutions hang together in the manner specified by the principles of justice. Third, citizens are capable of following the rules and normally do (JF §3).

If political freedoms are to be incompatible with a well-ordered society, then it must be shown that a particular freedom or an aspect of that freedom produces something strange, inconsistent or ambiguous in terms of the public rules. This is the case with the freedom to hold certain public offices. For instance, were soldiers permitted to run for an office that has jurisdiction, or potential jurisdiction, over the military tasks it is unclear how the other members of the military institution are to treat those who succeed at running for office. When orders come down, it would not be clear how to treat the soldier who is also an office holder. The ambiguity of that individual's position threatens the proper order within the military institution and society. Consequently, certain freedoms to run for certain offices need to be denied to all soldiers. That being said, this argument applies only to major political offices that have a connection to the armed forces. It might possibly extend to offices that can call for aid to the civil power.\textsuperscript{39} It does not extend to such offices as school board trustees. This right may be of little or no

\textsuperscript{39} In non-federal jurisdictions where the only connection political offices have to the armed forces is aid to the civil power rules governing conflict of interest could be considered sufficient to deal with an individual who is both representative and a soldier.
value since a busy soldier may find little time to run for office, but this is not a problem unique to members of the armed forces. To the extent that the ‘fair value’ of the right to run for office is guaranteed in civil society by job security rules and mandatory leave of absence provisions, the same rules ought to apply to soldiers running for military-neutral offices.

Holding office, however, is but one small aspect of the political freedoms that citizens are entitled to. Taking part in the political life of a society by making speeches and voicing an opinion is another matter entirely. When a soldier takes part in the public political life of a society nothing changes in the soldier’s de jure powers.⁴⁰ Consequently, there can be no ambiguities in terms of the order that society should expect. That is, there are no qualitative differences (in terms of rules) between a politically active soldier and an inactive soldier, so long as neither holds political office. Thus, the ideal of order justifies few denials of the political freedoms. According to the second condition only necessary restrictions are justified. From the perspective of the original position, the denial of a soldier’s right to participate politically and hold offices that have no relation to the military institution are not necessary in a well-ordered society. The justified denial of a soldier’s rights to non-military neutral political offices is moderated by the fourth condition that guarantees the most extensive rules of exit possible.

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⁴⁰ This is assuming that the soldier has no powers of office. Certain officers might have military powers that could conflict with freedom of political speech. In such a situation speaking out on certain political issues might be said to introduce ambiguities in social order. It is also possible that certain very high-ranking officers might be considered part of other exceptional institutions since they often resemble high-level civil servants. These arguments would have to be made elsewhere.
There are other public freedoms, other than public-political freedoms. Freedoms of speech and association can be non-political in nature. These freedoms have no impact on any rules that affect the military institution. That is, they create no ambiguities. An argument to the effect that public perception and image is sufficient to justify the denial of certain public rights is distinct from an argument about order. It is also one that would seem to fail. The parties in the original position would have to gamble with the conceptions of the good of those they represent in an unacceptable manner in order to justify such a denial. Speech and association that is unpopular and has no affect on the coherence of public rules is part of a soldier's conception of the good. Permitting a denial of these freedoms would demonstrate an unwillingness of the parties to take their responsibilities as representatives seriously. It might be possible for certain rules requiring the suspension of certain of these freedoms to be justified. Association with certain enemy groups, for instance, might be justifiably suspended depending on the soldier and the military task in which the soldier is involved. Similarly a military task might justify the suspension of a soldier's freedom to make public criticism of the armed forces when a task requires that the institution be perceived in a certain way. These suspensions however are distinct from denials. The justification of a suspension proceeds in a different manner than a denial. A suspension is not permanent, or necessarily for all soldiers.

11. The Case of Personal Freedoms

The conditions of the military exception call for only necessary restrictions and for rules that are functionally equivalent to the rights that are being restricted. The cases of personal freedom are often more difficult to deal with, prima facie, because real world
contingencies seem to play a greater part. The myriad different scenarios that soldiers could face are impossible to deal with in a complete way. However, there is still much that can be said.

Cases where an individual’s conscience is directly restricted are rare and unlikely. What is more common is that a soldier is stopped from pursuing a conception of the good because other freedoms are restricted. Take, for instance, a case where a vaccination required for tactical purposes is to be administered to all soldiers in a theatre of operations. An individual who is opposed to vaccinations on religious grounds is unable to exercise freedom of conscience without disobeying the order. It is argued, quite plausibly, that a certain vaccine is required as a countermeasure against a biological agent that is expected to be encountered during the performance of a justified military task. The vaccine is required for the sake of the soldier, the soldiers who rely on other soldiers, and the task. This necessity occludes other aspects of the case that are less apparent. That is, a restriction might be justified in accordance with the deviation condition, but functionally equivalent rules could potentially be put in place in order to avoid situations where soldiers are required to do things that are contrary to their conception of the good.

In a society where the armed forces are recruited through voluntary means there are always other individuals who could volunteer, but for various reasons have not. Consequently, there is always the possibility that by expanding recruitment or making the military institution more desirable more volunteers can be recruited. The military institution and those who wield power over it are under an obligation to ensure that soldiers consent as much as is possible to the conditions under which they might have certain rights suspended. This obligation gains force from both the preference for
voluntarism and the equivalent rules condition. A voluntary institution should not be in a position where manpower shortages require soldiers to have certain rights suspended without their consent. When that happens freedom is unnecessarily being traded for lesser goods. The equivalent rules condition requires rules that save a soldier’s ability to develop and exercise a conception of the good. Rules mandating informed pre-deployment consent and manpower reserves pre-empt unsatisfactory situations where there is no other choice but to send soldiers into situations where they will be required to do things contrary to their conception of the good. Once a soldier is ‘in theatre’ there is less that can be done and the necessity of the military tasks justifies the suspension of certain rights. Since liberal states do not embark on military adventures lightly there will often be sufficient intelligence prior to the actual deployment of troops to know that vaccines and other things might be required and sufficient time to garner consent from soldiers who are to be deployed.

It is also possible that certain things, such as the administration of vaccines, might be required for strategic reasons. This would require soldiers in garrison\textsuperscript{41} to take the vaccine despite the fact that they are not directly involved in a military task except the task of denying an enemy recourse to a biological agent by a force’s immunity. Vaccination, here, is a condition for admission into the armed force – no one can be a soldier without undergoing vaccination. Potential recruits must consent to the vaccine as part of joining the force. Vaccination, then, also becomes a barrier for the entry of certain groups into the institution. Those who have principled objections to vaccines are blocked from serving. Recall, however, that one of the reasons for granting liberty

\textsuperscript{41} By garrison, I mean a situation where soldiers are not deployed in any specific military task. They might be in training, maintaining equipment or just waiting.
priority was that it enabled what Rawls called a social union of social unions. By blocking certain groups, then, this strategic vaccination becomes an impediment to the kind of society that motivates the parties in the original position. Consequently, the deviation condition requires a stringent interpretation. True, strategic vaccination does deny enemies and potential enemies the use of certain biological agents, however, if one is not engaged in hostilities with an enemy that is likely to use such an agent then vaccination cannot be considered to be necessary on the basis of a threat from an unknown source. Were the threat sufficient to require the vaccination of soldiers in garrison it would be sufficient to require the vaccination of the entire civilian population.

