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NATURAL LAW, LIBERTY AND CONSCIENTIOUS OBJECTION

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In discussions of liberty and conscientious objection very often issues of a religious and/or aesthetic nature — which are outside the scope of morality proper — are intermingled with, or take the place of, moral arguments. For this reason, I would suggest, as a kind of heuristic device, that we temporarily purloin Kierkegaard's distinction between the aesthetic, ethical and religious spheres, using it at the outset to cull out some extrinsic considerations which can prevent us from coming to terms with the strictly ethical issues in conscientious objection.

For example, with regard to liberty, there is a religious interpretation, advanced by Kierkegaard, according to which freedom is contradistinguished not from necessity, but from sin. Liberty for the Christian is essentially a state of grace and salvation, an interpretation which may be concomitant and compatible with political oppression or insuperable, practical obstacles to personal development or activity. With regard to the aesthetic (in the wide sense), we find the common concept of liberty as the "ability to preserve one's nature and do what one likes without unnecessary obstacles." This interpretation receives elaboration as a philosophical theory in the work of Hobbes and others. Standing in the middle, as an example of a strictly moral approach to liberty, is Immanuel Kant's characterization of liberty as autonomy, the rational self-determination of persons coordinated into a kind of moral republic or "kingdom of ends."

As we consider the case of conscientious objection, it seems evident that in the main, extenuating factors and exculpating circumstances which have justified conscientious objection in the United States have traditionally been of a religious nature. The successful American Christian conscientious objector typically appeals to his denomination's pacifist interpretation of Gospel spirituality (as with the Quakers), or to the complete independence of the "Kingdom of God" from secular authority (as with the Jehovah's Witnesses). It is also possible for mainline Catholics and Protestants to appeal to their own pacifist interpretation, or the interpretation of their faith subcommunity, as a justification for their stand vis-a-vis war. But it is remarkable that for both draft-board adjudicators and anti-draft appellants, specifi-

cally *moral* objections and arguments seem to be excluded by a kind of common consent. The venerable hosts of utilitarians, deontologists, natural law theorists, etc. seem constrained to stand on the sidelines when it comes to actual, practical, personal confrontations with one's draft board.

Are there any powerful, persuasive and germane arguments of a purely moral nature sufficiently practical and applicable to serve to exonerate an individual from military combat service? In addressing this question, we must first distinguish between approaches which emphasize a subjective decision-procedure— e.g., the negative Golden Rule that one should not choose to do anything to anyone that he would be unwilling for that person to do to him — and approaches which are based on ostensibly more objective considerations. Prima facie it would seem that an objective norm such as "natural law," if it could point to certain hard and publicly ascertainable facts which are also indisputably common values, would be a solid buttress against the welter of counterpoised "facts" that any government can muster up in justifying mobilization and war and the drafting of recruits for war.

Natural law has at certain historical confluences been simply identified with the positive law — e.g., the "natural law" of subjection of slaves to masters in eras when slavery was officially condoned, the "natural" domination of husband over wife, etc. But it has also been at times the indispensable socio-political lever for transcending the oppression of positive laws. For example the natural law that government should be for the sake of, and/or with the consent of, the people governed has been the means of justifying and instigating the overthrow of tyrannies. In that particular species of oppression in which an individual is being constrained unjustly to fight in a war, or constrained to fight in an unjust war, or constrained to fight in any war in a context wherein no war can conceivably be justified — can an appeal to natural law be effective?

An initial elimination of one approach seems feasible: When it comes to conscientious objection, it seems that an appeal to the law of "killing only for self-defense" would be, in the last analysis, too in-

conclusive: there is such an imposing array of actual or potential hostile intentions in the international arena that a protective or suspicious government can always argue forcibly that it is fighting a war of self-defense, or initiating a preemptive war to obviate the necessity of defending against inevitable and imminent aggression, or fighting not against specifically military aggression but against, e.g., economic aggression which has the potential of destroying its subsistence as a nation.

As one considers the applicability of natural law theory to the issue in question, the first hurdle that presents itself is, of course, the well known lack of consensus, even among practitioners of natural law themselves, as to which concept of "nature" and/or "natural law" an appeal should be made. There are some who would even be satisfied with the absolutely vague and completely innocuous principle of *synderesis*, "good is to be done and evil is to be avoided," which is highly unlikely to move any hearts at the military conscription establishments! Faced with this de facto lack of consensus, I would like to suggest in the interim (while pathfinders are still searching for some path to consensus) that two somewhat specific tenets of traditional natural law theories (certainly more specific than *synderesis*) are eminently applicable to the issue of conscientious objection:-

1) Universal human brotherhood (characteristic especially of the stoicism of Epictetus), which relativizes all struggles of ascendancy of one national, political, ethnic or religious group over another, and disallows any thought of annihilating, or even subjugating, any group, is inherently incompatible with wars which aim at such subordination or annihilating, or even subjecting, any group is inherently incompatible with wars which aim at such subordination or annihilation. (The recent "Eve" hypothesis concerning the descent of the species from a single woman gives genetic substantiation to this concept; and the Treaty on Genocide, recently and belatedly ratified by the U.S. Congress, might be taken as the final, practical recognition of this principle in the sphere of contemporary international law.) Cases in point might be wars or campaigns directed against Kurds, Jews or Palestinians, Hindus, Iraqis or Iranians at present; and in the past, U.S. intervention in Vietnam to orchestrate the victory of one political faction over the other would be objectionable for similar reasons, unless it could have been shown that one of the factions had been aiming at the forcible extermination of the other.

2) The law of self-preservation, universally taken for granted and almost a truism, receives particular emphasis in the Thomistic version of natural law,

which emphasizes the teleology of all natural beings toward maintaining and fostering their existence. In previous times, this law would not have been of paramount importance for conscientious objection, because war was considered a major, last-resort means of self-preservation against a species of war itself, i.e., against nuclear war. Nuclear war, at a certain level of firepower, and in probable conjunction with a "nuclear winter," has the potential of annihilating the human species, as well as all other species of life on the planet. And since at present even a limited or regional war could conceivably expand (as has happened in the past) into a worldwide conflagration, war as an instrument for the resolution of conflicts must be viewed as a quaint luxury for past generations. With the widespread recognition of such possibilities and of such dangers in the last decade, a timely appeal to the fundamental and ineluctable law of self-preservation of the species, and of all the nationalities or peoples encompassed by the species, should be both credible and powerful.

With deference to those who are anxious to avoid any "naturalistic fallacies", we might observe that both the above-mentioned laws — the law of allegiance to the human species as a whole, and the law of self-preservation — are not only facts of existence and continued existence, but also values, recognized as commendable and rational at least in theory if not always in practice by the vast majority of people of the world. It is not this convergence of the fact and value which should be considered paradoxical, but rather the artificial separation of fact from value in the first place (which has instigated in philosophical discourse a multiplication of "naturalistic fallacies").

With a view to possible allegations of "objectivism," it should also be observed that the appeals made both to universal brotherhood and to species self-preservation give due respect to the elements of subjectivity and historicity — and in fact it is precisely human social and political and technological evolution that gives these long-standing natural laws, recognized for millenia, a new and emphatic persuasive force in the present era.

One cannot, of course, predict how persuasive such arguments from natural law might be with the various officials an individual conscientious objector might have to confront. But possibly we have now sufficiently transcended our long-standing ignorance of the terminal consequences and side-effects of nuclear attacks, and possibly we have even made sufficient advances beyond the narrow provincialism of us-against-them, so that such "merely ethical" considerations might have as much or more force than the strictly religious grounds that were considered valid in past wars and past conscriptions.