ROUTLEDGE HANDBOOKS



Routledge Handbook of Military Ethics

Foreword by General Martin E. Dempsey

Edited by George Lucas

ROUTLEDGE HANDBOOK OF MILITARY ETHICS

The *Routledge Handbook of Military Ethics* is a comprehensive reference work that addresses concerns held in common by the military services of many nations. It attempts to discern both moral dilemmas and clusters of moral principles held in common by all practitioners of this profession, regardless of nation or culture.

Comprising chapters by contributors drawn from the four service branches (Army, Navy, Air Force, and Marine Corps), as well as civilian academics specializing in this field, this handbook discusses the relationship of "ethics" in the military setting to applied and professional ethics generally. Leading scholars and senior military practitioners from countries including the U.S., U.K., France, China, Australia, and Japan discuss various national cultural views of the moral dimensions of military service. With reference to the responsibilities of professional orientation and education, as well as the challenges posed by recent technological developments, this handbook examines the difficulties underpinning the fundamental framework of military service.

This book will be of much interest to students of military studies, war theory, ethics philosophy, sociology, war and conflict studies, and security studies.

George Lucas is Professor of Ethics and Public Policy Emeritus, at the Naval Postgraduate School, Monterey, and Distinguished Chair of Ethics (retired), U.S. Naval Academy, Annapolis. He is author of *Military Ethics: What Everyone Needs to Know* (2015), *Anthropologists in Arms* (2009) and editor of *Ethics and the Military Profession* (2008).

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ROUTLEDGE HANDBOOK OF MILITARY ETHICS

Edited by George Lucas

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CONTRIBUTORS

(in order of appearance)

George Lucas, Editor: Recently retired as the Distinguished Chair in Ethics in the Vice Admiral James B. Stockdale Center for Ethical Leadership at the United States Naval Academy (Annapolis), Lucas is currently Professor of Ethics and Public Policy (Emeritus) at the Graduate School of Public Policy at the Naval Postgraduate School (Monterey, CA) and visiting professor at Notre Dame University's Reilly Center for Science, Technology, and Values. He is also Visiting Research Professor at the French Military Academy, Saint-Cyr.

General Martin E. Dempsey, U.S. Army, is currently serving as the 18th Chairman of the Joint Chiefs of Staff in the U.S. Department of Defense, the highest-ranking position in the U.S. Military.

Alasdair C. MacIntyre is Professor of Philosophy Emeritus at the University of Notre Dame and a Research Fellow at London Metropolitan University.

Colonel Don M. Snider (U.S. Army, retired) is Emeritus Professor of Political Science at the U.S. Military Academy (West Point), and now serves as a Senior Fellow in the Center for Army Profession and Ethic (CAPE) at West Point and as Distinguished Visiting Professor in the Strategic Studies Institute at the Army War College (Carlisle, PA).

Patricia Cook is Professor of Philosophy at the Naval Postgraduate School (Monterey, CA), where she currently teaches ethics courses, including a shortened version of the Stockdale Ethics Course that is part of the curriculum at the Naval War College.

Richard Schoonhoven has been teaching at the United States Military Academy at West Point since 2000, and is currently the program chair for the North American chapter of the International Society for Military Ethics.

Roger Wertheimer retired as the third holder of the Distinguished Chair in Ethics at the U.S. Naval Academy, and in retirement currently serves as a senior research associate in the Department of Philosophy at Agnes Scott College (Decatur, GA).

Paul Robinson served enlisted tours of duty in both the British Army and the Canadian Defence Force. A specialist in both military ethics and Russian history, he is currently a professor in the Graduate School of Public and International Affairs at the University of Ottawa, Canada.

Jessica Wolfendale is Associate Professor of Philosophy at West Virginia University and has published extensively on topics in military ethics, bioethics, and the ethics of torture and terrorism.

Martin L. Cook is the James B. Stockdale Professor of Ethics at the U.S. Naval War College (Newport RI), and co-editor of the *Journal of Military Ethics*.

Vice Admiral Walter E. Carter, Jr. became the 62nd Superintendent of the U.S. Naval Academy on July 23, 2014, following two years of service as President of the Naval War College in Newport, RI, where he established the Naval Leadership and Ethics Center on May 1, 2014.

Alain Fogue Tedom is Professor and Director of the African Centre for Strategic Studies for the Promotion of Peace and Development (CAPED), as well as Lecturer of International and Strategic Relations in Université Yaounde II—Cameroon.

David Whetham is Senior Lecturer in Defence Studies, King's College London, based at the Joint Services Command and Staff College at the UK Defence Academy (Shrivenham). Publications include *Ethics, Law and Military Operations* (Palgrave, 2010); *Just Wars and Moral Victories* (Brill, 2009); and with Andrea Ellner & Paul Robinson, *When Soldiers Say No: Selective Conscientious Objection in the Modern Military* (Ashgate, 2014).

Shannon E. French is the Inamouri Professor of Ethics and Director of the Inamori International Center for Ethics and Excellence, and a tenured Associate Professor in the Philosophy Department at Case Western Reserve University in Cleveland, Ohio. She has a secondary appointment as a professor in the CWRU School of Law, and she is a non-resident Senior Associate at the Center for Strategic and International Studies (CSIS) in Washington, DC.

Brigadier General Benoit Royal is President of the European chapter of the International Society for Military Ethics (ISME). Educated at Saint-Cyr, General Royal accumulated extensive wartime experience while serving with the French Marines. He currently commands the recruitment division of the French Army, and is an associate researcher in the professional ethics division of the Saint-Cyr Coetquidan Research Centre (CREC).

Shang Wei is a Colonel in the People's Liberation Army. She also holds a Ph.D. in Military Science, and she is currently a Research Fellow of the Military Political Work Research Center in the Peoples' Liberation Army Academy of Military Science. She writes and conducts research mainly on military philosophy and military culture.

Ping-cheung Lo is Professor in the Department of Religion and Philosophy and Director of Centre for Applied Ethics at Hong Kong Baptist University. His research areas include Chinese-Western comparative ethics of war and peace and Confucian-Western comparative bioethics.

Fumio Ota is a retired Vice Admiral in the Japan Maritime Self Defense Force. Since retirement, he had taught national security at the National Defense Academy of Japan in Yokusuka, where he served also as Director of the International Exchange Programme.

Patrick Mileham was a Regular Officer in the British Army. For a number of years, he has been leading programmes and publishing on "Military Ethics" and the "Moral Component" for the Royal Institute of International Affairs and Royal United Services Institute. He is an External Examiner at the Royal Military Academy (Sandhurst), a former Visiting Fellow in the Defence Studies Department at the Joint Services Command and Staff College (Shrivenham), and Reader in Corporate Management and Staff Governor at the University of Paisley.

Shannon Brandt Ford is a lecturer at the Military Staff and Command College of Australia, ADF (Canberra), where he is also a Ph.D. candidate at the Charles Sturt University, where he serves as Lecturer in Intelligence and Security Studies with the Australian Graduate School of Policing and Security.

Second Lieutenants Hakim Bouzid; Pierre Falzon; Eudes Foutel; Malik Ibrahima (Bénin); Quentin Le Goaziou; Sylvain Mve Ongoua (Gabon); and Charles N'Gandy are all Cadets 1/Class at the French Military Academy (Saint-Cyr).

Major General Robert Latiff, U.S. Air Force (retired), briefly worked in the defense industry following his military career, and subsequently became a private consultant on technology matters to government, industry, and university clients. He has served as the Director of Advanced Systems and Technology for the National Reconnaissance Office and as Commander of the NORAD Cheyenne Mountain Operations Center. Dr. Latiff is a member of the Air Force Studies Board of the National Research Council.

Colonel Jeffrey D. McCausland is Visiting Professor of International Security at Dickinson College. He also held the position of Distinguished Visiting Professor of Research and Minerva Chair at the Strategic Studies Institute (SSI), U.S. Army War College.

Major General Paul D. Eaton (U.S. Army, retired) served more than 30 years in the United States Army, including combat and post-combat assignments in Iraq, Bosnia, and Somalia. As a major general, he was assigned to Iraq from 2003 to 2004 as Commanding General of the Coalition Military Assistance Training Team (CMATT), where he designed, manned, trained, and equipped the Iraqi armed forces for the Iraqi Ministry of Defense and the security forces for the Interior Ministry.

Thierry Pichevin served for several years as an oceanographer in the French Military Corps of Engineers. He is currently a fellow and research associate at the Centre Researche du Saint-Cyr Coëtquidan (CREC) at the French Military Academy in Saint-Cyr, Brittany. He is author of *Éthique et renseignement: La difficile cohabitation du bien et de la nécessité* (Paris: Eska, 2013).

Michael L. Gross is Professor of Political Philosophy and Head of the School of Political Science and International Relations at the University of Haifa (Israel).

Rebecca J. Johnson is Associate Professor at the Command and Staff College in the Marine Corps University (Quantico, VA). Previously, she taught at the Georgetown Public Policy Institute at Georgetown University, and from 2004 to 2008 was an Assistant Professor in the School of International Service at American University.

Reverend Nikki Coleman teaches military ethics for the University of New South Wales, Canberra, at the Australian Defence Force Academy. Her research interests include the moral

status of the soldier, the moral underpinnings of the duty to obey orders, conscientious objection, defense policy analysis, and numerous areas in bioethics.

Aaron Belkin specializes in military masculinity and sexuality in the armed forces. He has previously taught as associate professor of political science at the University of California, Santa Barbara. Professor Belkin is founder and Director of the Palm Center, a research initiative of SFSU's Department of Political Science, which studies transgender military service.

Andrea Ellner, Ph.D. (Free University of Berlin) joined the Defence Studies Department of King's College, London, at the Joint Services Command and Staff College, Shrivenham, in 2007. She specializes in civil-military relations. She has worked on British defence, particularly naval, policy and European security and now focuses on women in the armed forces as well as gender and violent conflict.

Stephen Coleman is a Senior Lecturer in Ethics and Leadership, School of Humanities and Social Sciences, and Program Director, Military Ethics at the Australian Centre for the Study of Armed Conflict and Society, at the University of New South Wales (Canberra), where he teaches military ethics and other subjects to cadets at the Australian Defence Force Academy.

Colonel Daniel S. Zupan, Ph.D., U.S. Army (retired), is currently the Senior Leadership Instructor and administrator for the U.S. Army's Human Terrain System (HTS). Since his retirement, he has taught at the U.S. Air Force Academy (Colorado Springs), deployed to Iraq as Program Manager for the COIN (Counterinsurgency) Academy, and deployed to Afghanistan as a Team Leader for a Human Terrain Team.

Laurie R. Blank is Professor and Director, International Humanitarian Law Clinic, Emory University School of Law.

Amos Guiora is Professor of Law and Co-Director of the Center for Global Justice at the S.J. Quinney College of Law, the University of Utah. He teaches Criminal Procedure, International Law, Global Perspectives on Counterterrorism, while his work on Religion and Terrorism incorporates innovative scenario-based instruction to address national and international security issues and dilemmas, based upon his years of service in the Israel Defense Forces Judge Advocate General's Corps (Lt. Col. Ret.). He was Commander of the IDF School of Military Law, Judge Advocate for the Navy and Home Front Command, and the Legal Advisor to the Gaza Strip.

Jason Shelton is a recent graduate of the S.J. Quinney College of Law, the University of Utah. He focused his legal studies on National Security and International Law. Shelton served in U.S. Army Military Intelligence and Special Forces from 1999 to 2007.

Robert Sparrow is currently an Australian Research Council Future Fellow in the Philosophy Department, and an Adjunct Associate Professor, in the Centre for Human Bioethics, at Monash University, where he researches ethical issues raised by new technologies. He is a co-chair of the IEEE Technical Committee on Robot Ethics and one of the founding members of the International Committee for Robot Arms Control.

Pauline Shanks Kaurin is Associate Professor of Philosophy at Pacific Lutheran University in Tacoma, WA, and teaches courses in military ethics, warfare, business ethics, and philosophy of law.

Maxwell J. Mehlman currently serves as the Arthur E. Petersilge Professor of Law and Professor of Bioethics in the School of Medicine, and is Director of the Law-Medicine Center in the School of Law at Case-Western University (Cleveland, OH).

Colonel James Cook is Permanent Military Professor and Head of the Department of Philosophy at the U.S. Air Force Academy. He advised the National Military Academy of Afghanistan as Senior Academic Mentor from May through December 2009.

FOREWORD

General Martin E. Dempsey

I entered the Army at the end of the Vietnam War and learned just how hard it is to regain the public's trust once it is lost. It took decades for us to regain the confidence of the American people. Thanks to the character and competence of our men and women in uniform, we did it.

Today's polls consistently show that the American military is the most respected institution in the nation, but we can't take that trust for granted. We must continue to re-earn the public's confidence every day. As such, one of my priorities has been to renew the Joint Force's commitment to the profession of arms.

The American profession of arms has evolved throughout our history and now reaches around the globe. During the last 13 years at war, I've served alongside military professionals from other nations who are also committed to earning the trust of their respective nations. I've been encouraged by their dedication, and I've developed a deeper appreciation of the common bonds we share.

The details usually look somewhat different in each nation, as they should. The manifestation of the profession in a given country is the product of its unique set of political institutions and its distinct national culture.

Yet, not all military institutions around the world are considered professions. The people of our respective nations get to judge the extent to which we meet their expectations. They do so based on our demonstrated competence and expertise in the use of military power to defend them and on our ability to enforce high ethical standards within our ranks. We are not a profession just because we call ourselves one.

This anthology is important because it helps us do one of the things a profession must do. It calls us to reflect on how to provide security for our respective nations and how to better ensure the ethical application of military force in the future. It meets our responsibility to ask first-order questions about who we were, are, and can be. It also helps us continue the dialogue that will answer those questions.

I am highlighting this book, not because I agree with every idea in it, but because I believe in the importance of this effort. Today's complex security environment demands partnerships between like-minded militaries to secure our respective nations and to maintain global order. In this context, efforts to enhance the international professional dialogue are increasingly important. I hope similar projects will follow the example set by this effort to examine other

issues important to the profession, such as developing our junior leaders, keeping faith with our military families, and caring for those wounded by war over their lifetime.

We answer a noble and weighty calling to service as part of this uncommon profession of arms. Each of us, and all of us, are the stewards of the profession. Our respective nations bestow upon us a sacred trust. In our own ways and in our own contexts, we have an opportunity—and an obligation—to continue to ask ourselves if we are doing all we can to earn that trust.

INTRODUCTION

On the Very Idea of "Ethics" and a "Military Profession"

George Lucas

This volume is not about international law and "just war theory," nor does it primarily treat the use of force in international relations. It is not a book written by and for scholars and academics exclusively interested in exploring such topics. There are already a number of excellent books devoted to those subjects. Readers primarily interested in "just war theory" as enshrined in contemporary international law, or as understood and debated in moral philosophy and international relations, would do well to consult our previously published companion volume in this series, the *Routledge Handbook of Ethics and War*, edited by Fritz Allhoff, Nicholas G. Evans, and Adam Henschke.[1]

This volume, in contrast, is a book about *military* ethics: that is, about the moral foundations of the profession of arms, and the core values and guiding principles of the men and women who have served, or who are now serving in that profession in military organizations throughout history, and around the world. Most especially, this is a book about the shared moral values and unique role responsibilities that have emerged in that practice over centuries, as contributed to, and recognized by, many nations, peoples, and cultures.[2]

These shared moral values, and common role responsibilities, together define the *ethics of the military profession*. Our efforts focus upon the ordinary men and (increasingly) women who wear a military uniform, and engage in a variety of activities collectively said to constitute the defense and protection of their country. It is about what they do, how they do it, what they think about it, how they behave when carrying out their activities, and how they are expected to behave. And, finally, our book discusses how these military personnel are treated and regarded by those whom they have sworn to serve and protect, and, especially, how they treat and regard one another as members of a common enterprise.

In that sense, this book is quite unusual. As a work devoted to "professional ethics," it is not written primarily by and for academic scholars, lawyers, or policy theorists. Instead, it is written by and for those who are primarily themselves practitioners in the military profession in various national armies and navies around the world, along with many others who work with, for, and alongside them to support them in carrying out the activities of their profession.

And, lest all this seem to indicate that there is little here other than some minor terminological or jurisdictional distinction that finally makes absolutely no difference: there are many other issues of professional ethics in the military that *do not pertain to war at all*. We are featuring those in this volume. Those topics include: the role of personal and religious beliefs in guiding

professional conduct; the duty to treat other members of the profession with civility and respect; more general duties of public service and appropriate individual rectitude, probity, or public comportment; and questions of conflicts of interests and moral duties that might arise when members of other professions or disciplines—medicine, psychiatry, anthropology, and social sciences—serve in or work in cooperation with military forces. None of these professional issues arise in discussions of the ethics of warfare, but all would obviously figure into any systematic or coherent study of what the U.S. Army has recently termed "the Army professional ethic."[3]

Part I: The Moral Foundations of the Military Profession

In this volume, readers will first encounter contributors who are working to understand the extent to which military service itself constitutes a profession (perhaps similar in certain respects to law, medicine, journalism, and other recognized fields of professional expertise and endeavor). Other contributors assume that even if military practice is found to resemble the core practices of other professions, we must make explicit the internal norms of behavior and principles of proper *military* practice. How are concepts such as "professional malfeasance," or the boundaries of professional probity, defined and discerned? And to what extent do the profession's members from various nations and cultures agree on, understand, or strive to practice a generally agreed upon set of professional virtues or "excellences?"