Soldiers in training or simply in garrison waiting for the next time they are called on, could have some rights suspended. The problem here is that there is no clear idea of where the necessity for any suspension is derived. There are no immediate military tasks except the task of preparing for the next one. In such a situation, very few rights need be suspended. Recall that there are two levels of justification that are required to be met prior to any suspension. First the authoritative structure of the institution must be shown to be required in order to meet the requirements of the military tasks. Second, in order to preserve that authority it must be shown that by exercising a particular right a soldier would jeopardize that required authority. Of course, just because soldiers are in garrison it does not follow that the authoritative structure is no longer required. The authority required in order to meet the military tasks needs to be conditioned and cultured so that it is effective. However, there is no need to instill that authority in an involuntary manner. That is, the necessity of maintaining an authoritative structure cannot justify sanctions beyond dismissal from the organization when there are no military tasks. That is, exit
must always be provided for those soldiers who cease to see a coincidence of their good and that of the institution. Since it is not the military tasks themselves, but the possibility of the tasks that is replacing the second level of justification, the necessity required by the deviation condition is not met sufficiently to justify a strong suspension of personal freedoms. Training, however, seems to be another matter. Authority in training operations is not just required for the sake of future authority; it is also required for the sake of safety. Though ‘safety’ is not one of the military tasks listed by Rawls, the lives and, hence the freedom of soldiers, can be said to depend on the coordination of each soldier’s actions. The full exercise of certain freedoms may need to be suspended in order to insure the safety of all. The grounds for the kind of authority required to insure safety are more thoroughly examined in the next section.

12. Command with Authority

This area of concern does not deal with the rights of soldiers in the same way as the previous two. Instead it seeks to establish the extent that military commanders can command. Thus, in a roundabout sort of way we are sketching the right soldiers have to refuse to cooperate with military authority. This concern examines the objection that the requirements of liberal justice hollow out the ability of commanders to command with the authority required to meet the demands of the military tasks. Of course, the deviation condition ensures that this is not the case. It is worth emphasising, though, that there are reasons why the parties in the original position would insure that commanders had the authority to command. That is, it would be insured that commanders had coercive means at their disposal to motivate compliance with orders in appropriate circumstances.
Recall that the parties in the original position attribute to the individual a hierarchy of needs. According to this assumption certain material and security needs must be met for an individual to consider a more reflective conception of the good. From this, there are two grounds that favour authoritative command.

The first ground might be considered to be a form of simple paternalism. That is, the parties in the original position recognise the need for a highly specialized division and coordination of labour within the military institution. In order to insure that the best decisions are made, and the more complex tasks are performed, this division is necessary. When this division works individual soldiers are better off than when it does not work. They are better off because the military tasks are accomplished in a more efficient manner, and when that happens, soldiers are more secure. Those in command need the authority to insure, and confidence to know that each part of the division is compliant, because each other division relies on the other. The parties in the original position are willing to countenance the potential trade of an individual soldier’s more reflective conception of the good in this case because it secures to a greater extent the conditions that make that soldier’s conception of the good possible. That is, a soldier who has a conception of the good that runs contrary to certain orders is more likely to survive when those in command have the authority to insure that that soldier, and everyone else involved in the task with that soldier, is doing their job.

Another ground securing authority that the parties recognise is a more complex paternalism. In situations where the military tasks are being carried out it is hard for soldiers to hold steadfast to their more reflective conception of the good. It is easy in the face of the danger and challenges of the military tasks for soldiers to revise or reinterpret
their conceptions and shirk their duties when there is no substance to the authority of commanders. But, the utmost has been done to insure that soldiers of liberal regimes consent to being in the situation in which they find themselves. The parties in the original position can assume with some confidence that there is a coincidence in the goods of the soldier and the institution. The nature of the tasks that soldiers consent to weakens any resolve that the soldiers might have by threatening more basic needs than the needs from the conception of the good that led the soldier to agree to carry out the military tasks. The parties accept the authority of commands in order to counteract the erosive force of the situation that soldiers find themselves in. That is, they accept it as a necessary condition to realise the determinate conceptions of the good of liberal soldiers.42

The grounds for this authority ensure that when soldiers are deployed to dangerous places and where complex military tasks are required there are sufficient grounds for an authoritative military command structure. It is in these kinds of conditions that most military tasks are executed. The first ground covers the tasks mandated by self-defence since self-defence entails defence against something dangerous. Those tasks that are required out of a political duty of assistance are required in order to assist states that cannot meet the basic needs of their people. Tasks of assistance will, no doubt, be carried out in less than ordinary conditions that will be taxing on any soldier’s motivation. Such tasks can also garner the most pre-deployment

42 This ground may not justify authority to the same extent as the previous ground. However, it is unlikely that the two grounds will ever occur in isolation. It is more likely that the two will reinforce each other. It should also be noted that when the operation is not dangerous, such as missions for reasons of pure material assistance, the objective of the mission is to aid a society burdened by unfavourable circumstance and the moral reason that motivates the mission is likely to be plain to mission participants.
consent from those that will participate. Consequently the second ground, the more complex paternalism, is sufficient to justify operations that might not be dangerous but take place in conditions where assistance is required.

There are some substantive implications of these two grounds, and indeed any grounds that would be considered acceptable in the original position. These grounds cannot extend the substantive authority of commanders to require either suicide or forlorn hope missions. Such missions are, by definition, self-destructive. All grounds that are acceptable in the original position must engage the interests of the parties. It is only the structure of the original position that represents the reasonable. The parties are considered to be mutually disinterested and pursue what is best for themselves and those they represent. Any rational party could not agree to a rule that would permit the destruction of someone they represent. These grounds justify authority ‘in theatre,’ but they also justify it in dangerous situations ‘out of theatre.’ Examples of the later might be so called ‘live fire’ training exercises.

13. Summary

The parties in the domestic original position come to treat the military tasks because of commitments made on their behalf by their representative at the global original position. In order to reconcile the global commitments with the first principle of justice the priority of that principle is amended in a domestic original position that integrates the commitments of global justice so that the military institution can function effectively. The result of this amendment is the conditions of the military exception that outline how the set of freedoms of soldiers can be made unequal to the set enjoyed by those who do
not serve. These conditions are acceptable to the parties in the original position because they seek to preserve the interests of the parties to the greatest possible extent.

In favourable conditions, and when only a volunteer force is required, the conditions justify few inequalities. The parties are intent on insuring that soldiers can determine and live their lives in accordance with their own conception of the good whenever possible. It is only when the freedoms of soldiers threaten the possibility of accomplishing the military tasks, or the kind of society that the parties desire is threatened that any restriction is justified. The idea of a well-ordered society precludes situations where the public rules are ambiguous. Such a situation occurs when one person holds two positions within the structure of military authority such as when a soldier also holds a political office. Denying soldiers an equal right to hold some political offices while they are soldiers seems justified, but denying soldiers a right to participate in ways that have no effect on the public rules or to a lesser extent than civilians seems untenable outside of an argument connected to a military task.

Since soldiers are recruited by voluntary methods there is often the alternative of seeking more soldiers elsewhere. The number of recruits can be interpreted as an indication of the level of support that the population has for the military tasks soldiers are asked to perform. When it is possible to find others who might be willing to perform a task that some are unwilling to perform, there is an obligation to insure that there are rules in place to insure that those who are put in situations where their rights might have to be suspended consent fully and that there are enough reserves to insure that the non-consent of some does not jeopardise the operation. Once in theatre the need to maintain safety in dangerous conditions justifies a centralized and authoritative command
structure. When soldiers consent to operations in less than felicitous conditions, there is reason to insure that there is some authority to reinforce the original ideals and good that motivated the original consent.

The idea that unites these rules is that when a force is raised through volunteers the force ought to function as much as an instrument of the soldier’s conception of the good as an instrument of the state. The idea of a coincidence of the soldier’s good and the good sought by the military institution is the means by which the institution can achieve both goals. The third condition of the military exception ensures that achieving that coincidence is an obligation of a just and well-ordered society, while the fourth condition insures that no soldier is a soldier involuntarily.
Chapter IV - Conscription, and Emergencies

The ability to succeed at the military tasks is not always just a matter of motivation or coordination. Solving the military question does not guarantee success. Often success in military affairs is a matter of marshalling resources, both human and material. Conditions that permit the successful execution of the military tasks by a liberal society, and a volunteer force are favourable, but they are not the only conditions that are possible, or indeed foreseeable in the original position. No theory whose subject is the military institution can be considered complete unless these other conditions are addressed and dealt with in a satisfactory manner. In this chapter three less felicitous conditions are considered briefly. Though a voluntary force represents the kind of military force that a liberal society would prefer to have, if it must have one, there are times when the kind of force fed by volunteers is insufficient to meet the threat being faced. Conscription is one alternative. It represents an institutional arrangement that remains within the confines of the special conception, is bound by the conditions of the military exception but can possibly fill the institution’s ranks to a greater extent. Then, falling outside of the special conception, two kinds of emergencies are examined, the immediate emergency and the supreme emergency. In these kinds of emergencies the situation is desperate, much is at stake and personnel might make a crucial difference. In such situations, where there is so much to lose, the rights of soldiers and citizens can be said to place limits on what can be sacrificed and how it can be sacrificed. For Rawls this means reconciling the hypothetical interests expressed by the parties in the original position and the actual interests expressed by soldiers and citizens who are potential soldiers.
The chapter begins with some general remarks about conscription and its place within the special conception of justice. One of the concerns explored is that conscription affects the liberty of citizens and the distinction between the rights of soldiers and the rights of citizens begins to blur. Then, the times when it is permissible to opt for conscription are examined and it is argued that, following Rawls’ guidance, conscription can only be opted for when the institutions of liberty are threatened. In the third section, one of the concerns regarding the effect that conscription has on the rights of citizens is addressed. Citizens are often concerned that conscription is done selectively and only some minorities are conscripted. Some of this concern can be diffused by insisting that the public rules governing conscription be set up prior to any crisis. Then the fourth, fifth and sixth sections examine how the conditions of the military exception apply in cases of justifiable conscription. Following this treatment of conscription, the focus switches to conditions of ‘immediate emergency.’ These are conditions where following the conditions of the military exception are too costly. This kind of emergency falls within the general conception of justice. After an introduction, the circumstances where this kind of emergency can be declared are examined in the eighth section, followed by some remarks about application in the ninth. Finally, we then turn to the case of what Rawls calls ‘supreme emergency.’ This emergency occurs in the most extreme circumstances and permits leaders to take measures that would otherwise be considered to be great wrongs.

1. The Place of Conscription Within the Special Conception

The conditions of the military exception is an exemption from the full force of the priority of the equal basic liberties that permit decent societies to defend themselves and
meet their international obligations. They are only applicable in favourable circumstances that justify the special conception of justice. The first condition of the exception, the preference for voluntarism, permits conscription since it expresses only a preference. Thus, the conditions of the military exception are applicable to situations where conscription is called for. Some preliminary remarks concerning how the conditions are to fit within the special conception are essential.

How the conditions ‘fit’ within the conception of justice becomes an important issue when dealing with conscription. Issues of fit become apparent in certain problems of application. The second condition, the deviation condition, applies in a manner similar to the way it is applied in a volunteer force. Denied rights and suspended rights both require the same justification as they required in volunteer forces. The fourth condition, the exit condition, however, begins to indicate that there is more to conscription than just the rights of soldiers. The condition becomes troublesome; more precisely, it is partially moot. If soldiers who were conscripted could leave, then they would not have been conscripted. The problem might seem to be that there are no equivalent civilian positions that are conscripted. Thus there is no basis for comparing the rules of exit for a conscripted force. Soldiers are entitled to exit, but in the case of conscription it cannot be a matter of the soldier’s choosing. There is, however, more to this issue than the lack of comparable civilian occupations.

The real issue is that with conscription, the primary focus of justice switches from insuring that those who serve do so in accordance with their conception of the good to a concern for the most equitable administration of the conscription process, and then to minimising the impact on a soldier’s conception of the good. The principle of equal basic
liberties becomes involved because conscription affects the basic liberties of citizens who are not yet soldiers. The first principle is responsible for the shift in concern. That shift is simply an acknowledgment that no coincidence of goods can be assumed when soldiers are conscripted and that being conscripted unjustly is more significant to the parties, than how the individual is treated once conscripted though, of course, this is important. The new concern is better treated with the principles of liberal justice than the conditions of the military exception. The former principles address the basic structure of society or how the military institution fits into society, partially defines the set of basic liberties of citizens and distributes the burdens and benefits associated with military service. The conditions of the military exception, in contrast, are concerned with how individual citizen soldiers fit within the institution. It is not the aim of this thesis to tackle the complexities of the often intractable issue of how to administer conscription. Further, it is not clear how much help the parties in the original position can be to this discussion. Without any knowledge about the particulars of a war and the liberal society fighting it, there is not much that can be said. Only a few remarks on the administration of conscription will be made. The main focus will be to balance those few remarks with some concerning internal limits that the conditions place on a conscripted military institution.

2. Opting for Conscription

The decision to opt for conscription cannot be made lightly. In fact, it can only be opted for, according to Rawls, for reasons of national security (TJ §58, LP §13.2, JF §13.5).\textsuperscript{43}

\textsuperscript{43} Rawls also mentions that conscription might be used as a mechanism for constraining the military adventurism, if it could be shown to be effective (TJ §58). This argument is not repeated in any other place cited above.
Only the task of defending the institutions of liberty has enough force to justify the decision to opt for conscription. This is because a military institution that is raised through conscription has an impact on the rights of citizens who are not soldiers and, thus, there are important issues about its place within the basic structure that must be addressed.

The task of defending the institutions of liberty has a special place in the set of military tasks. So long as the institutions of liberty are not directly threatened with destruction, there will always be a possibility, from the perspective of the original position, that recruiting can proceed by way of volunteers. There will always be an opportunity to appeal to the conceptions of the good of a society’s citizenry so long as free institutions exist. When such appeals are possible there is always an opportunity to gain recruits. The conjunction of too few citizen volunteers and engagement in or possible engagement in a foreign military task, do not constitute a sufficient reason for the parties to sanction conscription. For the parties, stubborn citizens do not justify conscription, but show, rather, that a particular task is not in the interest of the individuals that the parties represent. Conscription is to be avoided in a situation where there are not enough individuals volunteering to meet the demands of a particular task but the institutions of liberty are not threatened with destruction.

When the institutions of liberty are threatened, the parties must take a different approach – they are no longer protecting particular individuals with determinate conceptions of the good. Instead, they are protecting the institutions that allow those particular individuals to have and pursue their determinate conceptions. The parties can overrule the desires of an individual who does not wish to serve, in this case. Such an
individual is not being reasonable. The parties make decisions in pursuit of the rational
good of those they represent. The decision to permit conscription is made in order to
secure the conditions for that individual to pursue a conception of the good. Conscription
is justified only when the institutions of liberty are threatened because, when they are,
there can no longer be a guarantee of a future appeal to the determinate conceptions of
the good of individuals in order to meet personnel shortages.