Accordingly, our book begins with a provocative contribution from an individual who is the most eminent and accomplished moral philosopher in the world today, Alasdair MacIntyre, who is also, coincidentally, the leading authority in the general area of this inquiry: the moral virtues inherent in specific forms of practice. MacIntyre suggests in his opening chapter that even if military service is a profession, it is a profession in the midst of a profound crisis, inasmuch as the questions and categories of conventional wars belong to a moribund paradigm. In the current, postmodern era of irregular warfare, where all the conventional practices have been transformed or abandoned, does our moral terminology still function? Do traditional understandings of military virtues (such as courage and prudence) serve any longer as reliable guides or goals in the context of unconventional wars undertaken within a radically altered historical and cultural landscape?

Col. Don Snider, a retired U.S. Army officer and educator who has almost single-handedly compelled his own organization to come to terms with these important questions, raises them here concerning the professional self-understanding of the military itself. The hierarchical structure of the military inclines it to function more like an obedient bureaucracy than a true profession. While obedience in a chain of command structure is integral to the military's power, this can be a countervailing pressure on its other source of strength, the professional identity of its members. Snider reminds us of the need for the profession to sustain its autonomy, hone its expertise, and enrich its ethical tradition. These are the conditions for developing the kinds of excellences that our new geopolitical frontiers will require of us, including the virtue of "political prudence," which MacIntyre conceives as the emerging hallmark of professional probity in this postmodern era of "irregular" warfare.

This opening section then concludes with some profound and moving reflections by a military educator at the Naval Postgraduate School, Professor Patricia Cook. Drawing on her years of discussions with her students (who are themselves mid-career military officers from the U.S. and many other nations), she reminds us that if the military is indeed a profession, then it is surely "a profession like no other," on account of its extraordinary role and importance in society generally, and also on account of the unique and poignant moral responsibilities accompanying that role.

Part II: Preparing the Military Profession for its Moral Obligations

The second section features eight contributors scrutinizing how the profession's "best practices" and core values are taught and inculcated, especially to new members entering the profession. The relation between training and education is an underlying theme. What sense can be made (and what prospects for success can be reasonably entertained) of demanding unilateral or asymmetrical compliance to the most exacting professional, moral, and legal standards of accountability in combat, unless each and every member of the military profession possesses the intellectual comprehension that activates the capacities, propensities, and capabilities to abide by these exacting professional norms?

The moral requirement of intellectually preparing military professionals to understand, accept, and to assume their demanding responsibilities is a neglected dimension of political philosophy (and of "just war theory"). Roger Wertheimer, now retired from the Distinguished Chair of Ethics at the U.S. Naval Academy, first identified this as a category of ethical exigency over a decade ago, and labeled it "*jus ante bellum*." He further develops and explains his initial insights in his provocative chapter for this volume, while other contributors, such as Richard Schoonhoven from the U.S. Military Academy (West Point), discuss the significance of his original insights, along with the difficulties encountered in attempting to discharge this important duty, without succumbing to the danger of self-righteous hypocrisy or inauthenticity in the military organization's collective efforts to do so.

Schoonhoven's concerns are focused and amplified by a former military serviceman in both the British and Canadian armed forces, Paul Robinson, whose chapter treats "selective conscientious objection." Like several other contributors, Robinson argues for fostering the individual autonomy and capacity for moral judgment in each and every serving member of the military, while simultaneously enabling or "operationalizing" that autonomy within the otherwise hierarchical and bureaucratic structure of military organizations. Such goals will prove challenging, however, as the Stockdale Professor of Ethics at the U.S. Naval War College, Martin L. Cook, observes. This is because military cultures, which exalt efficiency, tend to eschew the protracted work of developing capacities for moral reasoning and judgment in favor of "quick-fix" prescriptive programs of behavioral modification, habituation, and "character development." These quick fixes are often grounded in a superficial kind of social and behavioral pseudoscience that falsely promises an unrealistic return on a virtually nonexistent investment.

Vice Admiral Walter E. Carter, Superintendent of the U.S. Naval Academy (and former President of the Naval War College), links the reliance on such programs—along with military organizations' habitual mistake of slighting mature moral judgment in favor of mere legal compliance—with some of the widely publicized moral lapses on the part of senior officers. The character-indoctrination approach has bred cynicism about ethics itself among many military personnel. They are aware that the organization does not provide the genuine investment in moral education and professional mentorship that are bedrocks of moral behavior. Hypocritical pronouncements and exhortations advocating "integrity" by senior officers, who themselves often fail to exhibit the requisite moral characteristics of military leadership—combined with exclusive reliance on "JAGs and IGs" (military law and lawyers) to enforce compliance—have, Carter worries, hobbled the public trust that military organizations need to foster with their wider societies. Australian educator Jessica Wolfendale (who lectures on these topics to leaders and members of the Australian Defence Forces) goes even further to indict this unreflective culture for unintentionally fostering the commission of a range of war crimes in the midst of combat that are carried out deliberately, and therefore not excusable as exigencies "in the heat of battle." Her chapter, in describing the origins of such criminal behavior amidst conflict, makes

use of the very best and most recent findings of real (rather than pseudo) social science, unlike the character development programs she and others criticize for actually compounding these moral failures.

Professor Alain Fogue Tedom of the University of Yaounde in Cameroon likewise laments the lack of understanding of (or commitment to) military professionalism on the part of forces of many nations in his native Africa. His account of the lingering aftermath of corrupt colonial legacies, coupled with seemingly intractable poverty, lack of educational and career opportunities, and the widespread absence of requisite institutional infrastructure for military service, helps provide a historical understanding for this deficit. These obstacles to military professionalism must nevertheless be overcome, he argues, as part of the quest for stable democratic and rights-respecting government in the nations of that continent.

Why is military professionalism so potent, and why is a deficit of it so lamentable, as Professor Fogue Tedom and other contributors suggest? I would explain it this way. Suppose we came across a physician who actually believed it was permissible and acceptable to vivisect his patients without their consent, and without regard for their welfare, in order to carry out medical research or harvest life-saving organs for other patients who could pay him well. How would we characterize what is amiss here? Among many other things, we would surely want to convey that such behavior reveals a *complete misunderstanding* of the physician's profession, alongside a *betrayal* of its most basic and self-evident canons of probity and moral rectitude.

This is the kind of charge leveled by Fogue Tedom at African forces with respect to military professionalism: they do not comprehend their proper professional function within their own societies. Their unprofessional decorum thus erodes and degrades, rather than nurtures and protects, the very societies upon which they themselves are reliant. Individual military personnel simply seem to fail to grasp who they are, and what they are required on the basis of their voluntary commitments to do (and to refrain from doing), when they are found to engage in robbery, extortion, graft, corruption, and dereliction of duty.

This is surely not a failing limited to military personnel in African nations alone. Instead, the military forces and personnel of all nations, on all continents, must reckon with the moral underpinnings and exacting requirements of professionalism, as the other contributors to this volume likewise attest.

Part III: Military Ethics and Professionalism Across Nations and Cultures

Such sentiments challenge us to examine the understanding of military ethics in a variety of national and cultural contexts. Indeed, the preceding section of this volume ends with David Whetham's perspicacious account of his own challenging, and sometimes frustrating attempts, as a representative of the U.K.'s Staff and Command College in Shrivenham, to discuss and to engage in ethics education with the military forces of many other nations, as well as with those of his own.

This provides an appropriate segue for noting an additional feature that sets this volume apart from others that purport to deal with "military ethics." The perspectives examined, and the views expressed herein, do not reflect solely the practices and values of Western European culture. There is a dogma floating around that "ethics" in armed conflict is an almost entirely Western cultural concern. This belief is misguided, self-important, poppycock. It is not widely shared by military practitioners from other nations and cultures.

The culturally relative variant is instead the degree to which the individuals in military forces embrace and abide by the expectations imposed upon them through their common membership in the military profession. The reasons for *that* variation, in turn, are a function of many culturally

and politically relative variables, ranging from lack of sustainable military infrastructure in the world's poorest nations (as Fogue Tedom laments), to willful neglect or woeful (and perhaps culpable) ignorance on the part of individuals in the wealthiest national militaries (as Col. Snider and Vice Admiral Carter complain). What is evident from the contributions to the third section of this volume is that a keen and lively interest in "military ethics" is now well-nigh universal. It is expressed in the respective culture patrimonies, as well as the current practices of a great many nations and militaries. It is by no means the sole province of those who hail from developed Western countries, or who happen to speak English!

There is another prevailing, but mistaken notion that this book may help forever lay to rest. This is the view that there are no conceivable grounds for agreement or common practice among those in the military from different cultural, historical, and religious backgrounds. Shannon French, who authored a groundbreaking book and, for more than a decade, taught the most popular elective course at the U.S. Naval Academy precisely on this topic, opens our third section with a chapter that combs essential features of warrior cultures and traditions, past and present, and demonstrates the ubiquity of many underlying ethical concepts. These form the moral foundation of the profession of arms, as recognized and shared by its practitioners across many nations, cultures, and historical epochs.

The chapters that follow in the third section represent the views of a French Marine general officer, a Japanese vice admiral, and a senior educator in the Chinese People's Liberation Army, together with military representatives and educators from several other countries. These culminate in a proposal for an international code of ethics for military and peacekeeping forces drafted by cadets from many countries. (The cadets collaborated to draft this code while studying together at the French Military Academy in Saint-Cyr.)

Some of this section's contributors certainly see themselves as present or future political rivals and military adversaries of others, and are far from universal agreement on every point. They frequently lapse into criticism of the views (not to mention the practices) of their rivals and adversaries. Japanese Vice Admiral Fumio Ota, for example, reflects on his nation's continuing resentment at what they regard as politically self-serving exaggerations by adversaries in the present, of the otherwise very genuine and regrettable acts committed by Japanese military forces before and during World War II. The PLA essay delicately exegetes the ancient text of Sun Tzu to criticize both the injustice shown in what the PLA regards as a failure to respect treaty obligations and promises to China in the aftermath of WWII, but also criticizes the excessive militaristic posture the author's colleagues have adopted in response, over the issue of the Shinkaku/Diayou island dispute in particular. The depth of current regional tensions are evident in the contrasting perspectives on such events cited by different authors in these chapters.[4]

Notwithstanding such pronounced differences, there are also interesting areas of what Australian security expert Shannon Ford (following John Rawls) terms "overlapping consensus." Ford takes care in his chapter to fill in some of the unarticulated background details and challenge some widespread and prevailing assumptions regarding what "ethics" even is, and how it might function to inform national security policy. Prof. Shang Wei of the PLA's prestigious Academy of Military Science, however, simultaneously demonstrates the central role that morality, benevolence, and human dignity play, after all, in Sun Tzu's so-called "realist" theory of military strategy. From that perspective, she demonstrates that this respected military sage taught that an otherwise justifiable resort to war primarily for reasons of broken promises and wounded honor is both imprudent, and frequently devastating from a moral perspective. In doing so, she illustrates Ford's alternative approach to national security strategy as entailing an essential concern with considerations of morality, rather than as a distraction that "erodes the cold rationality of the strategic process."

Taken together, these various contributions illustrate how uniformed personnel and educators from nations and cultures all over the world are coming to terms with contrasting ideals of military ethics, and attempting more effectively to understand and inculcate these values and best practices found at the core of their profession. Another concrete manifestation of global cooperation in military ethics is the International Society of Military Ethics. Brigadier General Benoit Royal's chapter for this volume, for example, is based upon his Presidential Address for the European branch of that society, while Ford, Lo, and the PLA representatives have undertaken to organize a branch of this society in the Pacific Rim. Several of the other chapters in this volume were initially forged in meetings of regional branches of this society, which are now to be found in Africa, Latin America, and Europe, as well as in North America (where the first regional chapter of the International Society of Military Ethics was formed over three decades ago by U.S. Air Force General Malham Wakin and U.S. Army Colonel Anthony Hartle). Bringing together practitioners who share a common commitment to studying ethics and the military profession has truly metamorphized into a global endeavor.

Part IV: Contemporary Issues in Ethics and Military Practice

From these variant perspectives on what might be termed the ethics *of* the profession, we turn in the two concluding sections of this handbook to issues of ethics *in* the profession: that is, to the moral challenges encountered in the ordinary (and sometimes extraordinary) day-to-day practice of its characteristic duties and responsibilities.

In Part IV, we hear from two senior Army officers in the U.S. about civil–military relations. Both chapters focus on the vexed role of military advice and expertise in the political process, and (echoing Paul Robinson's concerns in Part II regarding autonomy and conscientious objection) the uncertain parameters of obedience and dissent regulating military personnel within their wider political and public context. The question of dissent came to the fore recently during an episode in the U.S. that Col. Jeff McCausland (retired Dean of the U.S. Army War College) has dubbed "the revolt of the generals." Major General Paul Eaton, who started that "revolt" with a letter for the op-ed page of the *New York Times* in 2006, describes the objection by senior military personnel to the conduct of the controversial U.S.-led war of intervention in Iraq, and its subsequent (and still unresolved) impact on the future role of military advice and expertise in the political process.[5]

U.S. Air Force Major General Robert Latiff, for his part, treats a topic of enormous ethical import that almost never finds its way into the "military ethics" literature of just war theorists: that of defense acquisitions and program management. Here, as he explains, the opportunities for costly error and outright graft and criminal behavior are rife, and, once again, frequently reflect the failure on the part of military personnel to understand or care about their professional roles and responsibilities (especially when these conflict with their individual aspirations).

The theme of conflicts of interest is continued by Marine Corps University educator Rebecca Johnson, who investigates conflicts among deeply personal commitments held by military personnel. The relation of the officer's private beliefs to his or her public duties is further examined by Rev. Nikki Coleman of the Australian Defence Force Academy. She looks at what is, and is not, reasonably included in what is widely known as "the unlimited liability" clause. The unlimited liability clause is an implicit, yet oft-cited feature of the supposed contract between military personnel, their chain of command, and the society. But does it entail (as it sometimes seems) that every aspect of a soldier's personal life (including privacy and informed consent) is thereby forfeit?

French Oceanographer Thierry Pichevin and Israeli educator Michael Gross introduce another type of conflict altogether: those that arise out of competing professional allegiances.

Pichevin looks at tensions that arise from military service undertaken by scientists, with science's distinctive disciplinary goals. Gross considers a range of moral concerns and conflicts of duties that arise for medical healthcare providers, including those that arise when their military oath and service loyalties, for example, seem to countermand their Hippocratic oath.

The final two chapters in this fourth section deal with some of the most familiar, intractable, and vexing moral issues in military life at present: inclusion, equality of treatment and of opportunity, and, finally, harassment and sexual assault. The current, very public struggle with these dilemmas in the various branches of the American armed forces merely reflects the larger struggle with similar issues faced in the armed forces of many other nations, as U.K. academic working at the Joint Services Command Staff College Andrea Ellner explains. Meanwhile, Aaron Belkin, a social scientist and founding director of the Palm Center for the Study of Public Policy and the Military, has been a leading force for the repeal of a U.S. Department of Defense policy known as "Don't Ask, Don't Tell." He reports here on the aftermath of the repeal of that policy in the U.S. (and earlier in other allied national militaries), and on the profound moral impact DADT repeal has subsequently had on the personal lives, moral character, and military readiness of soldiers, sailors, and Marines now serving under the new, more inclusive regime.

The oft-cited requirement for "civility and respect" within military organizations raises a significant illustration of the importance of our project in this volume. Obviously, many organizations, private and public, struggle with racism, gender discrimination, and sexual harassment and assault. These are not uniquely problems of "military ethics" alone. But another professional principle, viz. *loyalty*, has a singular place in military ethics, where it bears importantly on the questions of discrimination and abuse. Most military services inculcate a duty to "look out for your shipmate," fight to protect your comrade-in-arms, and, in combat, to "leave no one behind." Those principles may be vague and deserving of further ethical scrutiny, but they are based on one of the defining values of military service: loyalty to fellow service members. But how can one simultaneously inculcate such magnificent duties toward other members of the profession and then engage in insulting, abusing, or even physically assaulting them? The internal contradictions, and the stringent demands placed upon military personnel for one another's welfare, seem to necessitate "zero tolerance" of the aforementioned offensive behaviors. This is not simply because they are transparently both illegal and immoral, but because they decimate the profession of arms itself. Like the physician who vivisects his patients, the officer who mistreats fellow service members is a blight on the profession, violating one of the most fundamental canons of accepted professional practice.

Part V: Emerging Ethical Challenges for the Military Profession

The final section of this volume carries these concerns for the moral welfare of the military professional itself forward into the emerging horizon. Now hoving into view, for example: the biological, psychological, and genetic enhancement of warriors (Maxwell J. Mehlman); controversial new programs such as the U.S. Army's "Human Terrain System" in Afghanistan (Col. Daniel Zupan); the increased privatization and "outsourcing" of military combat operations (Lucas); and, notably, the dramatic increase of military interventions to halt or prevent humanitarian disasters, such as genocide (Stephen Coleman).