3. The Conditions of the Military Exception and the Principles of Justice

The conditions of the military exception exempt soldiers from the provisions of the first
principle of justice, mainly from the implications of the priority rule that ensures that
equal liberty cannot be traded for other goods. The relationship between the conditions
and the principles, however, is not fully evident when a volunteer force is the only kind
of force examined. The conditions apply only to soldiers, not to civilians. However,
conscription represents a limitation on liberty that all citizens face – not as soldiers but as
equal citizens. Consequently, unlike the volunteer force, any discussion of a conscripted
force will include prominent consideration of the first principle of liberal justice.

Conscripted military service is an obligation of citizenship that takes the form of a
restriction of the basic liberties. In the original position conscription is a possibility but it
does not become enshrined until later stages of application when the freedoms and rights
of citizens are worked into one coherent system. At these later stages, it becomes clear
that the possibility of conscription comes to mean that citizens run the risk of not being
able to fully pursue their conception of the good when they are eligible to be conscripted.
This risk that the parties face needs to be incorporated equally into the scheme of liberties
that are to be considered equal by the first principle. Part of any account of conscription
will be a management of the equality of the risk that citizens face. Rules that might seem to be mandated by the conditions of the military exception may alter the initial equality, which exists outside of the military institution. In this way, the conditions of the military exception overstep their bounds by not just applying to soldiers and affecting the antecedent equality of citizens. An example of this arises when rules governing soldiers and the political freedoms, to which we turn shortly, are considered. Ideally the risk of being required to bear the burden of defence should be shared as evenly as possible and rules that, though well meaning, work to distribute that burden unfairly should be avoided.

4. The Publicity Condition

The rules governing conscription ought to be public. In fact, all of the rules governing the military institution and the basic structure ought to be public since publicity is one of Rawls’ general conditions. This idea, however, needs to be emphasised. Conscription can often appear to be terribly random. Only some generations ever face conscription. Sometimes conscription is declared only after the supply of volunteers has dried up. On the other hand, some generations live their lives without ever realising that conscription is in fact a burden they could bear, that it affects the basic liberties they enjoy. It seems that some people face the possibility of conscription and some do not. Conscription is seen as an emergency measure and so it does not affect the actual basic liberties that all enjoy. Thus, one of the problems with conscription is that it can appear to be random, only affecting the liberties of some, and as such seem unfair. The idea of co-operation requires rules that give participants legitimate expectations. One of the expectations that citizens face is that they could be conscripted. This expectation is distinct from the risk that citizens face when conscription is active.
In order to avoid randomness and to provide to citizens a foundation for their legitimate expectations, the rules governing conscription must be established in the public political culture before they are needed. As we saw with the idea of a well-ordered society, citizens co-operate by following rules that all know and endorse. When the parties are made aware of the possibility that the society that they are constructing can come under attack and could potentially be destroyed, the rules that they adopt constrain all of the participants in all struggles for national survival. Their rules are not random. As such, much of the shape of a liberal conscript force can be foreseen before any threat. In order for citizens to plan their lives and to be treated equally the rules governing conscription must be public and made ahead of time. Equality is implicated because all members of society can only be considered potential conscripts if there is a rule explaining who is to be conscripted. When the rule is public and established ahead of time, it is built into the definition of the basic liberties that all are entitled to.

Rawls recognises that the administration of conscription is going to be fraught with difficulties. The burden borne by those who are conscripted is invariably the "result of accident and historical happenstance" (JF §58). The goal the parties set out for any system of conscription is that these burdens are shared as evenly as possible (JF §58).

5. Conscription and Political Freedoms

For a volunteer force the restrictions of a soldier's political freedoms were made because it was inappropriate, from the perspective of a well-ordered society, for certain individuals to be soldiers and to hold certain political offices. The same reasoning holds in the case of a conscripted force. Similar ambiguities in the public rules arise when soldiers are conscripted. There are, however, some differences. First, there need not be
the same kind of guarantee to exit that allows soldiers to regain the right that is denied, though the length of time a soldier is required to serve cannot be unlimited. Conscripts must serve for a period of time fixed equally for everyone. Second, a new concern arises over exemption from service.

In the context of a volunteer force the main concern was to insure that soldiers continued to serve because of a coincidence of goods. The ideal of the coincidence motivates the parties to insure rules minimising the impact of service on a soldier’s conception of the good and that principles guaranteeing exit arise. Conscription, however, is a restriction of the rights of citizens to fully pursue their conceptions of the good. A coincidence of good cannot be assumed. For a conscripted force the concern becomes, first, insuring that whatever impact the military has on the lives of conscripts is equal, and second, that it is as minimal as possible. This priority of concerns is given by the continuing relevance of the first principle of justice. When a citizen is required to serve, among the things they lose is the ability to fully pursue their conception of the good. This ability is lost by all, and should be lost equally. Rules that the equivalent rules condition required when it was applied to a volunteer force can become unjust when applied to a force of conscripts. Permitting some soldiers to pursue their conception of the good, if that conception involves running for office, by providing exit or a leave of absence to those individuals, would violate the principle of equality. Such a rule effectively allows some to regain their ability to pursue a conception of the good while others cannot. Put another way, such a rule would make conscription a lesser risk to some, but not others. Rules governing exit apply equally to all conscripts and cannot be expressed so as to favour some conceptions over others.
The issue of maintaining equal risk can be examined in terms of exemptions. One of the traditional objections to some schemes of conscription has been that those schemes offer too many exemptions and so they favour one class of people over others. For instance, exemptions for university students, and professionals might have that effect. One of the exemptions that appears to be warranted is one granted to those who hold political office. The exemption is not granted out of a need for leadership, but for the same reason that restricts volunteer soldiers from holding office. The exemption seeks to avoid situations where the order desired by the parties becomes ambiguous. Of course, this exemption extends only as far as the offices that soldiers are not permitted to hold.\(^{44}\) Exemptions based on social or military need have no place in a system that is to maintain equal risk.\(^{45}\)

The opportunity to participate in the public political life of a society while an individual is a conscript does not, at first glance, appear to be in any danger of being justifiably restricted. An appeal to the order necessary in a liberal regime fails in the same way as it did when the institution was voluntary. Free participation does not affect the way that the rules of conscription apply. Consequently, the free participation of conscripts in public political life does not, at first glance, affect the equal risk that citizens face. There seems to be no reason to deny to soldiers the rights to participate in public life or to disallow institutional rules to that effect.

\(^{44}\) Other reasons for exempting certain political offices might be argued. Most seem to depend on maintaining coherent order. The need to reconcile the demands of democratic government and the military institution, for instance, might be another way to insure that political leaders are not conscripted out of office.

\(^{45}\) It should be noted that when society moves from a volunteer system to one of conscription there is no reason to believe that the volunteer soldiers are the first conscripts. Volunteers ought to be treated according to the rules appropriate to volunteers. They are to run the same risk of conscription as other citizens. Only once ‘their number is up’ and they are conscripted should they be treated as conscripts.
6. Conscription and Personal Freedoms

The personal freedoms of conscripted soldiers are protected by the deviation condition and the equivalent rules condition. That is, freedoms that do not need to be suspended ought not to be, and whenever possible, functionally similar rules are to be instituted instead of rights. Again, these rules cannot be seen to countenance unnecessary exemption from conscription. These rules exist to 'soften' the experience of conscription. Here, the issue of 'conscientious objection' arises. The term 'conscientious objection' does not refer to what Rawls terms "conscientious refusal."46 'Objection' here means stating an objection based on conscience to service, but not a refusal to co-operate with the public system of rules. There is a long tradition of recognising various kinds of objections to service in the public rules governing conscription. However, these have often taken the form of exemptions given to clearly identifiable groups with historical traditions of pacifism. This policy effectively alters the equality of the risk of conscription faced by these groups.