The most conspicuous issue for the future of military ethics is new technology. In addition to Melman's discussion of biomedical and genetic technologies, three other chapters touch on aspects of military robotics that bear directly on ethical issues that are now facing the military profession. Law professor Amos Guiora, and Jason Shelton from the U.S. Army Special Forces, together explore the implications of the almost unlimited authority of political leaders, at present,

to use such military technologies for "targeted killings" (extrajudicial executions). Legal scholar Laurie Blank (Emory University Law School) examines the role of journalistic and social media in providing enhanced transparency and greater public scrutiny of "covert" military operations generally (including so-called "drone strikes"). Robert Sparrow of Monash University, one of the very first moral philosophers to call attention to the ethical dimensions and challenges of military robotics generally, here examines the impact of their use on the character, moral "fiber," and on the likely future status of moral virtues once deemed essential to the practice of military professionalism. How, he asks, will these guiding ethical principles of military professionalism survive intact, given the advent and enhanced use of robots in place of human warriors? Pauline Kaurin raises a similar range of concerns with respect to the advent, and increasing use in military settings, of so-called "non-lethal" weapons.

All of these emerging developments challenge the foundations, the future, and even our recent and very hard-won understanding of the military profession itself. These myriad concerns, indeed, finally bring us full circle to the thoughts about evolution, transformation, and the looming threat of unintelligibility of the professional moral vocation with which Professor Alasdair MacIntyre began. In a remarkable concluding chapter, Col. James Cook of the U.S. Air Force Academy manages to blend all of these considerations as he explores the evolution of a radically new kind of war currently taking shape in the "fifth domain" of cyberspace. He draws on "postmodern" philosophical concepts in the writings of Jean Baudrillard and Hans-Georg Gadamer to show that the events, "objects," and the novel ways of conducting competition and the pursuit of rival political goals within this new domain make it impossible to classify or to predict what sorts of implications cyber "warfare" will hold regarding the traditional ethics and core values of the military profession itself. Drawing on our previous experiences in the other four, more familiar domains of air, sea, land, and space, however, he predicts that the systematic interconnection and tendencies toward eventual equilibrium and homeostasis will eventually transpire within this "fifth domain" as well. Whatever "cyber warfare" is or will become, it will remain (Col. Cook argues) merely a *means* of carrying out war and wider political conflict, one that will admittedly challenge future military forces and their personnel to remain vigilant in adhering to the most basic principles of justice, equity, and human rights, as the underlying moral principles that their profession exists to serve and to protect.

Conclusion

The contributors' collective hope was that through this volume, we might circumscribe military ethics itself as an important new sub-field of professional ethics, and that we might develop it as a complement to the more well-studied "just war theory" and the latest trend, "revisionist" just war theory.

Studies of ethics tailored to the distinctive practices of other professions, such as the medical or legal professions, abound. We know that when there are cultural or conceptual crises, the professions have to be fortified by self-examination and reinterpretation. Ethical re-evaluation, the sort of thing we find in the "Nuremburg Code," the "Belmont Code," and the "Helsinki Code," for example,[6] can be salutary for the profession itself.

Analogues of all of this for professional military practice, especially regarding military ethics, have been scarce, even though the occasions for re-examination have been abundant. The analogues we do have for the military profession, such as the so-called "Lieber Code," have been illicitly appropriated within other disciplinary jurisdictions, where their influence is mediated indirectly (and somewhat ineffectively) in international law.[7] Where, we should ask, are the internationally disseminated results of broad, participatory deliberation and collaborative

reflection from military practitioners, specifying the canons of best (aspirational) practice, and, crucially, the limits on acceptable practice? The answer is that (prior to this volume) there was very little explicitly devoted to these topics, arrived at through deliberation with and among the members of the profession. In their place, we find instead little other than very narrow, limited, sometimes self-serving, and often vague and platitudinous training documents produced by individual branches of national military services.

The suggestion of this volume is that what has heretofore passed as "military ethics" is generally something else entirely: either (1) vacuous exhortations favoring "individual integrity" by the profession's leaders, offered within bureaucratic organizational settings whose routine procedures, regulatory regimes, and prevailing reward systems systematically and perversely undermine any attempts on the part of willing practitioners to abide by those exhortations; or (2) reflections on declaring and waging war, undertaken by scholars, academics, and policy specialists working in fields of international relations, political philosophy, ethics, and international law, and possessing at very best a narrow and highly abstract conception of military organizations and their members.

Notably, those latter discussions focus on the waging of war to the exclusion of a number of other essential activities and practices—including the attendant professional role responsibilities and moral values that attach to these—that also constitute the domain of "the profession of arms." By and large, these latter discussions are carried out by persons who are not themselves practitioners, nor do they work with and for practitioners, while authentic practitioners and their viewpoints are often wholly absent from those scholarly deliberations. These nevertheless are, to be sure, interesting and important discussions that can bear upon military ethics. But these are not *examples of* military ethics, nor are their participants rightly characterized as "military ethicists." Significantly, such deliberations do not aim at informing practice, nor do they emerge from it, so much as attempting to impose external, infeasible, highly abstract theoretical constraints upon it.

This volume signals that it is high time that the two sorts of concerns were properly distinguished from one another, and "military ethics" given its proper due as a legitimate focus of concern, and of profound and important moral reflection.

Notes

1. London and New York: Routledge/Taylor & Francis Group, 2013. Another excellent example of such literature is the *Ashgate Research Companion to Military Ethics*, eds. James Turner Johnson and Eric Patterson (London: Ashgate, 2014). The latter book, however, unintentionally offers a perfect illustration of the confusion that the present volume aims to address. The Ashgate book's very title and introduction proclaim it to be a resource for "scholars and graduates, serving and retired military professionals, members of the diplomatic and policy communities concerned with security affairs and legal professionals who deal with military law and with international law on armed conflicts," but the editors then divide contributions into "three major perspectives on *the use of military force*: the decision whether to use military force in a given context, the matter of right conduct in the use of such force, and ethical responsibilities beyond the end of an armed conflict" (emphasis added).

   The first and last of these perspectives (customarily designated *jus ad bellum* and *jus post bellum*, respectively) by tradition are not even thought to be the purview of military personnel at all, and thus, despite the title, deal with the topic of "military ethics" tangentially at very most. The second perspective (usually designated *jus in bello*) constitutes but *one* (extremely important) dimension of "military ethics" proper: namely, the *manner* in which military personnel during combat are constrained or regulated in their use of lethal force.

   "Military ethics," as we shall see in this anthology, encompasses a great deal more than the various legal and political considerations involved in the use of force. *Military* ethics, as distinct from just war theory and international law of armed conflict, encompasses a range of other topics, including the

preparation and education of military personnel for combat (*jus ante bellum*?), but also the behavior of those personnel, including their treatment of one another (whether or not on combat deployment), their interactions with their society and political supervisors (so-called "civil–military relations"), their understanding of the social responsibilities of their profession, and a range of other topics in the day-to-day duties and decorum of military organizations and their personnel that are seldom even envisioned, let alone discussed, in the many books devoted solely to the place of war and its proper conduct in international relations.

2. In describing it thus, however, our efforts might then be thought (mistakenly) to constitute another straightforward, but quite different task. Military personnel, real and imagined, both heroes and villains, ranging from Arjuna, Achilles, and Hector to Alexander and Julius Caesar in the ancient world, all the way to George Washington, Simon Bolivar, Napoleon, Admirals Nelson and Nimitz, Mao Tse-dung, Douglas MacArthur, and George Patton have always fascinated a wide public audience, eager to read or hear of their exploits, of the battles they fought, of their successes, failures, and personality flaws. But that widespread fascination with "world-historical," larger-than-life heroes and villains, real and imagined, constitutes something else altogether, military history and biography (when the subjects are real-life), and military literature (such as that of Stephen Crane or Patrick O'Brien) when they are not.
3. The U.S. Army, influenced by the work of one of our contributors, Col. Don Snider, has invested considerable effort in understanding the defining role of what it calls "the Army professional ethic" in the overall identity, purpose, and function of the Army as a military profession. See the "Army Ethic White Paper," available from the Center for the Army Profession and Ethic (CAPE) at the U.S. Military Academy (West Point): http://cape.army.mil/army-ethic-white-paper/. More recently, and influenced by this extraordinary organizational effort on the part of the Army, the U.S. Navy has set forth its concerns regarding ethical failures in that organization, and their principal responses—including establishing a "Naval Leadership and Ethics Center" at the U.S. Naval War College (Newport, RI)—are found in Vice Admiral Walter Carter's chapter in this volume, "Ethics in the U.S. Navy." This concern for renewal and recognition of, and greater adherence to, standards of military professional behavior (seen principally in terms of the impact of ethics on military leadership and organizational effectiveness) pervades many of the chapters in this volume, and especially those from military services in other nations and cultures, including the Chinese People's Liberation Army (PLA). I discuss the significance of the understanding of ethics and the military profession in my recent book, *Military Ethics: What Everyone Needs to Know* (New York: Oxford University Press, 2015).
4. It was not finally possible to include the brief remarks of PLA Senior Colonel Zhao Feng regarding this testy dispute, entitled, "Warfare in China." They are available from the Editor upon email request (george.r.lucas.jr@gmail.com).
5. A third critical perspective on this "revolt" at the time, that of Marine Corps General Anthony C. Zinni, retired Commanding Officer of the U.S. Central Command, entitled "What Went Wrong in Iraq," unfortunately was unavailable for inclusion in this volume. But his contributions to, and subsequent reflections on, the lessons learned from this event at the 2008 McCain Conference (U.S. Naval Academy, Annapolis) can be found at: www.usna.edu/Ethics/_files/documents/publications/Zinni%20edited%20transcript%20-%20McCain%2008.pdf.
6. For a brief outline of the historical circumstances giving rise to each of these documents, see: www.cgu.edu/pages/1722.asp. For the contents of each of these three examples of the medical profession's exhaustive self-examination and moral renewal in the wake of these various and profound crises, see, respectively: www.ushmm.org/information/exhibitions/online-features/special-focus/doctors-trial/nuremberg-code; http://humansubjects.stanford.edu/education/2009_05_Belmont.pdf; and www.wma.net/en/30publications/10policies/b3/.
7. That "General Orders 100" (1863), the so-called "Lieber Code," largely provided the content and guidelines for the first Geneva Conventions on the International Law of Land Warfare at the very end of the nineteenth century is not here in dispute.

   The point to be made, rather, is the recognition that German-born American legal scholar Franz Lieber, whom President Lincoln appointed to oversee this task, had studied at Clausewitz's military academy, participated with the Prussian Army in the Napoleonic Wars, and convened a committee of military practitioners in the U.S. to compose this code, whose express purpose was to set forth professional standards of ethical conduct for Union military officers and soldiers. As a document containing such thoughtful and thorough guidance regarding the ethics of the military profession, moreover, it was subsequently adopted almost wholesale as a guide to proper professional conduct by

the Prussian military: at the time, the most educated, polished, proficient, and universally respected military service in the world. It was from there that the individual provisions of the Lieber Code found their way into international law.

In sum, far from international lawyers first formulating and then imposing their judgments upon others, they were merely enshrining in "black letter" law the principles of ethical conduct and professional rectitude that military practitioners had originally devised for their own self-governance. Failure to appreciate this feature has led to a profound misunderstanding of the origins and nature of international law on the part of military personnel themselves, who fail to see in it the reflection of their own most cherished canons of professional conduct. It has not helped the cause of the international rule of law, moreover, that the main body of international legal scholars frequently adopt an adversarial, smug, and morally judgmental attitude regarding their own (historically marginal) role in these matters.

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PART I

The Moral Foundations of the Military Profession

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1

MILITARY ETHICS

A Discipline in Crisis[1]

Alasdair C. MacIntyre

Crises are recurrent and inescapable in the history of ethics, both in political and moral practice and in theoretical reflection on that practice. Why so?

No matter how well established and well functioning some mode of moral life is, from time to time the social context within which it has been functioning will undergo significant change. New issues arise, new questions are posed, and in the course of attempting to grasp and formulate those questions agents may have to recognize a need for new resources, resources that it may be difficult to provide. So it has been with the Aristotelian and Thomistic tradition at earlier stages in its long history.

So it is now in military ethics. What I have to say regarding this particular crisis falls into four parts. In the first, I discuss in traditional terms what it is that makes courage a virtue, the professional virtue of soldiers, although not only that. In the second, I consider the conception of war that was generally taken for granted in the era immediately preceding our own, in the legal, moral, and philosophical discussions of military ethics in the period that runs from the American Civil War to the end of the Cold War. I then identify the consequences of changes in that concept that have resulted from changes in the politics and the technology of armed conflict, changes that find expression in unfortunate metaphors that allow us to speak of a war on drugs and a war on terror.

The third part begins from an episode in the recent war in Iraq, which exemplifies what is distinctive in the contemporary exercise of the military virtues. From it, I draw morals both about those virtues and about the new questions that we should be asking, now that the concept of war has become dangerously ill-defined. In the fourth and final part, I return to the discussion of the virtues, reconsidering the relationship between prudence and justice in the light of my overall argument, and justifying my claim that military ethics is in crisis.

I. Courage as a (Military) Virtue

Some early Confucian thinkers are thought, perhaps mistakenly, to have excluded courage from the catalogue of the virtues, arguing that a would-be thief or murderer who was courageous is a more effective wrongdoer and a worse human being than a would-be thief or murderer who was cowardly. There are examples that may incline us to agree with them. When, in 1944, the

Red Army was advancing toward Germany's frontiers, Hitler ordered the battalions of the Waffen SS to stand firm, not to give up an inch of ground, but instead to die where they stood. To a man, they did. They endured magnificently in the service of evil. As Peter Geach remarked, either this was not courage or courage is not a virtue.[2] My claim is that this was not courage. Why not?

To be courageous is not only for an agent to risk or to endure dangers and harms, but to do so in a way and to an extent that is proportionate to the goods at stake in that agent's situation. If I am attacked by someone stronger and better armed than I am, and if the only way in which I can save myself is by running away, and if that is all that matters in that situation, it is not in the least cowardly to run away. But, if I am accompanied by a small child, and the only way in which I can have a chance of saving that small child from serious harm is by putting my own life at risk by standing and fighting, then courage requires me to stand and fight. If, in fighting a just war, nothing militarily will be gained by assaulting an enemy position, then to risk loss of life by assaulting it is not courage, but rashness. But, if the taking of that position is crucial to avoiding the frustration of one's objectives in fighting such a war, then courage may require risk-taking of a high order.

Everything turns on what goods are at stake. By this standard, the traits of mindless obedience exhibited by the Waffen SS were not courage. But, if this is so, then one cannot be courageous unless one has, and exercises, the ability to identify the goods at stake in particular situations.

What is true of courage is true also of temperateness, justice, and all other virtues. No set of dispositions is a virtue unless agents so disposed act so as to achieve the goods at stake in each particular situation. It is not required of them that they are able to make explicit those judgments about goods that are presupposed by their decisions and actions, let alone that they should have a theoretical grasp of what is involved. We do not become virtuous by attending lectures on ethical theory or, worse still, going to conferences on ethics, but by being educated into the relevant habits of thought and action in the life of everyday practice. To say all this is to say that we cannot have the virtue of courage, or the virtues of temperateness and justice, without also having the kind of practical intelligence that Aristotle called *phronesis* and Aquinas *prudentia*. It is perhaps to the point that Confucians generally do not recognize prudence as a virtue either.

A different and more radical objection to the thesis that courage is a virtue is advanced by those social psychologists and their philosophical allies who claim that there are no virtues, that the belief that agents exhibit one and the same set of moral traits through time in very different situations, so that their judgments and actions consistently exemplify those traits, is an illusion. What agents do is to respond to salient features of the situations in which they find themselves, so that their actions are the outcome of conjunctions of such salient features and agents' responses, exhibiting nothing like the consistency that is ascribed when we ascribe the virtues. The papers in which social psychologists report the findings on which they base such claims go back as far as J. M. Darley and C. D. Batson's famous paper of 1973, "From Jerusalem to Jericho: A Study of Dispositional and Situational Variables in Helping Behavior."[3] Their most important claim is that we can understand moral judgments and actions only in terms of the local contexts in which they occur. The conception of a virtue as one and the same trait that informs an agent's judgments and actions in indefinitely many and various situations lacks application. To think otherwise is to commit an attribution error. The moral philosophers who have relied on those findings include Gilbert Harman and John Doris.[4] There have been more than adequate replies to them by, among others, Christian Miller.[5] So let me make only two points here.

The first is that a lack of the virtues, as understood by Aristotle and Aquinas, in the population from which the 20th and 21st century subjects of experiments by American (and not only

American) social psychologists are drawn is something that, far from refuting, is entirely consistent with Aristotelian and Thomistic claims. For it is relatively infrequent for members of that population to have received the kind of early moral training and education that Aristotle and Aquinas take to be a prerequisite for the development of the virtues. Where we *do* find training and education expressly designed to compensate for this lack is at certain points in the military life. Why this is important can be brought out by considering a second and very different kind of reply to the social psychologists.