Conscription may not need to be total. The nation need not be entirely in arms. In which case, those who have legitimate grounds for conscientious objection need not be conscripted. That is, it may not be militarily necessary for them to be conscripted since individuals found elsewhere could fill the ranks. However, the parties would not accept exemptions from service based on pacifist comprehensive doctrine, or conceptions of the good. That is, they would not permit liberal conscription to become a programme that insures only some kinds of comprehensive doctrines participate in the defence of the institutions of liberty when all doctrines benefit from their defence. The structure of the

46 By this Rawls means the outright refusal to comply with legal or political orders (TJ §§56, 58).
new original position is such that the parties remain committed to the principles of justice. The parties see conscription as a possibility that all citizens face equally and it constitutes part of the set of rules that make up the scheme of fully adequate basic liberties. To permit exemptions from conscription based on comprehensive doctrine would be to violate the principle of equal basic liberties. The parties cannot gamble by permitting rules that favour the conception of the majority and, so, likewise, they cannot gamble by permitting rules that favour the most pacific conceptions.

Once subject to conscription, the conditions of the military exemption are operative. Recall that the parties are aware of philosophies and theories of war. They understand notions of so called 'total war' and that effectively fighting a war of national survival requires many different tasks to be performed. If it is not necessary to have everyone at the front, then it is possible and necessary to deploy conscripts in ways that minimise the impact of conscription on their comprehensive doctrine. In this way, pacifists may be given duties in hospitals or even required to replace vacancies opened by conscripted civil servants. It is important, however, that exemptions from the front are not granted in order to insure some do not serve, but because of definite military need. Treating conscientious objection in this way finds grounds in the idea of a social union of social unions. That is, there is a good to be realised by having all sorts of citizens participating in the war effort in their own unique way. By granting exemptions from conscription, some citizens, are denied the opportunity to participate and the institutions of liberty are purchased by some and not all. Here, conscription is not solely a method for enlisting soldiers in the strictest sense, but serves to conscript individuals into the war effort. It is entirely possible that some might find themselves conscripted to farm work.
The kind of war that needs to be fought and the kind of resources that need to be allocated in a particular way create a complex human resources problem. It would be unreasonable for the parties to assume that they could ever make rules that attempt to solve such a problem satisfactorily. However, it would be apparent to them that a system that attempts to distribute conscripted human resources in a way that is sensitive to conscience would be preferable to one that does not if such a system is possible.

How the system of conscientious objection is administered is a complex matter and beyond the scope of this paper. Conscientious objection does not necessarily give individuals the ability to avoid situations similar to ones where they might be required to submit to a vaccine contrary to their conception of the good, or avoid dangerous situations. Being a stretcher-bearer may not require wielding a rifle, but it is very dangerous. Once in, conscripts are subject to all justifiable and necessary discipline. Rules that require soldiers to consent to missions are untenable since permitting individuals to refuse consent would jeopardise the initial equality. However, rules that require soldiers to be briefed or informed about the nature of the tasks that they are to carry out would seem to be required. Though such rules may seem superfluous since soldiers are unable to consent to the missions that they are to execute, the parties nonetheless have an interest in such rules. After the individuals have served their terms of service they need to know what they have done so that they might reconcile what they have done with their conceptions of the good. Moreover, some individuals might find that living an examined life is worthwhile in itself and need to know as much as they can about what it is they are doing. It is important to accommodate such a conception of the good for the same reason that it is important to accommodate conscientious objectors.
7. Conscription and Command Authority

The issue of command authority is somewhat simpler for conscripted forces. All of the reasons that secured authority to those in command of volunteer forces apply *a fortiori* to the case of conscripted soldiers. The first argument, the simple paternalism argument, is amplified by the involuntary nature of conscription. The more complex paternalism argument is amplified by substituting the good of an individual with one that the parties themselves recognise: defending the institutions of liberty. In this way, soldiers are better served by having an authoritative command structure. Such a structure insures the good of soldiers by guaranteeing compliance with institutional rules when the soldiers' sense of justice cannot be fully relied upon.

There are some limits to the authority that those in command of conscript forces wield. The authority that commanders have is justified ultimately by appeals to the determinate conceptions of the good of the individuals that the parties represent. This justification cannot permit those commanders to order forlorn hope or suicide missions. Simple paternalism justifies authority by pointing out that soldiers are more likely to survive armed conflict by having a structure of authority that insures military labour is effectively divided. The more complex paternalism argument modulated for the case of conscription is that the parties understand the good of preserving the institutions of liberty because they are so instrumental in providing a medium for the development and pursuit of the conceptions of the good of their constituents. They accept authority because the sense of justice of soldiers is not sufficient to guarantee compliance with orders that are necessary to secure the aim of the parties. In both cases, the authority is accepted because it is instrumental in securing the good of individual soldiers as
determined in the original position. However, when commands are used to demand the certain destruction of individual soldiers they cease to have authority. There is no good that accrues to the individuals that the parties represent when such commands have authority. The only way good can accrue to those who carry out such missions is if the individuals choose them.

8. Immediate Emergency

It might seem redundant to speak of ‘immediate’ emergency and perhaps even astonishing that this is the first serious mention of emergency so far in this thesis. There is no doubt that all emergencies are immediate in some way, and that all instances of the military tasks are urgent. This category will be used to refer to a very specific kind of emergency. An immediate emergency occurs when the conditions of the military exception are impracticable or conditions appropriate to the general conception of justice obtain for military reasons. The emergency is immediate because circumstances dictate that time is scarce and efficiency the only solution. The concessions that such an emergency justifies, however, are demanded only by the necessity of a weighty military task.

According to the conditions of the military exception, a military institution supplied by volunteers is required to insure that soldiers consent to the situations in which they are placed and are entitled to exit the institution. Further, liberal conscription cannot jeopardise the risk that civilian citizens face equally. Even when volunteers are called on to defend the institutions of liberty the rules apply. The way that the institution treats individuals is contingent upon how they are recruited, which constitutes their legitimate expectations. The conditions of the military exception provide goals for each method of
recruiting that are to be achieved as extensively as possible. That is, a volunteer force aims at minimising the impact it has on a soldier’s conception of the good through a coincidence of goods, while the goal of a conscripted force is to simply minimise impact. When these goals threaten the institutions of liberty, then the circumstances of the special conception no longer obtain, and so the principle of general justice is the operative principle. There might be times when liberal institutions face an immediate threat where there would not be time to institute conscription and every last military resource must be brought to bear. These forces must be deployed immediately and the process of consent or the prospect of dissenting soldiers threatens that ability to deploy. Such a circumstance is an immediate emergency. Similarly the threat facing the institutions of liberty might immediately require a certain skill set and the prospect of maintaining the equal risk of conscription would never deliver the required resources in time.

An immediate emergency essentially permits conscription on the basis of social need. In an immediate emergency, society needs individuals to defend it so they are conscripted. In favourable circumstances volunteer soldiers are not necessarily conscripted first, since as citizens they run the same risk of conscription as any other.\footnote{It might seem odd to think of volunteers distinctly from conscripts. Consider: volunteers are entitled to certain terms of exit that are not mediated by the first principle of justice in the way the entitlement of conscripts is. In this way, a volunteer could be entitled to exit the military before a conscript. It would be unjust to change the volunteer’s entitlement to exit to terms similar to the conscripts – in favourable conditions.} In an immediate emergency, it is possible that they might be the first conscripts, and other militarily useful groups, such as airline pilots, might be next. Essentially, an immediate emergency is an emergency that permits definite descriptions to enter the otherwise general formula defining who is to be conscripted. When the military situation
requires such targeted personnel selection, the conditions of liberal justice no longer apply. It is only in unfavourable conditions (conditions appropriate to the general conception) that specific groups can be unequal. Because it occurs in unfavourable conditions an immediate emergency can only be invoked to defend against a particular kind of threat. Recall that the military exception is only operative in favourable conditions, and is an exception from the demands of the first principle of justice. An immediate emergency can only be declared when the possibility of equal basic liberties are threatened. It is possible that in some circumstances peace with an enemy is preferable to the relative injustice of selective conscription. Peace would only be acceptable if the peace ensured equal basic liberties. If such a peace is not possible, as it might be in all but the most rare circumstances, then an immediate emergency is to be declared in order to preserve the possibility of exercising equal basic liberty in the future.

9. The Conditions of Immediate Emergency

An immediate emergency is an escalation in the level of urgency, or peril, that a well-ordered society faces. Conscription was justified in order to defend the institutions of liberty against a threat. An immediate emergency is one where the institutions of liberty are facing the real possibility of destruction or the conditions of the possibility of equal basic liberty whether material or security cannot be guaranteed. Some very specific conditions must be met before an immediate emergency can be declared and the general principle be made operative. There are two types of conditions that can justify such a declaration. First, the conditions of society can justify invoking the general principle. That is, it might be impossible for citizens to realise the equal basic liberties because of the presence of one’s enemy and the real possibility of the victory of one’s foe would
ensure that any hope of exercising them would disappear. Second, a society's circumstances might also be such that complying with the conditions of the military exception puts the institutions of liberty at further risk to such an extent that defeat is almost certain and the possibility of that society exercising equal basic liberty is extinguished.

The social circumstances necessary to justify the applicability of the principle of general justice are stringent. Rawls points out with reference to the historical experience of the United States that:

Never in our history has there been a time when free political speech, and in particular subversive advocacy, could be restricted or suppressed. And this suggests that in a country with a vigorous tradition of democratic institutions, a constitutional crisis need never arise unless its people and institutions are simply overwhelmed from the outside. (PL VIII §12)

Of course, Rawls is talking about the political rights of citizens and not necessarily those of citizen soldiers. The quotation does give an indication of the kind of conditions that Rawls has in mind. They are conditions where the rights and freedoms that are guaranteed by a typical liberal state are worthless to the majority of its citizens. Conditions where public space is dangerous, food, clothing, and shelter are scarce, and the future is terribly uncertain, make the guarantees of freedom of thought, conscience and speech of little or no value. These kinds of conditions are considered to be some of the basic needs that need to be satisfied for the special conception to be operative. In essence, when war is brought to the citizens of a liberal state in an intense and constant manner, the kinds of arguments that justified an authoritative military command structure begin to hold sway over the general population. When the social conditions force the
general principle, then the military exception is not longer operative and the rights of soldiers can be made unequal if that is to the advantage of everyone.

The second kind of condition is one where society may not be in unfavourable conditions, but the conditions of the military exception are the obstacle preventing the successful defence of the possibility of equal basic liberty. This situation is distinct from the previous situation because it is a purely military problem. The problem is essentially one of how the institution can marshal resources in a non-consensual manner. Being overwhelmed from the outside is not sufficient for the military exception to be set aside for purely military reasons. Conscription can marshal the nation to meet an invasion force. The state must not have seen the invasion coming. That is, the institution needs forces in being, perhaps of a particular kind, immediately in order to defend the institutions of liberty of that society and the military exception threatens the ability of the military to respond effectively. An example might be a situation similar to the one faced by Britain during the spring of 1940. A large part of Britain’s forces were caught in the shallow port of Dunkirk, in France, and surrounded by the army that would inevitably threaten to invade their home island. It could be imagined that without the forces caught in France, the Britons would never be able to ward off certain invasion, but without a timely evacuation the forces would be irretrievably lost. It would be justifiable, in this case, to conscript and requisition civilian sailors and their small boats in order to evacuate the force.\footnote{Operation Dynamo, as the Dunkirk evacuation was called, did not occur precisely in this manner. Few civilian sailors were used though many civilian boats were. Those sailors that did participate were volunteers.} Waiting for the machinery of liberal conscription to bring to bear the resources necessary to defend liberal institutions in this instance would be to abdicate
their defensibility, but more importantly it would destroy the possibility of achieving equal basic liberties.

10. The Military in Unfavourable Conditions

When an immediate emergency can be declared, the general principle is operative. This principle places no restrictions against inequalities, and permits trade-offs between any of the social values so long as these are to the advantage of everyone. Here the consent of soldiers need no longer be curried by the institution nor exit guaranteed. So long as it is to the benefit of everyone, soldiers can be placed about as the ‘moveable forts and magazines’ Thoreau describes. Unlike Thoreau’s soldiers, the soldiers fighting in an immediate emergency do not exist to service some ‘unscrupulous man in power.’ Nevertheless, even in unfavourable conditions, soldiers are not without moral status. The general principle of justice requires that everyone is to benefit by any inequality. When the principle is expressed in this way, soldiers must benefit by the inequality to some degree. This means that even in a situation of immediate emergency soldiers cannot be required to undertake missions of forlorn hope or suicide. Soldiers clearly do not benefit in any acceptable way from an inequality that requires their certain destruction. The only benefit that might accrue to soldiers by such missions is glory or posthumous public adoration. Such values, however, do not count as values that would be acknowledged as primary goods that could be traded for the increased security of the state. Primary goods are those goods that are “social conditions and all purpose means” that are generally necessary for individuals to develop as rational persons (JF §17.1); posthumous glory clearly halts rational development.
It should be noted that forlorn hope missions, or suicide missions, are not morally impermissible. They simply cannot be required of soldiers. The soldiers that carry them out must freely choose such missions. That is, soldiers cannot be required to choose between the firing squad, life in jail, all but certain death in the breech and suicide. Some soldiers might still feel compelled to undertake such missions without being required. It is a mark of Rawls' theory that even in such urgent circumstances soldiers still command respect and their interests are considered.

11. Supreme Emergency

There is one other kind of emergency that needs to be addressed, and it is one that Rawls actually discusses. It arises in his discussions of international relations and the conduct of war (CP 25, LP §14). This is the idea of a 'supreme emergency.' In LP this idea permits violations of the rules governing the conduct of war, but there seem to be important implications for the rights of soldiers because the urgency of the military situation provides justification to disregard what would otherwise be strong prohibitions. Though Rawls discusses this kind of emergency, an examination of the idea shows it to exist in a moral limbo that is not sufficiently explained. One can only show what Rawls seems to mean and do some extrapolation. In Rawls' discussion the idea is used to deal with difficult military circumstances and provides an exemption from the principles of the law of peoples that require states "to observe certain specified restrictions in the conduct of war" (LP §4.1). Rawls' discussion of this exemption is short and unclear. 49

The focus of the discussion is on the conduct of a statesman. Rawls develops supreme emergency, mainly, through an example. The conditions of the example, he argues, permit the deliberate targeting of innocents in a war. Though, Rawls does not say so, it is not clear why other rules of *ius in bello*, such as prohibitions on certain weapons or torture, need to remain absolute. The answer, of course, depends on how he justifies this exemption and its conditions. Unfortunately, Rawls is not very helpful. Nonetheless, since Rawls does mention this kind of emergency and it putatively justifies a sweeping exemption, it seems reasonable that it might exempt statesmen from respecting the rights of soldiers.