In 2011, massive fraud by (up to that point) a highly reputed Dutch social psychologist, Diederik Stapel, was uncovered, involving both articles authored or co-authored by him, and doctoral dissertations that he had supervised. That fraud, and the failure to identify it earlier, were investigated by academic committees who discovered an uncomfortably high incidence of bad research practices in their discipline generally. Such practices specifically included a willingness by researchers to go on running an experiment until a result consonant with their favored hypothesis was obtained, as well as a willingness to ignore discrepant findings.

So what had gone wrong? Let me risk committing an attribution error by saying that what mattered about those social psychologists was that no one had inculcated into them the virtue of truthfulness. Truthfulness is the indispensable professional virtue of all academic researchers, as courage is the indispensable professional virtue of soldiers. The problem for social psychologists is that, by and large, they have been recruited from the same population as the subjects whom they study.

When I speak here of indispensable professional virtues, it is important to be careful. Aristotle distinguishes the courage characteristic of the citizen soldier from genuine courage (*Nicomachean Ethics* III, 1116a15–1116b3). The citizen soldier often acts as the courageous agent would act, but in key part from fear of the consequences of not so acting. And a sufficiently stringent enforcement of penalties on fraudulent researchers might bring it about that social psychologists acted as the genuinely truthful agent would act without having the virtue of truthfulness. But in neither case would this be sufficient. Good soldiers need the virtue of courage (that is, courage informed by prudence and other moral virtues) just as good researchers—and not only in social psychology—need the virtue of truthfulness (that is, truthfulness informed by prudence and other moral virtues).

Why this is so in the case of soldiers I will illustrate later in this chapter. I note, however, that wars have to be fought with the soldiers whom you happen to have at the time. Frederick the Great tried to bring it about that his troops would behave well in battle, because they were more frightened of their own noncommissioned officers than they were of the enemy. It is a mark of his military genius that he could do so well even with soldiers of whom this was true.

II. The Conventional Conception of Warfare

When courage and prudence are exercised by soldiers, it is always in the context of some particular understanding of war. In the second part of this chapter, accordingly, I will be concerned with the conception of war and the understanding of what it is to act rightly or wrongly in war that developed from the 1860s to, say, the 1980s. We may think of it as the age of Francis Lieber (1798/1800–1872) and Jean Henri—or Henry—Dunant (1828–1900), although the conception of war and the conduct of war that their writings presuppose had already been presented in classic form by Clausewitz. Wars, so it was understood, are waged between states with the active engagement of their subjects or citizens, and the central concern of both ethics and law is with the laying down and enforcement of codes governing the conduct of war. So it is with Lieber's draft of the "Code for the Government of Armies in the Field" in U.S. President Abraham

Lincoln's "General Orders #100" of 1863. So it was with the first Geneva Convention of 1864, which resulted from the founding of the International Committee of the Red Cross, an event for which Dunant's influence had been largely responsible. And so it was with the Hague Convention of 1907 and the Geneva Convention of 1949.

Wars are to begin with a formal declarative act by some government, either a reasoned declaration of war, or an ultimatum stating conditions that, if unsatisfied by a specific time, will result in a state of war. Wars are to end with another act of government, an acknowledgment of defeat by one of the contending parties and an acceptance of the terms imposed by the victors. Those at war are to discriminate between themselves and their citizens and neutral states and their citizens, and between combatants and noncombatants. There are rules prescribing how prisoners of war are to be treated and forbidding fire directed against anyone raising a white flag or any medical personnel or ambulance bearing a red cross, red crescent, or similar symbol. Wars are to be sharply distinguished from police actions and the treatment of a prisoner of war is to be governed by different rules from those governing the treatment of those apprehended for committing criminal acts. It was these rules that gave new life to the conception of a "just" war: that is, of what provides a justifiable circumstance for declaring war, and what is required if one is to act justly in waging war. These rules provided the discipline of military ethics with a central part of its subject matter.

We need not labor the point that those rules were often violated during the late nineteenth and twentieth centuries, nor the even more important point that without the work of Lieber, Dunant, and all those others who contributed to the making of codes of conduct and of the Hague and Geneva Conventions, these wars would have been significantly more destructive and corrupting in their effects than they were. What we do need to note is how many large-scale armed conflicts (sometimes resulting in huge numbers of deaths) were not in this period classified as wars, except in retrospect. What was, from the standpoint of an imperialist power at the time, a rebellion, or a series of criminal acts (as in India in the 1850s, or in Ireland in 1916 and after, or in Kenya in the 1950s) was, or became (from the standpoint of Indians, or Irish, or Kenyans) a war for their independence. But because the imperialist powers were able to classify such wars as unjustified rebellions, they felt free to act without the moral or legal constraints of the laws of war. What was from the standpoint of the Igbo people a war for the independence of Biafra (a war resulting in a million deaths) was from the standpoint of the government of Nigeria (and also from that of the governments of the United Kingdom, the United States, and the Soviet Union) an unjustified rebellion.

Nonetheless, it was possible in this period to entertain as a not wholly unrealistic hope that the framework of rules that had developed for 100 years out of the work of Dunant and Lieber would be improved and strengthened, so that all large-scale armed conflict would be brought within its scope. There might then be general agreement on what justice in going to war consists in, what justice in the conduct of war consists in, and what justice in ending a war consists in. The military virtues of courage and prudence could then be understood as those qualities of mind and character that issue in just actions at each of these stages.

That hope is no longer realistic, because of a number of changes that have for many, especially in high places, blurred or obliterated the key distinctions made and valued by Clausewitz, Lieber, Dunant, and their heirs. These changes are of three kinds: rhetorical, technological, and political. I begin with the rhetorical use of metaphors.

George Lakoff has taught us how metaphors are indispensable in structuring and directing our thinking.[6] But they can also corrupt it. So it has been with the use of "war" as a metaphor and with metaphors used to characterize war, beginning with the "Cold War" and continuing with "the war on drugs," before lapsing into "the war on terror." What mattered most about

the Cold War, something obscured by the name given to it, was that it was not, in the Clausewitz sense, a war. It had an indefinite beginning and an accidental ending, and, while it lasted, it was a semi-permanent condition. It had an indeterminate and varying enemy—sometimes the Soviet Union and other countries of the Warsaw Pact, sometimes also, or instead, North Korea, China, Cuba, and/or Vietnam—and always that indeterminate (and, often enough, imaginary) force, the "international communist movement." It was waged rhetorically, in the name of democracy, and invoked to justify antidemocratic interventions in Guatemala, Iran, and Chile.

The so-called war on drugs marks a further stage in the misuse of, or the transformation of, our conception of war. Here, the distinction that is blurred and obscured is that between a war and a police action. Police actions are directed against criminals, not enemies. Their aim is to make arrests, and to bring criminal suspects to trial. Armed force in police actions is employed to serve these aims. But the war on drugs is at once more than a set of police actions and less than a war, it too having no foreseeable determinate ending. And so I come to the rhetoric of the war on terror.

Here, we may begin by noting that that war, so far as the United States is concerned, began with something not too unlike a war in the older sense. Al-Qaeda was not of course a state, but from 1992 onward its then-leadership identified the United States as an enemy and issued statements that amounted to a declaration of war. The aim of the war so intended was to end what they perceived as the unjust American occupation of Islamic territory. They were especially outraged by the presence of American troops in Saudi Arabia, as allies of those false guardians of the Islamic holy places, the Saudi royal family. The achievement of that aim would have been to end *that* war. So their actions up to and including the attack of 9/11 were designed to make the cost of maintaining that occupation so high that the United States would be unwilling to pay it.

Their war, as they conceived it, had a determinate beginning, an intended end, and two well-defined parties at war. So, at first, did the justified retaliatory war launched by the United States. Its primary aim was to bring to justice the perpetrators of the crimes of 9/11, while its secondary aim was to remove the government of Afghanistan that was sheltering those perpetrators. Yet both these well-defined wars metamorphosed into the ill-defined war on terror. What do I mean when I call it ill-defined? One example will serve.

The United States has by now held in prison for a considerable period of time individuals captured outside the United States who have been and are treated neither as prisoners of war (to whom the rules of the Geneva Conventions apply) nor as those arrested during a police action, who have to be charged and brought before a court of law. That is, it has refused to acknowledge the applicability of either of those conceptions of justice that had up to a certain point in time been recognized as supplying the standards of acceptable behavior. So from the standpoint of the just war tradition, conceptual indeterminacy has issued in flagrantly immoral action.

Finally on these issues of indeterminacy, let me briefly take account of the part played by technology in altering our conception of the distinction between being at war and not being at war. I take just one example, that of cyber warfare. In 2007, NATO set up a meeting of experts in international law to determine how that law applies to cyber warfare. One question posed to them was that of whether, if an organized, non-state group of hacker activists launched a seriously harmful disruptive attack, the so-called law of self-defense applies, justifying military retaliation, or whether the only justified response would be one of law enforcement by a police action. On this, there was significantly no consensus, a majority taking the former view.[7] Interestingly, this report has not as yet been endorsed by NATO or any other official body. So the issue remains indeterminate, to be determined on particular occasions by political choices.

Indeed, this is the larger significance of all these conceptual indeterminacies. They leave open for political choice a far wider range of issues than was the case within the older conceptual scheme for thinking about war. But, of course, it has also been certain types of political choice that have multiplied these conceptual indeterminacies.

III. Virtue, Morality, and the Current Transformation of Warfare

In what is plainly going to be an unusually influential book, *War from the Ground Up: Twenty-First-Century Combat as Politics*,[8] Emile Simpson has described a crucial change in the relationship between political and military decision-making. In what he calls conventional wars (that is, wars as characteristically understood during the preceding period), policy dictated strategy and strategy was the work of those in military command, so that "politicians, if they do listen to their generals have to consult a relatively small number of people. But in contemporary armed conflict strategic and political issues often arise at ground level, so that junior commanders often make political choices, either consciously or by implication through a course of action" (p.120). Political dialogue concerning military operations therefore needs to include voices from every level, but "Liberal democracies are not constitutionally configured to do that" (p.121). Policy decisions are reserved for those who govern. Simpson quotes Vernon Bogdanor on the importance of recognizing how essential it is for democratic accountability that civilian authority over political decisions should not be usurped.

Two questions become inescapable. The first pertains to what military commanders in the field are doing when they make political decisions for military reasons. The second pertains to the relationship between those decisions and the policies of their governments. I will pose both questions in the light of a single well-known example.

In 2006, United States forces had lost control of large areas in and around Ramadi, in Anbar province in Iraq, in the face of a Sunni insurgency, supported by al-Qaeda contingents whose leaders were not Iraqis.[9] At least one American general judged that there was no possibility of defeating that alliance. But at this point al-Qaeda and the local tribal sheikhs began to fall out. Al-Qaeda insisted on marriages between their members and women of the tribes. This violated tribal custom and was therefore prohibited by the sheikhs as the guardians of custom. Al-Qaeda declared that tribal custom had no authority whatsoever. Only the Koran has religious and moral authority and to hold otherwise is to fail in submission to God. The sheikhs and their tribal followers were finally brought to the brink of armed conflict with al-Qaeda by al-Qaeda's murder of a sheikh, something of which the then Colonel Sean MacFarland, a brigade commander with the 1st Armored Division, became aware as a result of the activities of Captain Travis Patriquin, formerly a Special Forces officer.

Captain Patriqin spoke Arabic and his all-important contributions to the military enterprise in Iraq were his conversations. It was in the course of these that he learned how things stood between the sheikhs and al-Qaeda and translated for Colonel MacFarland a proposal by the sheikhs that, if they turned on al-Qaeda, American forces would provide material and tactical support. Remember that this proposal came from those who had up to this point been waging lethal war against the forces commanded by Colonel MacFarland, so that to agree to it, as Colonel MacFarland did at a meeting attended by him and some 50 sheikhs, was to take a considerable risk.

The sheikhs made one condition. They required Colonel MacFarland to guarantee that the American forces would not withdraw from Ramadi until they, the sheikhs, had completed their operations against al-Qaeda. Colonel MacFarland had no authority to commit himself to this. He did commit himself to it. What were the outcomes? The first was the Sahwa al Anbar, the

Anbar Uprising, in which the sheikhs and their tribal followers took on and defeated the forces of al-Qaeda. Al-Qaeda, as is their way in such situations, moved out, in this case eastward to Mosul and elsewhere. A second outcome was the creation, early in the command of General Petraeus—who had not yet arrived when Colonel MacFarland made his initial game-changing decision—of a Sunni militia in Anbar province, paid by the United States military, fully cooperating with them, trusting them and securing a high degree of law and order within the province. A third and subsequent outcome we will identify and discuss later. What we have to ask now is what Colonel MacFarland was doing when he did what he did.

He made three judgments. The first was that what was of the first importance was to defeat al-Qaeda in Anbar province. The second was that only the Sunni tribes were capable of defeating al-Qaeda there. The third was that the risk of strengthening a still potentially hostile force by affording the tribes material and tactical support was worth taking. In making those three judgments and acting on them, Colonel MacFarland was exercising the military virtues in their contemporary form. To understand what is involved, we need to return to my earlier discussion of the virtues.

There, I argued, following Aristotle and Aquinas, that the exercise of courage always involves the exercise of prudence. What Colonel MacFarland's decisions and actions exemplify is the exercise of prudence of a more specific kind, what we may call (following Aristotle) political prudence. Political prudence takes note of a particular range of goods and its effective exercise is always apt to transform the political landscape, often in unpredictable ways. It is concerned with the particularities of some local situation and with sustaining or undermining some set of political institutions, as Colonel MacFarland was concerned to uphold tribal custom and authority. Its exercise at ground level inevitably goes beyond implementing the decisions of those with higher political authority and it is liable to make a significant difference to the future options that confront those higher decision-makers. Its exercise, which always involves risk-taking, requires courage, so that the relationship between prudence and courage becomes more complex than I initially suggested. It is not just that the exercise of courage requires prudence, but that the exercise of political prudence requires courage and that political prudence has become a military virtue. Moreover, its exercise requires a concern for justice. It mattered a good deal that the sheikhs trusted Colonel MacFarlane to act justly in honoring his commitments to them and he could not then have been unjust without also being imprudent.

We would make a bad mistake if we thought of Colonel MacFarland as having found application in this particular case for some set of general rules or policies that he already had in mind. When General Petraeus arrived on the scene, he asked Colonel MacFarland if he had as yet read the counterinsurgency manual and the answer was "No." I am not, of course, saying that there is no place for rules in the exercise of political prudence, but knowing what rules to apply and how to apply them is itself an exercise of prudence and not of rule-following. The contrast between an ethics in which prudence, including political prudence, has a central place and an ethics in which rule-following has displaced it can be brought out by considering the case of al-Qaeda, whom the Anbar uprising defeated.

For them, as for other Salafists, the practical content of Islam is to be expressed in a set of injunctions drawn from the Koran whose application is taken to be independent of cultural context. Hence derived their conflict with the Anbar tribes, also Sunni Muslims, for whom those injunctions are to be interpreted, supplemented, and applied with reference to tribal custom. The mistake made by Salafists is to suppose that any set of injunctions can specify a way of life without either the kind of interpretation, supplementation, and application that are commonly supplied from the resources of whatever culture it is in which those injunctions are respected, or else from some other kind of interpretive mediation, as supplied by the kind of philosophical

reflection at which the greatest Islamic thinkers have excelled (something else condemned by Salafists). That they themselves are interpreting and applying the relevant Koranic injunctions in their own cultural terms, the terms of a deeply impoverished cultural reaction to Western modernity, is something of which they are unaware.

The result is al-Qaeda's allegiance to an abstract and uncritical legalism, an ethic of rules for which the virtues can be none other than those qualities that ensure unquestioning conformity to those rules. Among these, there is no place for prudence, let alone for political prudence. It is important that such an abstract legalism is not exclusive to Salafists nor are the mistakes from which it derives. Both are to be found among culturally impoverished Christians in both Catholic and Protestant versions. It is even more important that in making these mistakes, Salafism is eccentric by Islamic standards. Hanifa, the largest and most influential school of Sunni jurisprudence, has always recognized, from the Abbasid caliphate onward, that obedience to the precepts of the Koran and to the Hadith not only is compatible with, but requires the exercise of reflection in finding application for those precepts, in interpreting and extending them, and in bringing them into relation to local custom.[10] To Hanifa, Salafism has always been a threat, but militant Salafism in its contemporary forms, especially as it informs the heterogeneous organizations and conspiracies that have taken the name of al-Qaeda, represents a peculiar threat, not only within Islam, but to the rest of us, a threat that is not only a matter of its horrendous crimes, but also of the ethical and anti-philosophical commitments that find expression in those crimes. Its philosophical errors play a crucial part in all this. Hume remarked that "Generally speaking the errors in religion are dangerous, those in philosophy only ridiculous." About the latter, al-Qaeda shows him to be mistaken. So we have reached a point where we have been able to ask and answer a question that Colonel MacFarland did not have to pose: "What is al-Qaeda?"

Our answer has been that al-Qaeda is a movement that begins from commitment to a Salafist theology, a commitment that issues in a politics of armed conflict designed to secure blind submission to that theology, a movement that is continually regenerated in and from the impoverished cultures in which it is at home. It has been important to give this answer, since only in the light of it are we able to answer the further question, the one that Colonel MacFarland did ask: "Who can defeat al-Qaeda?" But now we are asking it not locally, as he did, but globally. The answer is that it is *only* from within Islam, *only* from an Islamic standpoint theologically and philosophically superior to that of the Salafism of al-Qaeda, that al-Qaeda can be defeated. Not only will the military defeat of the several al-Qaedas be insufficient, but a politics that fails to recognize this will be an inadequate politics, a politics uninformed by prudence and a politics in consequence of unintended consequences.

IV. Prudence, Justice, and the Contemporary Crisis in Military Ethics

To illustrate this, I return to Colonel MacFarland's decision in 2006. Earlier, I noted two outcomes of that decision, the first the defeat of the al-Qaeda units in Anbar province, the second the creation of a Sunni militia, paid and supported by the United States military, that secured law and order in that province. Unhappily, there has been a third outcome. Before withdrawing from Iraq, the United States transferred the responsibility for paying and maintaining that militia to the present Iraqi government. Since then, not only has that militia gone unpaid, but the Sunni leadership has been systematically threatened by the actions of the Shiite government. The end result has been widespread Sunni disaffection and a sense of their abandonment by those Americans whom the Sunni had trusted. And in January 2014, al-Qaeda, since then displaced by the even more dangerous Islamic State of Iraq and the Levant (ISIL), was able to return to Anbar province. But this negative outcome needs to be understood in a wider context.

Whom did Colonel MacFarland commit by his decision? American policy makers at the time allowed it to be interpreted as a commitment that justified Sunni confidence in the United States' further intentions. Yet they did not view it as any kind of constraint on their own future actions. It was after all only the decision of a local commander. So without intending it, they presented the United States and its commanders to the Sunni as untrustworthy, and they did this in the course of handing over power in Iraq to a Shiite government dedicated both to dominating the Sunni and to solidarity with Shiite Iran. So confusion about the relationship between military and political authority finds expression in self-defeating policies. Might those policies become more generally self-defeating?

They will do so, I am arguing, if the theological and philosophical dimensions of the struggle against al-Qaeda are not adequately grasped. Al-Qaeda's aggression, especially on 9/11, satisfies the conditions traditionally required for waging a just war against another state, but, just because al-Qaeda is not a state, although aspiring to found many states, the struggle waged will not achieve a just outcome unless reconceived, so that in some new ways military action serves nonmilitary ends. Consider recent events in Northern Mali. In the spring of 2012, al-Qaeda of the Maghreb, reinforced by fighters and weapons from Libya, took advantage of a rebellious Touareg incursion into Mali from the Sahara to launch their own invasion and to occupy for several months the cities of Gao and Timbuktu and the surrounding countryside. Their aggression was directed both against the government of Mali and against the Sufist culture of the people of Northern Mali. What was notable in the response of Western governments was the importance that they attached to the former as compared to their almost complete lack of attention to the latter. Why was this a major error?

Sufism is, of all the modes of Islamic devotion, the one most at odds with al-Qaeda. It traces its origins to the earliest followers of Muhammad, but understands their teaching very differently from the Salafists. Its various orders, whether Sunni or Shiite, are schools in the practice of prayer, of learning how to move toward awareness of the presence of God, and how to purge from the self that which divides one from God. Sufism reverences holiness in its saints, and the tombs of its saints are sites of prayer. It has made itself at home in a variety of different Islamic cultures. Its practices are regarded by al-Qaeda as idolatrous. In Northern Mali, it has been established since the Middle Ages, and Timbuktu preserves the memory of its cultural inheritance from the period when it was a great Islamic city. The area around Timbuktu is a place of Sufist tombs, and the city itself house a remarkable set of collections of manuscripts dating from the thirteenth to the sixteenth centuries, manuscripts in Arabic, but also in Fulani, Sudanese, Farsi, and Songhay. In the sixteenth century, Timbuktu was home to a university of 25,000 students and a center of Islamic learning. It is still a center of what was, and could be again, although poor, a culture of grace, civility, and piety.

Al-Qaeda vandalized the tombs and would have succeeded in burning the manuscripts, but for the heroic and ingenious rescue effort mounted by those who take care of them in the Ahmed Baba Institute. What matters is that these were not incidental side effects of al-Qaeda's invasion. The assault on Sufist culture was and is at the core of al-Qaeda's project. But the response of the Western powers has been to treat the defeat of al-Qaeda in and around Northern Mali as entirely a military problem to be solved first by the French military action, and then by the Malian army and a multinational African peacekeeping force. The response of al-Qaeda, as always, has been a temporary withdrawal, leaving in place, merged into local communities, as many of their people as they can, staging suicide attacks and planting improvised explosive devices at roadsides. The population lives in fear, the immigrant Touaregs have gone, the tourist trade has disappeared, numerous shops are shuttered.[11] If this state of affairs continues, if the economy of Northern Mali is not restored and strengthened, if Sufist culture does not once more flourish, then al-Qaeda has already won. Its military defeat will have become irrelevant.

V. Conclusion

My conclusion therefore goes beyond Emile Simpson's. It is not just, as he has argued so impressively, that officers in the field now recurrently have to make what are both political and military decisions. It is also, as Simpson suggests (but does not quite say), that the large changes that have had this result have left us without any adequate conception of *what war now is*, and so put in question much that has long been taken for granted.

These changes have been least understood in the arenas of civilian politics, and clarity of thought has been replaced by the confused rhetoric of the so-called war on terror and with it a misconception of the nature of the struggle against Islamic terrorism and now ISIL. About that struggle, the central truths relevant to Americans are that it is of crucial importance to the United States that Islamic terrorism and ISIL should be defeated, that the United States may on occasion have an indispensable part to play in contributing to that defeat by military actions, but also that not only is it impossible for Americans by themselves to defeat Islamic terrorism and ISIL, but that their government's actions have contributed to, and continue to contribute to, the strengthening of Islamic terrorism and ISIL. How so?

The United States has allied itself in the Islamic world with large-scale sponsors of Wahabbist teaching, most notably with the rulers of Saudi Arabia, and so with those who promote the selfsame Salafism that provides Islamic terrorism with its recruits. And its actions in Afghanistan, Pakistan, and elsewhere, whatever their justification, reinforce just those images of the United States that inform political Salafism. In both respects, the policies of the United States are self-defeating.

But my primary concern in this chapter has not been with policy. Rather, I want to ask, given this understanding of political realities and the more general perspective that I have outlined, what are the implications for our thinking about military ethics? They are twofold.

First, we have been reminded of the general truth that the effective appeal in practice to some particular set of virtues and rules always presupposes some particular historical and social context, some background agreement in ways of thinking, feeling, and acting that for most of the time is taken for granted, but which makes that effective appeal possible. It is characteristically when that context is transformed that we are made uncomfortably aware of a need to rethink some of the ways in which we have hitherto understood and applied our evaluative and normative concepts. We become able to do this adequately only when we identify accurately those changes in the social context that have made our established practice problematic.

This is what I have tried to do in this chapter. Hence what may have seemed my disproportionate attention to historical, social, and even theological considerations of a kind often thought irrelevant to enquiries in ethics. In fact, however, my historical, sociological, and theological claims need to be spelled out a good deal further since they provide some of the premises for my conclusion that it is now imperative to rethink our conceptions of the virtues and of rules, as we apply them in military situations.

A second central claim has been that one area that needs special attention is the relationship between the exercise of prudence, more particularly of *political* prudence, and that of the other virtues.

I began by talking about the relationship between prudence and courage. Let me, in conclusion, say something more about prudence and justice. Discussions in the just war tradition have focused either on what makes it just to go to war or on what is required of us if we are to act justly while waging war. Yet quite as important is the need for justice in bringing a war to a close and in constructing a just peace as the end to which the waging of war was a means. To defeat an enemy after extended armed conflict is characteristically to bring into being some new set of relationships, not only between the victors and the defeated, but also between both of these and those others with whom they engage politically and economically. Whether those

relationships are or are not just always depends in part on how the preceding armed conflict was waged, and whose interests were taken into account by those who waged it.

If Islamic terrorism and ISIL are at home in and generated from certain specific types of culture, as they are, then it matters very much that both during and after the armed conflict, a care for justice should extend to the other inhabitants of those cultures. What constitutes such a care in this or that situation requires the exercise of political prudence informed by a grasp of the local particularities of this or that situation. It will not be surprising, therefore, if the important decisions and actions are the work of local commanders, and if a better understanding of what justice and the other military virtues requires is the outcome of reflection on those decisions and actions rather than of more theoretical reflection on general principles. But for the moment, and for the foreseeable future, most of us do not have the kind of experience and the kind of understanding of that experience that we so badly need.

It is therefore important in presenting these reflections to understand that they are not addressed to, or primarily for the benefit of, a purely academic audience. For if my central theses are correct, then the least likely context for us to learn what we most need to learn is through our interactions solely within such a restricted and narrowly specialized community of discourse. We may instead hope that, at some time in the future, reflection from an academic distance on what has been learned in and from engagement in the *practices* of the armed conflicts of the recent past and the immediate future will once again become profitable. But the present crisis in military ethics is such that that time is still not quite at hand.

Notes

1. Editor's note: This chapter was originally written and delivered as the opening keynote address for the 40th annual meeting of the North American International Society for Military Ethics at Notre Dame University (October 15, 2013).
2. Peter T. Geach, *The Virtues* (Cambridge: Cambridge University Press, 1977): ch. 8.
3. J. M. Darley and C. D. Baston, "From Jerusalem to Jericho: A study of dispositional and situational variables in helping behavior," *Journal of Personality and Social Psychology* 27, no. 1 (1973): 100–108.
4. For example, Gilbert Harman, "Moral philosophy meets social psychology: Virtue ethics and the fundamental attribution error," *Proceedings of the Aristotelian Society* 99 (1999): 315–331; and "Virtue ethics without character traits," Princeton University (August 18, 1999): www.princeton.edu/~harman/Papers/Thomson.html. See also John Doris, *Lack of Character: Personality and Moral Behavior* (Cambridge: Cambridge University Press, 2005).
5. For example, *Character and Moral Psychology* (Oxford: Oxford University Press, 2014).
6. For example, George Lakoff and Mark Johnson, *Metaphors We Live By*, 2nd edition (Chicago, IL: University of Chicago Press, 2003).
7. Michael Schmitt (Ed.), *Tallinn Manual on the International Law Applicable to Cyber Warfare* (Cambridge: Cambridge University Press, 2013).
8. Emile Simpson, *War from the Ground Up: Twenty-First Century Combat as Politics* (New York: Columbia University Press, 2012).
9. On this episode, see Fred Kaplan, *The Insurgents* (New York: Simon & Schuster, 2013): 244–245; and David Kilcullen, *The Accidental Guerrilla* (New York: Oxford University Press, 2007): 155–170.
10. See Baron Wheeler, *Applying the Canon in Islam: The Authorization and Maintenance of Interpretive Reasoning in Hanifa Scholarship* (Albany, NY: State University of New York Press, 1996).
11. *Chicago Tribune* (May 16, 2013), Sudarsan Raghavan's *Washington Post* report (May 26, 2013), and Xan Rice in the *Financial Times* (August 24–25, 2013).

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2

AMERICAN MILITARY PROFESSIONS AND THEIR ETHICS

Colonel Don M. Snider

> How can I be a professional, if there is no profession?
>
> *Statement from an Army Major, 1999*[1]

It is generally recognized that there are now three distinct military professions in America, each identified with the physical domain in which their warfare expertise resides—the land, the sea, or the air and space.[2] These military professions, each of which emerged out of the early federal bureaucracies, still roughly coincide with the boundaries of the military departments of the Army, Navy, and Air Force. Some have argued cogently that a fourth military profession is now emerging, a Joint Warfare profession, but that subject is beyond the scope of this chapter.[3]

For each of these military institutions, there are war colleges, libraries, museums, and centers of history filled to overflowing with rich volumes written both by academics and by the institutions themselves, particularly as regards their operations in periods of war. But what is noticeably thin within that history is the institutions' own focus on themselves as a vocational profession rather than just a military department. In the case of the U.S. Army, after undertaking in 1970 a serious assessment of the professional failures of its officer corps in Vietnam,[4] fully 30 years elapsed before the next major study of the Army as profession was initiated at West Point in 2000.[5]

Thus the quotation above from that renewing study, though made over a decade ago, sets the frame for this chapter. In it, I want to trace the history of the intellectual thought, as it developed within the U.S. Army in America from roughly 2000 to the present, on what it means for the Department of the Army to be a military profession, and equally what it means for Army soldiers and civilians to consider themselves professionals.

Because of my own research within the Army over this period, most of my descriptions and examples will, of necessity, be Army-specific. But as current events are showing, the other military departments in the U.S., and in other nations as well, are proceeding anew with their own institutional evaluations and formulations of profession and ethic, and I will include reference to those as appropriate.[6]

Throughout this chapter, there are two levels of analysis, one each at the levels of the institution and the individual. As noted by the U.S. Army major above, at the level of the individual the late 1990s was a very difficult time for many young Army officers to see themselves as professionals, or to see the Army at the institutional level as a profession. As we wrote then:

> With post-Cold War loss of end-strength and tightened financial resources, it had been a hard decade for the Army; the catch phrase was "doing more with less," while supporting a remarkably increased rate of deployments to such places as Haiti, Bosnia, and Kosovo. These other-than-war missions brought sharply into question the Army's identity and its ability to prepare for what it still thought was core to its future, the conventional land battle. At home the economy was booming and young officers were leaving the Army at rates twice the historical norm.[7] Studies by knowledgeable outsiders,[8] soon to be reinforced by the Army's own internal studies,[9] documented a stressed institution whose professional culture was in peril. "How the Army did things" (Army culture) had become increasingly bureaucratic, micromanaged, and then challenged and found wanting amid heightened distrust between the generations of the Army officer corps.[10]

Fortunately, in the ensuing years, the Army has wrestled mightily with these issues of "profession," "professional," and "ethic," even while stretched out across the globe fighting two wars. I will first note the evolution at the institutional level where the central theme is that of the dual character of our military departments—by organizational character they are simultaneously both government bureaucracy and military profession. Which character dominates at any point in time is a result of the actions of the previous and current strategic leaders of the department, both uniformed and civilian. Second, I will discuss the role and nature of professional ethics as understood within military professions. Then, third, I will turn to the individual level of analysis and focus on the role of the ethic as a means of social control of the members the profession via their personal developmental motivations. I then offer a penultimate section on the content of such military ethics and their inherent moral obligations, including the sensitive one of dissent. Ultimately, I will conclude with some observations on what other military service organizations striving to articulate their "professionalism," whether in the U.S. or elsewhere, might adapt from the Army's recent experiences.

I. The Dual Nature of Military Organizations: Both Bureaucracy and Profession[11]

A profession is "a relatively high status occupation whose members develop and apply abstract [expert] knowledge as human expertise to solve problems in a particular field of endeavor."[12] There are five aspects of a profession that are inferred in this definition: (1) professions provide a unique and vital service to the society served, one it cannot provide itself; (2) they do so by the application of expert knowledge and practice; (3) because of their effective and ethical application of their expertise, they earn the trust of the society; (4) professions self-regulate—they police the practices of their members to ensure it is effective and ethical; this includes the responsibility to educate and certify professionals, ensuring only the most proficient members actually apply their expertise on behalf of the client; and (5) professions are therefore granted significant autonomy in their practice on behalf of the society. Traditionally, the law, medicine, and theology were considered professions within Western democracies. More recently, the military, accountancy, and a few other service vocations have been accorded the status of professions by the societies they serve. These five aspects are expanded below.

First, the service provided by professions is vital to the flourishing of the society that establishes them. Yet, such work is generally beyond the ability of the members of society to do for themselves. Thus, *a deeply moral relationship of trust* exists, and must exist, between the profession, its individual members as "professionals," and the society served. Professionals are to continuously develop expertise and use that expertise only in the best interests of the society served—professionals are thus empowered servants of the society. A military profession, in particular, must provide the security, the common defense, which a society cannot provide for itself, but without which the society cannot survive. *That military profession is then morally obligated to use its military expertise only in accordance with the values held by the society that it exists to serve and protect.*

Second, unlike bureaucracies in the purest sense, professions create and work with expert (abstract) knowledge developed into human expertise, performing uniquely expert work. It is not often routine or repetitive work: a professional's expertise is most always applied within new, often unexpected, situations. Professionals require years of study and practice before they are capable of expert work. They normally start at the entry level and develop the art of their practice by study and experience. There usually is no lateral entry into professions. Historically, as mentioned above, medicine, theology, law, and the military are professionalized occupations.[13] Effectiveness, rather than strict efficiency, is the key to the work of professionals—the sick want a cure, the sinner wants restoration, the accused and the victim want justice, and the defenseless want security. Although the professional must always aim for both effectiveness and efficiency, effectiveness is what counts most.

Third, professions earn and maintain the trust of their clients through their effective and ethical application of their expertise on behalf of the society they serve. Thus *it is the society served* that will determine whether the profession has earned the high status of a noble occupation and the autonomy that goes along with it. It is not true that "once a profession, always a profession." Professions that fail to meet expectations for effectiveness and ethical performance risk losing the trust of their clients and their esteemed status as a profession (think of accountancy after the Enron scandals, and the Navy after the Tailhook scandal). As a result, they are then controlled more like a bureaucracy than a profession with the issuance of more detailed legislation and regulation, restricting previously granted autonomy.