Rawls builds the exemption by examining historical situations where it might have been possible for states that were closely liberal to claim exemption. Rawls sees a possible exemption in the actions of the British Bomber Command of the early 1940s. The decision to target the German populace when Britain stood ‘alone’ was justified by two reasons. First, Nazism represents a peculiar evil. Second, there is an important link between Europe and constitutional democracy. Rawls seems to believe that the triumph of Nazism would have sent Europe and the world into a ‘new dark age.’ What seems to justify the exemption is that a (just) way of life would be destroyed, that the light of

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50 The term ‘statesman’ is another of Rawls’ technical terms. The possibility of a stateswoman, I assume, is included in this term. It is used to introduce an ideal political office holder who is contrasted with a politician. Rawls: “The ideal of the statesman is suggested by the saying: the politician looks to the next election, the statesman to the next generation” (LP §14.2).

51 In his paper “Fifty Years After Hiroshima” (CP 25) Rawls does not argue that there is anything intrinsically wrong with nuclear weapons, only that they were used in times that could not be considered a supreme emergency. He seems to hold out the possibility that they could be used in such an emergency. That being said, Rawls says that in the example he uses prohibitions against the torture of prisoners remain in place (LP §14.3 n. 7). This must be a feature of the specific case and not the general case.

52 Of course, Britain was never alone. In 1940 it was alone only in the sense that France had fallen and the United States was not yet convinced that Nazism was dangerous enough to warrant military intervention. It was, of course, not until Germany declared war that Washington was compelled to enter the fray. Britain did, after all, have the ability to draw on the resources of its vast empire.
liberal democracy would be extinguished. Thus, supreme emergency is a greater emergency than an immediate emergency. The latter is an emergency where the possibility of equal basic liberty for only one society is threatened with destruction. A supreme emergency is one where that possibility faces irreparable destruction or extinction, or a (just) way of life faces the same prospects. Only such threats justify exemption from the rules of *ius in bello*.

The idea of a supreme-emergency is fraught with difficulties. These difficulties are problematic for this project because without a clear justification of the exemption it cannot be clearly established what other principles might be disregarded. The first difficulty is that exemption entails a suspension of the law of peoples since one of its principles is being intentionally violated. This is problematic because the domestic analog of the law of peoples is the principles of justice governing the special conception and there is no corresponding international general principle of justice. Second, Rawls does not generalize the conditions that led the exemption he gives to Bomber Command between 1940-42. Third, Rawls gives no account of the moral status of individuals who

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53 This is, of course, hard to claim considering the Dominions of Canada, Australia and New Zealand remained to hold the torch, so to speak, and so did the United States. It is not clear from Rawls' exposition if the evil of Nazism was simply the threat it represented to free institutions. He says Germany had to be stopped for two reasons: the place of free institutions in Europe and the "uncalculable moral and political evil" that Nazism represented "for civilized society" (CP 25, LP §14.3). I will take the later reason to refer to the genocidal policies of Nazism. Either prospect, allowing free institutions to fade, or allowing genocide to be perpetrated on one's or a portion of one's population, is sufficient to justify the exemption.

54 The prospect of a (just) way of life facing irreparable destruction or extinction should be interpreted to include genocide. It should include just, but illiberal (burdened), states and ways of life not appropriately described in terms of justice, such as religious minorities. A people ruled by an unjust regime being invaded by a genocidal regime could invoke a supreme emergency in virtue of the fact that the people or way of life, considered distinctly from the regime, is facing extinction. A way of life should be seen as referring to people with a shared way of living not to an abstract notion of 'culture' seen independent of individuals. In this way, supreme emergency is not an exemption that applies only to Nazism. Nazism conjoined two evils either of which could potentially justify a supreme emergency. See the previous note.

55 A liberal state that has been forced into conditions of general justice by war remains subject to the law of peoples. It may no longer be, strictly speaking, a liberal state, however, Rawls does acknowledge that decent hierarchical states can be members in good standing of the society of peoples and be subject to the international laws that govern them.
are not participants in the co-operative venture of the parties (non-citizens). Rawls often assumes that they have moral status, but gives no argument. This third issue does not arise when Rawls’ assumption of a closed society remains intact. It is not clear what reason Rawls has to assume that foreigners have a moral status beyond the status they have within the system of natural duties without major modification of the original position. Recall that the parties are to deliberate on the rules of their co-operative venture and therefore know that they are members of that society. It is the structure of the original position that provides reasonable constraints on the parties who disinterestedly pursue their own good. Those constraints only work when the parties do not know their future in society. It is certainly not clear what the status of foreigners is beyond negative entitlements that arise from the natural duties of individuals.

In his discussion of supreme emergency Rawls focuses much of his attention on ‘statesmen.’ This aspect of the emergency receives the most general treatment. He discusses how other bombing campaigns of the 1939-45 war were not conducted with a legitimate exemption and were great wrongs. However, Rawls does not go so far as to say they were wrongs that violated rules that would have been set out by the principles of justice. Instead they are characterized as failures of statesmen to recognise that the level of urgency that may have once been the case no longer held and thus the statesmen failed in their duties. This twin emphasis on urgency and statesmen seems to place supreme emergency in a strange category. The urgency of the situation derives from the real possibility that the tradition of just institutions are facing extinction, international co-operation is impossible\textsuperscript{56} and foreigners are not benign at all. In such a situation it is

\textsuperscript{56} The conditions that permit the society of peoples no longer hold. There are not enough decent societies left to hold the torch of liberty so there cannot be enough to permit cooperation either.
difficult for the parties (and Rawls) to speak of justice in the manner we have come to expect of them. That is, the circumstances of society are so complex and uncertain that the parties are not prepared to consider matters of justice as public rules governing institutions in a purely procedural way – as pure procedural justice.57 Public rules cannot adequately treat the circumstances faced by such a society because Rawls and the parties have in mind a substantive good to which they are absolutely committed. In a supreme emergency, and to a lesser extent in an immediate emergency, the natural duties of leaders and not public rules become the subject of justice since there is, now, a specific good to be established but no procedure for establishing it. Thus, supreme emergency can be interpreted to be an instance where the natural duties that statesmen have on behalf of their people are given priority. In particular, the supreme emergency exemption is an exemption that gives priority to a statesman’s obligation to further just institutions over other prima facie duties such as those constraining the deliberate targeting of innocent individuals. This is possible, for Rawls sees statesmen having obligations not just to their contemporaries, but to future generations as well (LP §14.2).