Fourth, to earn their clients' trust, professions are guided by a professional ethic. Professions control and guide the actions of their institution and its professionals and the effectiveness of their work by their ethic. A professional ethic is the evolved set of laws, values, and beliefs, deeply embedded within the core of the profession's culture, which binds individual members together in common purpose to do the right thing for the right reason in the right way. The ethic sets the conditions for the creation and maintenance of a motivational, meritocratic culture. The ethic provides a set of standards that individual professionals willingly impose on each other to keep trust with their client. Hence, a *self-policing ethic* is a necessity for any profession. This is of special importance for a military profession given the lethality inherent in its expertise.

A profession's ethic also serves to motivate members of the profession. Today, businesses and bureaucracies motivate their workers primarily through extrinsic factors such as salary, benefits, and promotions. In contrast, *professionals themselves place the greatest value on the service they render to society*. Although extrinsic factors are important to professionals, they place public service and adherence to a professional ethic above compensation. Professions motivate their members more with inspirational, intrinsic factors—the lifelong pursuit of expert knowledge, being certified in their expert and honorable work of service, camaraderie with fellow professionals, and the status of membership in an ancient and revered occupation. Professionals value the service they render to society more than the remuneration society extends them. This is why a profession is a *calling*—something far more important and satisfying to the professional than a job.

Fifth, and last, when a profession's work is done effectively and ethically, the institution and its individual members are granted significant autonomy. Members of professions are trusted to perform their expert work without close supervision. As we will discuss in more detail later, the professional's actual work is *the continuous exercise of discretionary judgments*, acted upon and followed up by the professional for effectiveness. Think of a surgeon doing surgery in an operating room, a military leader conducting security operations in a combat zone, or a civilian scientist doing research in an Army laboratory. All have trained for years, all are surrounded by technology, all are granted extensive autonomy in the execution of their own discretionary judgments. Each is working as a professional, within a profession.

II. Military Organizations as Government Bureaucracies

For brevity and the purposes of this chapter, I will simply assert that it is correct to view, organizationally, each cabinet-level department within the federal government of the United States, at least, as a bureaucracy. In the Army's case, it is clear that when it was established from the colonial militias in 1775, the American founders saw it, though necessary and useful, as an entity to be tightly controlled, as are bureaucracies. It was not until the late nineteenth century that the Army and Navy were granted the status of military professions, adding that character to their bureaucratic status.[14] Remarkably, both of them have been military professions now for less than half of their existence!

It is not so much the absolute character of bureaucracy that we are interested in as it is the contrast between mere bureaucracies and legitimate professions. Thus the continuous challenge for the strategic leaders of the Army profession, at least since being professionalized, has been to keep these two internal natures in proper proportion, with profession predominant over bureaucracy in all areas except those very few that are intrinsic to any large organization. The reasons for this are readily apparent in Table 2.1, which contrasts the ideal characteristics of a profession with those of a bureaucracy.

The right column of the table displays those characteristics of bureaucracy such as its work, which is the application of nonexpert knowledge to routine and repetitive situations, the application embedded in organizational routine and process rather than in the employees themselves.[16] The extreme of this repetitive sameness of routine, tantamount to an office assembly

Table 2.1 A Comparison: Profession vs. Bureaucracy[15]

Parameter	*Profession*	*Bureaucracy*
Knowledge	Expert, abstract; requires lifelong learning	Nonexpert; quickly learned on the job
Practice	Knowledge applied with discretion to new situations by individual professionals	Repetitive situations, work done by following SOPs, administrative rules, and procedures
Measure	Focus on effectiveness of applied practice	Focus on efficiency of resources used
Culture	Granted autonomy with self-policing ethic	Closely supervised; imposed governmental ethic
Investments	Priority investment in individual professionals	Priority investment in hardware/software, routines
Growth	Individuals develop coherent professional worldview	A worldview is irrelevant to the work
Motivation	Intrinsic, altruistic toward client; work is a calling	Extrinsic, egoism; work is a job for personal gain

line, is seen broadly throughout governmental bureaucracies—think of a state department of motor vehicles that issues drivers' licenses and automobile registrations and license plates day in, day out, over the years!

In contrast, the coins of the professional realm are expertise and the knowledge underlying it. Far more so than other occupations and organizations, professions focus on generating expert knowledge and the ability of its members to apply that expertise to new situations. Medical professionals perfect medical techniques to apply to patients, lawyers apply legal expertise in trying cases, and the military develops new technologies, capabilities, and strategies to "provide for the common defense," most often in distant places and under difficult circumstances that cannot be foreseen in advance. Such professional expertise is ultimately validated by the client (or professions would not survive), and forms the basis for the trust between the profession and the society served. As noted earlier, success in professional practice stems from effective and ethical application of the expertise—the patient is cured; the case is won; conflict is deterred or, if not, settled on terms favorable to the United States. Thus efficiency, while important, ranks behind effectiveness as a measure of success for professions.

And herein is the basis for the natural tensions within the dual character of most military organizations. Predominantly, they are focused on creating and adapting their expert knowledge and developing it into their individual members to use. But in many other situations, generally in administrative, logistical, educational, and headquarters contexts, they are a hierarchical bureaucracy focused on apparatchik-type work familiar in any large organization in the modern world today. In this world, the watchword is efficiency, "doing more with less." While this dual nature is unavoidable and healthy for the nation, it can be cause for considerable tensions, both for the individual professional and for the professional organization as a whole. Resolving those tensions, constantly, is the unique responsibility of leaders at the strategic level, those known as the stewards of the profession.[17]

Maintaining an appropriate balance between a specific military organization's two natures is thus ever elusive. At any time, bureaucracy can come to predominate over profession. The result is a military organization whose leaders, self-concepts, decisions, and organizational climate for soldiers reflect a high degree of bureaucracy and efficiency rather than military professionalism and effectiveness. In the bureaucratic mode, the self-concept of that military's members is likely to be one of "employee," while in the mode of a professional following a vocational calling their self-concept is more likely to be one of "military expert" or "honorable servant." Samuel Huntington observed, decades ago, that "officership is a public bureaucratized profession. The legal right to practice the profession is limited to members of a carefully defined body. His commission is to the officer what his license is to the doctor."[18] The U.S. Army, during Operation Desert Storm in 1991, for example, was a case of the latter: highly professional.[19] As our research in the 2000 study ultimately demonstrated, however, the U.S. Army by the end of the drawdown of the 1990s had become all too much the former: that is, the Army's strategic leaders had allowed bureaucracy to dominate profession.[20]

III. The U.S. Army's "Essential" Characteristics of Profession

For its own part, the U.S. Army decided last year, when it published its new doctrine, to frame its understanding of itself on a set of "essential" characteristics of profession that, notably, are seldom, if ever, manifested within bureaucracies. There was a long discussion within the communities of practice that drafted the doctrine as to just which, and how many, "essential" characteristics must be present institutionally for the Army to legitimately be a profession. They settled on just five: Military Expertise; Honorable Service; *Esprit de Corps*; and Stewardship of

the profession—which, if present, will produce the fifth essential characteristic, Trust, both internally among professionals and externally with the American people.[21] Why just these five were selected should be obvious by the end of this chapter.

Skeptics, however, may still demand to know why it matters whether the Army, or any of America's military services for that matter, is more like a bureaucracy or more like a profession. What difference does it make? The Army will still be here, performing its service for the nation, will it not?

The short answer is that it is of supreme importance to the nation how the Army's strategic leaders manage this difficult and constant tension between its professional and bureaucratic identities. Historically, militaries that do not resolve this tension in favor of their professional identity can experience the "death" of their professional character.[22] As their bureaucratic nature comes to dominate, they cease to be a profession creating new expert knowledge and developing the practice of their professionals. Instead, they become little more than an obedient military bureaucracy, treating their officers and soldiers as bureaucrats (think again of the quotation at the beginning of this chapter). In this regard, it is a chief concern of mine that the current military forces of Western European nations, with one or two exceptions, have come to serve more as obedient bureaucracies and less as professional organizations since the end of the Cold War.

IV. The Expert Knowledge of Military Professions

It is the case that America's military professionals have a highly unusual and demanding set of tasks. Stated rather starkly by Dr. James Toner:

> The preeminent military task, and what separates it from all other occupations, is that soldiers are routinely prepared to kill . . . [and], in addition to killing and preparing to kill, the soldier has two other principal duties, rarely discussed . . . some soldiers die; when they are not dying they must be preparing to die.[23]

During our research, we concluded that the expert knowledge necessary for such unique tasks could be mapped into four clusters that, among America's professions, demark the Army and the other military departments that are in the business of "killing and dying."[24]

First, the military–technical cluster is the expert knowledge of applying coercive, lethal force while employing Army units in actual combat, or what Huntington much earlier called the "management of violence." Second, since Americans expect their armed forces to be built, maintained, and to fight wars "rightly," adhering to both the moral and legal content of the nation's values and the profession's ethic, there is the moral-ethical cluster of knowledge. Third, since war is a human endeavor and professions are quintessentially human institutions practicing their art with human minds and hands, there is the expert knowledge of human development. Such knowledge allows the Army to transform citizens into soldiers, to develop strategic leaders over a lifelong career, and to create cohesive units capable of withstanding the stresses of extended combat. Fourth, there is the political-cultural expert knowledge, which allows Army leaders, particularly at the strategic level, to represent the profession within the political institutions of our government and, as well, in the multicultural coalitions and countries in which our armed forces serve globally.

Of these four clusters, it is the second that is the focus of the remainder of this chapter, the moral-ethical knowledge and its application through principled leaders under the moral and legal mandates of their oaths of commission or office. Rightly understood, that "office" spoken

of in their oath is not a physical space. Rather, it is a moral space defined by the inherent obligations of the office they assume. American military personnel who take an oath of commission, for example, are thus to be personally called to, motivated by, and identified strongly with their expert knowledge and its trusted application on behalf of the profession's client, the American people. The moral identity of the individual professional, then, has little meaning in the absence of such concrete and deeply felt links between the expert knowledge of the military profession and its honorable service to the American people.

V. The Practice and Certifications of the Individual Military Professional

To understand America's military services, including the U.S. Army, as collectively constituting a profession, we need to better understand just what the actual "practice" of the military professional really is, irrespective of rank or position. Once that understanding is established, then we can proceed to a discussion of the manner—professional certifications—in which professions attempt to ensure that the practice is both effective and ethical, garnering and maintaining the essential trust of those served.

Simply stated, the practice or work of the military professional is "the daily exercise of their discretionary judgments while making decisions and taking actions that fulfill their moral and legal obligations under their [oath]."[25] Stated in more detail in a sequence of actions, their practice is:

- A member of the profession who is facing a new situation or task . . .
- Based on his or her accumulated expert knowledge . . .
- Classifies the task (estimate/diagnosis), reasons about it (inferring from abstract knowledge applicable to the new task/situation), and then acts on it (execution/action) . . .
- Follows the action, evaluating it for effectiveness and, ultimately, adaptations to . . .
- The profession's body of expert knowledge and its jurisdictions of expert work . . .
- The "practice," then, is the repetitive exercise of discretionary judgment, action, and follow-up . . . all judgments with high moral content.

Note that this process of diagnosis and action guided by inferential logic from abstract expert knowledge is the same as followed by doctors and lawyers in their daily activities, as it is essentially for all professionals. The essence of this definition is that true professionals largely control their own work. Most often, no one tells the professional what to do or how to do it. Their actions are largely discretionary.

In the American case, think of a junior leader on patrol in Afghanistan, or a senior leader in the Pentagon making policy and budget decisions. Each exercises discretionary judgment—their issues are not solved by a formula or other rote processes, rather they are professional judgments drawn from professional education and experientially gained knowledge. That is the practice of the military professional's art. No one tells the leaders of America's branches of military service, for example, what to write in doctrinal manuals. Each of the three services has wide discretion in setting policies to educate and train their soldiers, sailors, or Marines with that knowledge, and field commanders execute operations with wide discretionary authority. The constantly evolving nature of war requires this, even more so now under increasingly complex, decentralized operations.

Further, we must note that most of these discretionary judgments have a high degree of moral content, meaning that these decisions directly impact the life or well-being of other human beings, whether soldier and family, the enemy, or an innocent noncombatant on the battlefield.

Such judgments must therefore be rendered by professionals of well-developed moral character, those of high moral sensitivity who possess the ability to reason effectively in such frameworks and have the moral courage to consistently place the needs of those they serve over personal considerations. Thus, the development of the personal character of military professionals must at all times be as effective as that of their unique military competences.

Unfortunately, that is not now the case, with repeated examples of moral failure, both institutional and individual, being reported all too often within the U.S. armed forces. Think of the military services' well-documented inability to deal effectively with sexual harassment and assault within the ranks. We shall return to this topic later in this chapter. Suffice it to say here that this failure to balance the development of military professionals among competence, character, and commitment must be a top priority for the current stewards of the professions.

Given this brief explanation of the practice of military professionals, we turn now to the topic of their certifications as professionals. One of the aphorisms from the literature on professions most instructional here is: "Bureaucracies *promote*; Professions *certify*." Clearly, this short phrase highlights one the most vexing issues, both historically and currently, that our military professions face. Given the "up or out" personal management systems most military services use, albeit almost all of Congressional origin, it is almost a given that their promotion activities will be, and will be viewed by individual professionals as, highly bureaucratic. The powerful incentives and motivations they produce toward "careerist" behavior remain the bane of those seeking to resolve the institutional balance toward profession. The central challenge, then, is to make and maintain the service's systems of advancement as much like professional certifications as possible. And in some branches, particularly aviation and nuclear specialties, each of the services do often maintain systems of advancement that are more like a profession (certifications) than a mere bureaucracy (promotions). But that is not broadly the case.

For its part, in their new doctrine on profession, the U.S. Army decided it needed certification of each individual member of the profession in three areas, now known as "the three C's": competence, character, and commitment.[26] Historically, it is fair to say that the Army has always focused strongly on training to standard for both individuals and units, thus certifications for military competence (performance of duty with discipline, and to standard) have been routine. More recently, and particularly in light of the lessons learned from the wars in Iraq and Afghanistan, certifications in character (dedication to the Army ethic demonstrated in decisions and actions) and commitment (honorable service and mission accomplishment despite adversity, obstacles, and challenges) are being elevated by the professions' stewards to a par with those focused on competence.

VI. Trust: The Lifeblood of Military Professions

Before moving to a detailed discussion of the ethic, we must also note just how difficult it is for the stewards of the profession to maintain the culture of profession dominate over that of bureaucracy, to "suppress the bureaucratic tendencies" as we say in the U.S. Army.[27] In particular, one of the critical balancing roles is to be sure that the profession has the right expert knowledge and practice when it is needed, as well as keeping that expert knowledge of their professions (all four clusters, including the moral-ethical) current to the needs of the nation. This is the deepest moral obligation of any profession, to always be ready to meet the needs of their client. If they do not, the results in terms of vital trust relationships can be catastrophic.

For just one example, consider Baghdad, March 2003. As part of coalition forces, the U.S. Army had just completed a successful conventional campaign to overthrow the government of Saddam Hussein. But then the enemy changed tactics to insurgency and, sadly, it soon became

very apparent that the Army had lost the expert knowledge, and with it the expert practice, of countering insurgencies. In the words of the Army's current chief of staff:

> When we first went there, we thought we would have a conventional fight . . . We had a conventional fight, which turned quickly into an insurgency that was compounded by terrorism . . . We were surprised by the changing tactics that we saw. We had no idea about the irregular aspect we were about to face. We didn't recognize this was a possibility. And when we did recognize this, it took us too long to adjust.[28]

The loss of expert knowledge and operational expertise had occurred shortly after the Vietnam War in the 1970s and 1980s when, while building a new all-volunteer force, the Army's stewards turned their tactical and operation emphasis solely to conventional combat in Europe. The damage had been done: they had failed conspicuously in that deep moral obligation, both to their collective client, the American people, and to their subordinates, who were asked to fight a counterinsurgency campaign in Iraq with neither the expert knowledge nor the materiel support requisite to doing so.[29] Only through the immense sacrifices of Army professionals was such expert knowledge and operational expertise restored on the battlefields in Iraq some two to three years later.

The professional, and thus moral, responsibilities of the stewards of our professions are immense, indeed. And in the next section we shall see this also applies to superintending the constant adaptation of the profession's culture, and at its core, the ethic.

VII. U.S. Army Culture and at its Core, the Heart of the Army: The Ethic[30]

Understanding the way institutional culture shapes professional behavior is helpful to our discussion here. Self-awareness at the institutional level is as important as self-awareness at the individual level. What cannot be understood cannot be changed by appropriate leaders at either level.

Army culture, similar to that of each of America's other branches of military service, is understood as the system of shared meaning held by its individual members: the shared attitudes, values, goals, and practices that characterize the larger institution over time.[31] Institutions—organizations that endure—have distinct and stable cultures that shape their behavior, even though they comprise many, ever-changing individuals.[32] An organization's culture generally reflects what it finds to be functionally effective in times of strong need. Culture goes beyond mere "style." It is the spirit and soul of the body corporate, the "glue" that make units and commands distinctive sources of identity and experience. It is essentially "how we do things around here."[33]

In the American case, the Army has posited that its ethic must accomplish at least three purposes.[34] First, it must establish core principles as guidelines for all moral judgments by Army leaders based on the moral purpose of the Army—to defend the republic founded under America's Constitution. Second, at the operational level, it must inform the design of military operations guiding leaders to adapt those same moral purposes to a specific operation. And, third, it must provide the framework, standards, and motivation for the development of the personal character of individual professionals, the motivation to inculcate Army values into a consistent behavior of military virtues.

The U.S. Army has many artifacts at the surface level of its culture that reveal the foundations of the deeply moral character of the profession. The purpose they all serve for aspiring professionals is spelled out in the Army's Blue Book that all new soldiers receive:[35]

> Being a Soldier means conducting yourself at all times so as to bring credit upon you and the Nation—this is the core of our Army culture. Our Army is a unique society. We have military customs and time-honored traditions, and values that represent years of Army history. Our leaders conduct operations in accordance with laws and principles set by the U.S. Government and those laws together with Army traditions and Values require honorable behavior and the highest level of individual moral character . . .

Very recently, the Army codified for the first time in its history both a definition of its ethic and a framework within which to organize and understand the many, many statutes, regulations, and cultural artifacts that have long constituted it.[36] The new definition is in bold within the paragraph below, extracted from Army Doctrinal Reference Publication 1 (ADRP1), *The Army Profession*:

> The Army, like other professions, regulates the behavior and effectiveness of Army professionals and units through its ethic. **The Army Ethic is the evolving set of laws, values and beliefs, deeply embedded within the core of the profession's culture and practiced by its members to motivate and guide the appropriate conduct of individual members bound together in common moral purpose.** The Uniform Code of Military Justice, regulations, and policies set the minimum standard for behavior. Effectiveness is an outcome of the Army's Ethic, as adhered to and practiced by members of the profession. The constituent parts of our ethic are evolving with the changes in the practice of warfare and our societal norms, but the manifestation of our ethic has not changed since 1787. Our ethic may be summarized as: "The Army protects and defends the Constitution of the United States against all enemies foreign and domestic."

The new organizing framework, also extracted from ADRP1, is in Table 2.2 below.

Table 2.2 The framework of the Army ethic

	Legal foundations (codified)	*Moral foundations*
Army as profession (*laws/values/norms for performance of collective institution*)	Legal-institutional The U.S. Constitution Titles 5, 10, 32, U.S. Code Treaties of which U.S. is party Status-of-forces agreements Law of armed conflict	Moral-institutional The U.S. Declaration of Independence Just war tradition Trust relationships of the profession
Individual as professional (*laws/values/norms for performance of individual professionals*)	Legal-individual Oath of: – Enlistment – Commision – Office U.S. Code—Standards of Exemplary Conduct UCMJ Rules of engagement Soldier's Rules	Moral-individual Universal norms: – Basic rights – Golden rule Values, creeds, and mottos: – "Duty, Honour, Country" – NCO Creed, Civilian Creed – Seven army values – Soldier's Creed, Warrior Ethos

Abbreviations: NCO, noncommisioned officer; UCMJ, Uniform Code of Military Justice

As mentioned earlier, the Army ethic is rich and varied in its sources and its content. Parts of the Army ethic originate from codified, legal documents, such as the Constitution and the Uniform Code of Military Justice. Institutionally, it is the codified part of the ethic that serves to establish officially the mission of the Army. Army professionals are always to conduct their individual duties according to the legal part of the Army ethic. The Army considers an individual's performance of duty unacceptable if it does not meet the minimum standard of the codified legal norms. The Uniform Code of Military Justice (UCMJ) prescribes penalties for Army professionals who neglect their duties.

In addition to the legal foundations, however, the Army also draws the moral foundations of its ethic from traditions, customs, and documents with immense moral content and civic importance for all Americans (recall the earlier discussion of the Blue Book issued to each new soldier). Technically, these types of traditions and documents do not have standing in law. Quite often, however, they inform, support, and form the basis for (origin of) laws. Some include the Declaration of Independence, the just war tradition, and the "golden rule" for interpersonal behavior. The Army weaves these moral foundations throughout its culture and the subcultures within it. The Army believes these moral foundations are effective and passes them on to succeeding generations through leadership, mentoring, customs, and traditions.

VIII. The Motivations Flowing from the Ethic

A final point needs to be made from Table 2.2. We need to note that two different types of motivation can flow from the two foundations of the Army.[37] From the left side, the legal foundations, flows the motivation of obligation generally understood as the concept of duty. All Army professionals are obligated to "do their duty" at all times. And if they do not, then legally they can be charged under UCMJ for "dereliction of duty" and punished. The older type of leadership, known as "transactional" leadership focusing on such rewards and punishments, often relied on this form of relationship between the leader and the led. Fortunately, more relational and effective types of leadership are now in use, known as "transformational" or "authentic" leadership models.[38] To the point of this discussion, they rely on the motivation flowing from moral foundations of the ethic shown on the right side of Table 2.2, the motivation of aspiration. What this motivation draws on is the innate aspirations of the individual professional—who they want to become, what they want to accomplish, what goals they seek to contribute to—to inspire them to best efforts. Of interest, research in the Iraq War clearly indicates that such authentic moral leaders were able to develop critical interdependent relations of trust that produced better operational results, as well as higher levels of moral development in those being led.[39]

Thus, the Army ethic can be understood as guiding relationships among *moral values*, *ethical principles*, and *the martial virtues* that are the desired manifestation of professional character, both individually and institutionally. The Army, as well as the other military departments, has long espoused a specific set of values as part of their ethic. The Army espoused seven values; the other military departments do with three.[40] Regardless, there have been abundant indications during the last decade of wars in the Middle East and since that relying on so-called "values clarification" as a means of character development lacks efficacy. Given the number of moral failures recently observed within the services, the gap between espoused values and individual behavior is simply far too large for any other conclusion.

More recently, as a follow-on doctrinal effort, the Army has been working to better define just what specific moral obligations, expressed as ethical principles, flow from the roles of military profession and individual professional. It is seeking to determine if these will motivate better the closure of the "values to virtues" gap. One version of those moral principles is as follows:[41]

As Army Professionals, we fill multiple distinctive roles, each of which imposes moral obligations on us. These moral obligations are inherent in the broad identity we all aspire to become—Trustworthy Army Professional. To achieve that aspiration, we must embrace three component identities: Military Expert, Honorable Servant, and Steward of the Profession. To understand and be motivated by our moral obligations, they are best expressed as moral truths or ethical principles. In this manner, the Army's Ethic is a principled Ethic, the moral principles applicable to each Army Professional at all times as we operate with professional discretion under mission command.

Principles of the Army Ethic

Army Professionals are Military Experts:

As Soldiers, we maintain expertise in the knowledge, skills, and abilities of our chosen profession of arms. We employ lethal force to protect innocent persons, American and foreign, from hostile action. As Army Civilians, we maintain our expertise in the knowledge, skills, and abilities of our profession in order to support the Army mission.

Competence, character, and commitment mark us as Army professionals; we do not expect advancement other than that merited by these individual characteristics.

Army Professionals are Honorable Servants:

We have taken an oath to support and defend the Constitution. This means we obey and support lawful and moral authority; we reject and report illegal or immoral orders and actions.

We serve willingly with personal integrity and courage, committing best efforts to provide our honorable service. We do not let personal interests interfere with our Duty; the team and its mission are always more important than the individual.

We respect the dignity of all persons and will not look upon anyone, even our enemies, with hatred, spite, or vengefulness.

We demonstrate courage by setting the example for right conduct despite risk, uncertainty, and fear. We provide our candid, professional opinions to subordinate, peer, and superior alike.

Army Professionals are Stewards of the Profession:

We uphold the standards of the profession and its subordination to civilian authority. We lead by example always, holding fellow professionals at all levels accountable for their own decisions and actions.

We properly care for and employ all resources entrusted to us by the American people. Within those available resources, we ensure our Army is well-equipped, well-trained, and well-led. We take care of our Soldiers, Army Civilians, and Families.

We maintain the Army's expert knowledge through continuous assessment, experimentation, and learning. We invest in the development of fellow professionals and take responsibility for the cultivation of their honorable service within the profession.

Such a re-articulation of the core content of the Army ethic attempts to move beyond the realm of values into the realm of specific moral relationships with specific examples (e.g., "we lead by example always"). But, of course, while clear articulation of an ethic is needed (I would call it the necessary but not sufficient condition), even more important are the programs of professional development that help the individual inculcate such understandings into their

own identity and, ultimately, into their attitudes, decisions, and virtuous actions. That discussion of individual moral development, however, is beyond the scope of this chapter.

IX. Trust, Dissent, and the Moral Space to Profess

I trust this recounting of the U.S. Army's development over the past decade and a half of its understanding of itself as a military profession has established several major points, among them: the central idea of the dual character of our military organizations everywhere as both bureaucracy and profession; the constant tension between them that can only be resolved in favor of profession by the leadership of its stewards; trust with the client (in our case, the American people) as the lifeblood of our military professions' existence; the nature of the expert knowledge that military professions create for themselves to defend their nation; the work of individual military professionals that can be best understood as "repetitive discretionary judgments" with high moral content; the role of a professional ethic as means of both motivation and social control over institution and individuals; and some indication of efforts to address the current "values to virtues" gap by means of re-articulation of the ethic and renewal of programs of character development.

One subject remains, the role of the stewards of the profession in one critical aspect of domestic civil–military relations—how best for them to maintain the necessary trust of their citizens while at the same time disagreeing in appropriate manner with civilian leaders, who (as in the case of the American Constitution) rightly exercise authority over their respective military services.

A review of civil–military relations, even limited to America, is well beyond the scope of this chapter.[42] But the differing views often held by senior civilian and uniformed leaders on the role of the military's ethic in such actions is a point of focus for this chapter. And it is a recurring source of tensions.[43] In its new doctrine, the U.S. Army makes clear that in civil–military relations, the military is the servant of its Constitutionally mandated civilian leaders, both those in the executive branch and in the Congress:[44]

> The key condition for effective American civil–military relations is a high level of mutual respect and trust between civilian and military leaders. Army professionals fulfill their obligation to create such mutual respect and trust by strictly adhering to a set of norms established by law and past practice:
>
> - The Army Profession's principal obligation is to support the democratic institutions and policymaking processes of our government. Military leaders should offer their expertise and advice candidly to appropriate civilian leadership within the Department of Defense and more broadly within the JIIM community.
> - Civilian decision makers seek and consider professional military advice in the context of policy deliberations. Army professionals properly confine their advisory role to the policy-making process and do not engage publicly in policy advocacy or dissent.

As the last bullet makes clear, little has changed since Samuel Huntington noted over five decades ago that "loyalty and obedience" are to be the cardinal military virtues.[45] This precept has remained embedded in the Army's professional ethos to this day, especially for the stewards of the Army profession. But can something more be said other than "do not engage publicly in policy advocacy or dissent"? I think it can, and to do so we must draw on the thoughts of two other scholars in the field.

First, Dr. Martin Cook, currently holder of the Stockdale Chair at the Naval War College, has focused on the challenge the potential dissenter faces when he or she uses discretionary professional judgments to arrive at a decision to dissent. To Cook, the challenge is:

> how to understand professionalism so that two equal values, somewhat in tension with each other, are preserved: the unquestioned subordination of military officers to constitutionally legitimate civilian leadership; and the equally important role of the officer corps in providing professional military advice, unalloyed with extraneous political or cultural considerations.[46]

As Cook and others believe, part of that judgment must rest on the idea that professionals are obligated not only to serve the client (in this case, ultimately, the state and its duly appointed or elected leaders), but also are obligated to have "their own highly developed internal sense of the proper application of the professional knowledge."[47] In other words, dissent without insubordination to civilian authority can rightly be based on loyalty to the profession's expert knowledge and its effective and ethical application. This is the moral obligation owed the client by the profession.

The second scholar of interest here is Dr. James Burk, military sociologist at the Texas A&M University. In a challenge to Huntington's functionalist assertion that loyalty and obedience are the cardinal military virtues, James Burk contends that:

> Military professionals require autonomy, to include moral autonomy, to be competent actors held responsible for what they do. By autonomy, I mean the ability to govern or control one's actions with some degree of freedom. Autonomous action is a precondition for responsible obedience and the opposite of blind obedience . . . [There is a] conceptual space within which military professionals exercise moral discretion. The map includes a definition of responsible obedience and disobedience. But it also includes two types of actions that do not fit the classic definitions of these alternatives. They each exhibit a defect in which discretion is used either to do what is morally wrong or to do what was explicitly not authorized. Nevertheless, they are not simply forms of disobedience. They are "protected" actions, protected because the discretion to commit them preserves the autonomy on which the moral responsibility of the military profession depends.[48]

As I have stated before, Burk's argument is compelling.[49] When the exercise of discretionary professional judgment leads to dissent, such acts by the profession's stewards can fall in the "protected space" that professionals' actions occupy, a space that may indeed require acts of dissent or disobedience if "the moral responsibility of the profession is to be preserved."

But that is a narrow space, indeed. Knowing with certitude which acts fall in this narrow space will never be easy, but the knowledge that it exists should give both the professional and the client intense motivation to understand the ethics our military professions use to self-regulate their actions, including those of dissent.

X. Conclusion—So, Can We Generalize?

As they draw down from over a decade of war, each of America's military services is now (as of 2014) reassessing its own understanding of itself as a military profession (vs. a government bureaucracy), and of its individual personnel—officers and enlisted, as well as both uniformed and civilian—as *military professionals* (as opposed simply to government employees or job-holders).

It seems logical to ask, then, of those topics discussed thus far in this chapter, which have relevancy to their ongoing studies? In interrogative form, I suggest the following seven items:

- Institutional character: Do we seek to be a social trustee profession or a group of experts—or just a government bureaucracy?
- External and internal jurisdictions: Are they recognized, current, well adjudicated?
- Expert knowledge: What are the fields? Who provides it? Is it current to 2020?
- Expert practice: What is it and who practices it? How is it developed, assessed, and certified?
- The profession's ethic: What is it? How well does it motivate and control both the institution and its individual professionals?
- Developmental identities: What are they? Do human resource systems capture the right motivations?
- Certifications: For what? How effective are they, particularly in moral character?

By working through an analysis of these seven areas, each and every military service, as well as other governmental entities seeking to be more professional, should have a robust framework to follow. To be sure, each will have to be tailored to the moral purpose and culture of the respective institution, and the nation, culture, and government served. But, as a point of departure, these seven areas of focus should serve quite well for any military service in any national context.

Notes

1. See Gayle L. Watkins and Don M. Snider, "Project conclusions," Chapter 25 in *The Future of the Army Profession* (Boston, MA: McGraw-Hill, 2002): 545–546. This first edition of *The Future of the Army Profession* will hereafter be referred to as *FAP I*.
2. See Don M. Snider, "The US Army as profession," Chapter 1 in Snider and Matthews, Eds., *The Future of the Army Profession*, 2nd edition (Boston, MA: McGraw-Hill, 2005): 18. This second edition of *The Future of the Army Profession* will hereafter be referred to as *FAP II*.
3. See Don M. Snider and Jeffrey Peterson, "Opportunities for the Army: Defense transformation and a new joint military profession," Chapter 10 in *FAP II*: 237–250.
4. See *Study on Military Professionalism* (Carlisle Barracks, PA: Army War College, 1970): www.carlisle.army.mil/orgs/SSL/dclm/pubs/study1970.pdf.
5. See Watkins and Snider, *FAP I*: 537–546.
6. See "Ethics in the Navy," published by RADM W. Ted Carter, President, Naval War College (March 24, 2014), in the following section of this volume. The full text with appendices is available at: www.usnwc.edu/getattachment/4fdc7dfe-2b5b-46da-aad8-670628c6fbe2/Ethics-in-the-US-Navy-24-March-2014.aspx.
7. See Mark Lewis, "Transformation and junior officer exodus," *Armed Forces and Society* (Fall 2004): 63–93.
8. Edwin Dorn, Howard D. Graves, Walter F. Ulmer, Jr., Joseph J. Collins, and T. O. Jacobs, *American Military Culture in the Twenty-First Century: A Report of the CSIS National Security Program* (Washington, DC: Center for Strategic and International Studies, 2000).
9. *Army Training and Leader Development Panel Report (Officers): Final Report* (Ft. Leavenworth, KS: U.S. Army Combined Arms Center, 2001). For a detailed analysis of this internal Army research effort, see Don M. Snider and Gayle L. Watkins (project directors) and Lloyd J. Matthews (Ed.), *FAP I*, Chapter 22.
10. See Joseph J. Collins and T. O. Jacobs, "Trust in the profession of arms," *FAP I*, Chapter 3: 39–59.
11. Snider, Chapter 1 in *FAP II*: 3–38; and Army Doctrinal Reference Publication 1, *The Army Profession*, HQ, Department of the Army, June 2013, hereafter referred to as ADRP1, available at: http://usarmy.vo.llnwd.net/e2/c/downloads/303970.pdf.
12. See James Burk, "Expertise, jurisdiction, and legitimacy of the military profession," Chapter 2 in *FAP II*: 41.