If supreme emergency is a type of emergency where statesmen are to be guided by natural duties and not principles of justice then the status that soldiers have as participants in the society of the statesman is unclear. As Rawls seems to be saying, if prohibitions on the killing of innocents are only prima facie, then a fortiori, 58 the duty to protect the rights of soldiers is also only prima facie. Natural duties are not duties that

57 This is Rawls idea that the ‘primary subject of justice’ is the ‘basic structure of society.’ In other words Rawls’ subject might be seen to shift away from institutions to persons and both their acts and character as a state finds itself in circumstances that are less and less conducive liberal government. See Hugo Adam Bedau, “Social Justice and Social Institutions,” Midwest Studies in Philosophy Vol. III: Studies in Ethical Theory, Peter French, Theodore E. Uehling Jr & Howard K. Wettstein, Eds. (Minneapolis: University of Minnesota Press, 1980), pp. 159-175.
individuals have *qua* participants; they are duties of individuals *qua* individuals and have “no necessary connection with institutions.” Thus natural duties “hold between persons irrespective of their institutional relationships” (TJ §19). From this characterization of natural duties there is reason to believe that if the actions of statesmen in a supreme emergency are determined by natural duty, and that the duty to do no harm to innocents can be overridden, then so too can the statesman’s duties to fellow citizens. There is nothing, then, in the nature of supreme emergency, given this reconstruction, that guarantees the prohibition of authoritative commands requiring forlorn hope missions. Soldiers were protected because as participants in society something was owed to them by virtue of belonging to shared institutions, namely, mutual advantage. But cooperation is no longer the basis of social organisation in a supreme emergency. The threat of being faced in a supreme emergency is such that a statesman’s actions must include consideration of duty towards future generations and foreigners. In a supreme emergency, a statesman is always faced with the fact that failure means that the worst off person is the one yet to be born and who will be born in a world where there is no hope of equal liberty, or the one who will never be born because of the extinction of a way of life. In such circumstances it is preferable that some face almost certain death in the hope of avoiding such a possibility. It is not, strictly speaking, a principle of justice that mandates this choice but natural duty.\(^59\)

\(^58\) It is *a fortiori* only because our intuitions about the sanctity of innocent life seem to be much stronger than any intuitions that we might have about the inviolability of the rights of soldiers.
\(^59\) The general principle might be said to be still operative in a supreme emergency only without certain assumptions that seem to hold throughout most of Rawls’ work. Namely, one needs to drop the strong presentism and the special status granted to co-participants that seems to hold everywhere else. See Jon Elster, "Ethical Individualism and Presentism," *The Monist*, 76 (3) (1993), pp. 333-348.
Conclusion

In this thesis an answer to the question: how ought liberal society treat the rights of the citizens that are its soldiers, has been sought. The idea driving this inquiry has been that soldiers are citizens first and the respect that they are entitled to as citizens is not alienated when they don a uniform. It is an unfortunate fact about the world in which we live that some must answer the call to arms, but the call is not made voluntarily by liberal societies. They are reacting to the deprivation and danger that is found in our world. It is another unfortunate fact that these reactions are intrusions into the ideal of liberal society and trespass on the lives of soldiers.

When we ask how we are to treat soldiers, we are asking how we are to manage the intrusion of the infelicitous aspects of the world into the sanctuary that is a well-ordered society. This paper has tried to show that soldiers are entitled as much as citizens to live in that sanctuary and that the rights they are entitled to are directly related to the extent that the infelicitous aspects of the world intrude into liberal life. This relationship is offset only by the need for hierarchical authority to solve practical problems and to insure safety.

Using Rawls’ theory of justice the idea of an intrusion is particularly appropriate. It is through revelations made to the parties in the first domestic original position by the parties in the global original position that new facts about the world filter through the veil of ignorance. These facts show to the parties that the ideal to which they are committed is unrealistic. Nonetheless, it is an ideal that need not be scrapped. The idea introduced here of an original position designed to integrate these revelations, provides the theoretical apparatus necessary to exempt the military institution from the full force of
the priority of the first principle of liberal justice, but, since the parties remain the same, they have the same interests. In this new original position the parties are to exempt the military institution, but they must also protect the interests of the soldiers who make up the institution. The result is that the four conditions of the military exemption are added as a caveat to the rule specifying the lexical ordering of the principles of justice.

These four conditions were examined and applied to a volunteer and a conscript force. These two situations represent the first two of four situations of escalating urgency. In favourable conditions the kinds of armed forces characterized in the first two situations are the only kinds open to a liberal society. As the situation becomes more perilous and liberty becomes threatened to a greater extent the kinds of prohibitions on the treatment of soldiers, citizens and individuals seems to diminish. (See Table IV-1 for a summary of the findings) So long as a society finds itself in favourable conditions where citizens are equally able to lead normal lives then the prohibitions are quite stringent. In such circumstances the kind of treatment that soldiers are entitled to is a matter of how the soldier was recruited. Volunteers must be given every opportunity to consent to the operations they are asked to participate in. Conscription must be undertaken so as to insure that all citizens face an equal risk of conscription while rules of conscientious objection are to be instituted as extensively as possible. Never, in favourable conditions, would it be permissible to ask soldiers to choose between state sanctions and almost certain death in the breach. For Rawls, cooperation for mutual benefit is the foundation of liberal society and since no advantage accrues to the soldier in such circumstances it would be illiberal to require soldiers to make such a choice. In a
supreme emergency, however, there is no such foundation that would ensure a prohibition of that nature.

This inquiry is, in some ways, pioneering and as such not every facet of the question has been explored in the greatest of detail. Some of the exploration has overturned ideas that could prove interesting to the work of interpreting Rawls' complex work. The overall coherence and desirability of Rawls' theory has been left unchallenged. There are many who would champion other authors. Perhaps the most interesting work to be done would be to see how the rights of soldiers fare in the theories of others. It is my hunch that few contemporary theories have the flexibility to integrate the military institution into their conceptions of social justice. Perhaps this is because political philosophers have ignored soldiers, which is tantamount to regarding them in the way Thoreau describes.
Table IV - 1 The Rawlsian Military Institution
### Table IV - The Rawlsian Military Institution

<table>
<thead>
<tr>
<th>Favourable Conditions</th>
<th>Unfavourable Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Military Tasks</strong></td>
<td></td>
</tr>
<tr>
<td>Liberal Volunteer</td>
<td>Liberal Conscript</td>
</tr>
<tr>
<td>All justifiable tasks</td>
<td>Defence of the institutions of liberty</td>
</tr>
<tr>
<td><strong>Threat faced</strong></td>
<td></td>
</tr>
<tr>
<td>No necessary threat</td>
<td>Institutions of liberty threatened</td>
</tr>
<tr>
<td><strong>Characteristic</strong></td>
<td></td>
</tr>
<tr>
<td>Consent to operations is required to the greatest extent possible.</td>
<td>Conscription must maintain the equal standing of citizens as potential conscripts.</td>
</tr>
<tr>
<td><strong>Political Freedoms</strong></td>
<td></td>
</tr>
<tr>
<td>Right to run for office</td>
<td>Restricted (denied for some offices - may run for minor offices only).</td>
</tr>
<tr>
<td>Right to participate in public political life</td>
<td>Not restricted</td>
</tr>
<tr>
<td><strong>Personal Freedoms</strong></td>
<td></td>
</tr>
<tr>
<td>Right to determine risk</td>
<td>Guaranteed as much as possible out of theatre, but suspended in theatre.</td>
</tr>
<tr>
<td>Right to determine conscience</td>
<td>Guaranteed as much as possible out of theatre, but suspended in theatre.</td>
</tr>
<tr>
<td>Freedoms while in training</td>
<td>Not suspended, except to insure safety.</td>
</tr>
<tr>
<td><strong>Exit</strong></td>
<td></td>
</tr>
<tr>
<td>Guaranteed as entitlement</td>
<td>Guaranteed equally (i.e. fixed term of service)</td>
</tr>
<tr>
<td>** Equivalent Rules**</td>
<td></td>
</tr>
<tr>
<td>Rules of consent</td>
<td>Rules of conscientious objection</td>
</tr>
<tr>
<td><strong>Forlorn Hope Missions</strong></td>
<td>Voluntary</td>
</tr>
<tr>
<td><strong>Suicide Missions</strong></td>
<td>Voluntary</td>
</tr>
<tr>
<td><strong>Rules of ius in bello</strong></td>
<td>Apply fully</td>
</tr>
</tbody>
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