13. For major works on professions, see Andrew Abbott, *The Theory of Professions* (Chicago, IL: University of Chicago Press, 1998); and Eliot Freidson, *Professionalism Reborn: Theory, Prophecy and Policy* (Chicago, IL: University of Chicago Press, 1994).
14. See Allan R. Millett and Peter Maslowski, *For the Common Defense: A Military History of the United States of America* (New York: The Free Press, 1994): 133–137.
15. Snider, *FAP II*: 14.
16. For bureaucratic behavior within military institutions, see David C. Kozak and James M. Keagle, Eds., *Bureaucratic Politics and National Security: Theory and Practice* (Boulder, CO: Lynne Reiner Publishers, 1988).
17. ADRP1, Chapter 6.
18. See Samuel Huntington, *The Soldier and the State* (Cambridge, MA: Belknap Press of Harvard University, 1957): 16.
19. See Stephen Biddle, "Victory misunderstood: What the Gulf War tells us about the future of conflict," *International Security* 21, no. 2 (Fall 1996).
20. See Gayle L. Watkins and Don M. Snider, "Project conclusions," Chapter 25 in *FAP I*: 537–547.
21. ADRP1, para 1-23 through 1-29, pages 1-5 and 1-6.
22. Abbott, *The Theory of Professions*: 27, and Chapter 10.
23. James Toner, *True Faith and Allegiance: The Burden of Military Ethics* (Lexington, KY: University of Kentucky Press, 1995): 22–23.
24. See Richard Lacquement, "Mapping Army professional expertise and clarifying jurisdictions of practice," Chapter 9 in *FAP II*: 213–236.
25. See Don M. Snider et al., "The multiple identities of the professional Army officer," Chapter 6 in *FAP II*: 143.
26. ADRP1, Chapter 3: pages 3-3 to 3-5.
27. See "An Army white paper: The profession of arms" (HQ, TRADOC, December 8, 2010): 8–9.
28. General Ray Odierno, interview in the *Army Times* (September 19, 2011).
29. See Don M. Snider, "Once again, the challenge to the US Army during a defense reduction: To remain a military profession" (Carlisle, PA: Strategic Studies Institute Press, 2012): www.strategicstudies institute.army.mil/pubs/display.cfm?pubID=1097.
30. See Army White Paper, 2010.
31. See FM 6-22 *Army Leadership* (Washington, DC: HQ, Department of the Army, 2006): 8-1.
32. A. L. Kroeber and C. Kluckhorn, *Culture: A Critical Review of Concepts and Definitions* (New York: Vintage, 1952); Edgar Schein, "Sense and nonsense about culture and climate," in Neal M. Ashkanasy, Celeste P. M. Wilderom, and Mark F. Peterson (Eds.), *Handbook of Organizational Culture and Climate* (Thousand Oaks, CA: Sage, 2000): xxiii–xxx.
33. See Edwin Dorn et al., *American Military Culture in the Twenty-First Century* (Washington, DC: Center for Strategic and International Studies, 2000). See also Don M. Snider, "An uninformed debate on military culture," *Orbis* 43, no. 1 (1999): 11–16.
34. See Robert Caslen, Jr. and Erik Anderson, "Reconnecting with our roots: Reflections on the Army's ethic," *Military Review*, 2010: 110–116; and Chris Case, Robert Underwood, and Sean Hannah, "Owning our Army ethic," *Military Review*, 2010: 3–10.
35. HQ, Department of the Army, TRADOC Pamphlet 600-4, October 2010: 16.
36. ADRP1, Chapter 2.
37. See Sean T. Hannah and Peter L. Jennings, "Leader ethos and big-C character," (*US Army Research*, 2013), Paper 267: http://digitalcommons.unl.edu/usarmyresearch/267; and ADRP1, Chapter 2, paras 2-11 to 2-14.
38. See Sean T. Hannah and Patrick J. Sweeney, "Frameworks of moral development and the West Point experience," Chapter 4 in Snider and Matthews (Eds.), *Forging the Warrior's Character* (New York: McGraw-Hill, 2008): 65–90.
39. See Patrick J. Sweeney and Sean T. Hannah, "High impact military leadership: The positive effects of authentic moral leadership on followers," Chapter 5 in Snider and Matthews (Eds.), *Forging the Warrior's Character* (New York: McGraw-Hill, 2008): 91–116.
40. See John Mark Mattox, "Values statements and the profession of arms," *Joint Forces Quarterly* 68, no. 1 (2013): 59–63.
41. See "Army ethic white paper," a working draft prepared by the Center for Army Profession and Ethic (CAPE), West Point, New York; copy in possession of author.

42. For a current overview, see Nielsen and Snider (Eds.), *American Civil–Military Relations: The Soldier and the State in a New Era* (Baltimore, MD: Johns Hopkins University Press, 2009).
43. See Don M. Snider, "What our civilian leaders do not understand about the ethic of military professions" (AWC Press, 2013): www.strategicstudiesinstitute.army.mil/index.cfm/articles//What-Our-Civilian-Leaders-Do-Not-Understand/2013/11/26.
44. ADRP1, para 6-12, page 6-3.
45. Huntington, *Soldier and State*: 73.
46. See Martin Cook, *The Moral Warrior: Ethics and Service in the U.S. Military* (Albany, NY: State University of New York Press, 2004): 55.
47. Ibid.: 65.
48. See James Burk, "Responsible obedience and the discretion to do what is wrong," Chapter 8, *American Civil–Military Relations*: 149–171.
49. See Don M. Snider, "Dissent and strategic leadership of the military professions," *ORBIS* (Spring 2008): 256–277.

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3

A PROFESSION LIKE NO OTHER

Patricia Cook

What distinguishes the military profession as a profession? All professions use intellectual achievement and learning, and all professions render service. The profession of arms is the ultimate in each of these respects, involving academic learning in several disciplines, and the dedication of both body and soul in service to the public. The profession is unique in that the aspiration toward its most salient activity, killing, would disqualify the aspirant from membership in it. All professions have a code of conduct, but the military has, in addition, a complex, in some ways convoluted, moral arena that its members must navigate. These are the points that will be developed in this chapter.

I. A Traditional Profession

One of the themes of this book is the professional status of military officer. We are invoking the traditional meaning of "professional" as opposed to the colloquial one. Traditionally, the professions are distinguished by their specialized learning, their guild-like association of practitioners, the self-regulation by the guild of its members, and, above all, their unequivocal commitment to the public good.[1] Physicians, attorneys, and the clergy exemplify the professions as understood in this traditional sense. We sometimes hear the term "professional" used in other senses: in contemporary, everyday contexts, it sometimes refers simply to one who is paid for an activity (for example, a professional tennis player as opposed to an amateur), or to someone whose specialized job is a lifelong pursuit (for example, a professional secretary). However, in this book, we are using the term in the sense of the traditional professions, with their specific distinguishing characteristics.

Thus, we are featuring in this book the "profession of arms." There are at least two reasons for the emphasis on its status as a profession. First, this calls attention to the fact that despite the conspicuous hierarchy of the military organization, it does not, or should not, operate as a bureaucracy. Military officers are not functionaries who are cogs within an organizational machine. They are not, or not mainly, followers of orders.[2] Instead, they are self-regulating members of a venerable body of experts whose values and standards sanction their activities. I will say more on this later. The second reason for our focus on the professional status of the military officer is to make sense of what we are calling "military ethics." Like the other traditional professions,

the military is oriented toward public service. Its specialized knowledge, skills, and practices include a rigorous code that is largely self-made and self-enforced.[3] Although military ethics has historic roots in the just war tradition and philosophical roots in utility, deontology, virtue ethics, and natural law, the profession of arms has established itself as an autonomous arbiter of values.[4] These values, and the practices that accord with them, are constitutive of the profession and the professional.

The prestige normally accorded to the professions is well earned. The traditional professions are exceptionally learned, involving a body of knowledge that requires years of study, and a prolonged apprenticeship. The mastery of the professional cannot even be approximated by the layperson, even though the layperson may be wholly dependent on this mastery at times. The layperson must rely on the physician when sick, on the attorney when confronted with legal matters, and on the military for security. No single person could ever hope to have all of the various forms of expertise that one needs in normal life. Each of us must depend upon professionals, and the fact of this dependency gives rise to the ethos of public service that defines the professional.

The traditional professional is free to make money, to charge for services rendered, and to thus make a living by using his expertise. What defines the professional, however, is that he puts the client's good first. This is a sacred trust. It is akin to the trust held by a fiduciary (though "fiduciary" is a legal term) to put the good of the client before his own.[5] The professional could not do his job in the absence of trust. For example, patients would not go to doctors if they did not trust that when sick and vulnerable, their care will be the first priority. This trust is also remarkably comprehensive: for example, we trust the professional to put the client's good first even when there is a clear conflict of interest.[6] When we go to the doctor, we trust that his prescription will be based on our needs as a patient; even if the doctor's practice gets revenue from some particular test or treatment, we trust that the test will be ordered for the patient's good. As other contributors such as Snider and Martin Cook also note, the profession of arms, like medicine, law, theology, and teaching, is a social trust profession.[7]

II. The Moral Code of the Profession of Arms

Professionals have traditionally sworn an oath that commits them to upholding the moral standards of their guild.[8] These standards are themselves a hallmark of the autonomy and self-regulation of the professions, though they tend to be derived from the sacred trust to serve primarily the client's good (or the public good) interpreted through the specialized knowledge of best practices. There is no question that the military is oriented to the public good: after all, military duty can include "the ultimate sacrifice." But it is important to note that the profession of arms has intricate architectonic principles for effectively putting the public good ahead of its own: discrimination and proportionality. These standards are deceptively simple to state, but, in practice, they can be bewilderingly complex. Their application involves one more species of the specialized expertise required of the military professional.

Consider the principle of discrimination: the military professional discriminates between those who are enemy combatants and those who are noncombatants. I do not know if there was ever a time in history when this task was straightforward, but it certainly is no longer with guerrillas, insurgents, and nonstate terrorists in the battle space. The duty of the military officer is to take upon himself any danger the conflict introduces to noncombatants—"to assume that danger himself," as Michael Walzer puts it.[9] This is, of course, what makes the profession of arms a noble one. There are other dangerous occupations—driving a racing car is a dangerous occupation, but it is not for that reason noble. What is noble is the warrior's deliberately taking any

peril to innocents upon himself. The confrontation in Afghanistan of SEAL Team 10 with the local goat herders illustrates the radical jeopardy this ethos involves.[10] Much notice has been taken of the newest "remote control" technologies that distance the warrior from the battlefield and thus insulate him from personal risk. But we should remember, on the other hand, the unprecedented kinds of risk to which the tactics of counterinsurgency (and other kinds of irregular warfare) expose the warrior.[11]

When noncombatant casualties are foreseeable but unavoidable, the principle of proportionality requires that this damage be weighed against the military advantage being sought. The military professional is never allowed to inflict collateral damage for his own convenience, and he cannot cause harm or destruction simply to enhance his own safety. Proportionality assessments are accordingly complex and non-formulaic. Judgments have to be made by a competent military authority on a case-by-case basis. Even the law defers to the military professional in a command position to make these interrelated strategic, tactical, and moral judgments. Here, by the way, is a cardinal example of the autonomous professional expertise that is constantly being exercised in the military. This also exemplifies a specialized virtue, or excellence, that must be part of the moral outfit of the military professional. Call it "astuteness in sizing up proportionality": this is a special kind of prudence or practical wisdom, and it cannot be cultivated outside of the military profession. So, like other professions, the military has proprietary virtues, excellences that can only be expressed, and only be developed, within the context of the profession itself.

III. Dying and Killing

At this juncture, we are coming to an area of important differences between the profession of arms and anything else properly called a profession. To summarize: we have been saying that the profession of arms belongs among the traditional professions: practitioners have a distinctive expertise that they develop through long study and apprenticeship; they operate under the auspices of an autonomous guild according to a code established and enforced by fellow practitioners; and they are bearers of a sacred trust to put the public good ahead of their own. The object here, however, is not just to highlight the similarities. We want to feature the differences. As discussed elsewhere in this volume, dying (or preparing to die) marks one conspicuous difference.[12] The military professional actively assumes the danger to which his activities expose noncombatants. Other modes of serving the public good involve something comparable only on rare occasions. A police officer might insert himself between the perpetrator and a victim of domestic violence. The physician who is treating Ebola patients is assuming mortal risk, and in some sense is thereby reducing the risk to his patients, since this means they will be treated by him. The attorney who intercedes in a threat against his client is willingly assuming some of his client's risk. But these are rather exceptional instances. For the military professional, this is the main activity. The military calls the relevant virtue "commitment," although this seems to be a banal word for what is among the most noble of human achievements.

A more critical difference between the profession of arms and all other traditional professions is marked not by dying and danger, but by killing. More specifically, the military profession is distinctive in requiring its practitioners to do something that they emphatically do not want to do: to intentionally injure and kill other human beings. This is categorically different from what is required of the attorney at law, the physician, and even the law enforcement professional. All professions presumably involve activities that no one would particularly relish. The attorney may have to zealously defend a client he suspects is guilty. The physician may have to tend to festering wounds or repugnant maladies. The police officer may have to shoot a perpetrator

who refuses to surrender. These are qualitatively different, however, from the stock in trade of the military professional: intentional killing.

That the military professional is reluctant to kill is true by definition. Anyone who was eager to kill, who sought out military action for the thrill of it, or who somehow enjoyed killing, would be for that reason barred from the professional military. A Rambo, for whom "killing is as easy as breathing," would not qualify. Even someone who wanted to kill the enemy out of anger or vengeance would be of questionable suitability for the profession. Achilles would not have made a sound military professional. Indeed, the character of the true military professional is distinguished by the virtue of self-control: "*sophrosune*," even more than courage, is a signal virtue.[13] The sublime self-control that characterizes the ethos of the military is displayed in its decorum and celebrated in its ceremonies. In practice, self-control is the modus operandi of the military professional: proportionality and discrimination are above all forms of restraint.

Reckoning with this paradox—that the military professional must be reluctant to kill, and yet in some sense remain quite ready to do so—has colored military practice throughout history. If we go back to Plato, we see the problem raised by the ideal republic's need for a specialized military class, the Guardians. With their fierce temperaments and rigorous martial training, the Guardians held an unmatched power in the city. The republic needed them to be fierce for its defense, but what would stop the Guardians from using violence on one another, or, alternatively, from cooperating with one another and forcibly controlling the city? Plato prescribes long education for the Guardians as a partial response to this problem. From early childhood, the Guardians are habituated to treat fellow citizens as friends, with whom they literally have all things in common.[14] Outsiders are treated as menacing enemies. Education of the Guardians supposedly aimed to make them like "noble puppies": belligerent toward strangers but gentle with familiars.[15]

The problem is probably inverted in real life: warriors are taken from the ranks of ordinary human beings who have to be trained to be sufficiently vicious for wartime. Psychological literature tells us about natural inhibitions that make it difficult for humans to kill.[16] Dehumanization of the enemy has been the stock tool for overcoming this aversion.[17] Examples span human history, but continue into the present. A veteran of Operation Iraqi Freedom was quoted as saying, "You just sort of try to block out the fact that they're human beings and see them as enemies . . . You call them hajis . . . You do all the things that make it easier to deal with killing them and mistreating them."[18]

Dehumanization of the enemy, however, does not help with discrimination. The military professional has to discriminate between combatants and noncombatants, but if the enemy is subhuman, their civilian compatriots would be subhuman too. Dehumanization actually confounds discrimination, and opens the door to extra killing as well. Recently, *objectification* rather than *dehumanization* has been endorsed by military ethics specialists. Objectifying the enemy means cultivating an attitude of indifference. Dehumanization, by contrast, involves an attitude of disgust toward a subhuman enemy, famously exemplified by the Nazis referring to Jews as rats, or Hutus calling Tutsis cockroaches. Objectification is preferable, according to Shannon French, as a way of thinking that enables battle but prevents war crimes.[19] We have to "train our troops to objectify the enemy for the purposes of combat . . . because we believe this is the only mode that frees their cognitive resources to deal with the strategic and performance demands of intense combat situations." However, "troops who generate intense disgust and contempt to help them kill will have a harder time readjusting to civilian life after the violence is over," French says. "It is important for our troops to know that they have fought honorably. But there is no honor in killing sub-humans."[20]

IV. Professional Paradoxes

So the military profession is unique in this way. Its moral purpose is to defend the innocent and to safeguard rights and justice, but its main activity, on the pre-reflective or instinctual level, is abhorrent. One of the tasks of this singular profession is to regulate, and reconcile, this stark tension. I would argue that the tension has to be addressed philosophically, since it apparently defies common sense. I often hear the quip (from civilians with no close ties to the military) that "military ethics" is an oxymoron. The idea seems to be that, in resorting to war, we give up on ethics and rely strictly on power. This idea, though profoundly mistaken, sometimes crops up even among people who have seen firsthand what scruples restrain us in a just war.

I have been teaching philosophy to military officers—most of them naval aviators—for six years. They have varying levels of awareness of military ethics and the just war tradition, and often do not have a ready answer to the question of how their service in Iraq and Afghanistan squares with morality. I ask them if the principles of morality change during wartime. Obviously, the "rules" change: it is not normally permissible to break things and kill people. Is this a suspension of morality? Is there a "wartime morality" that is different from ordinary morality?

Some officers have an "us or them" kind of response.[21] The use of force in wartime is necessitated by the showdown. There is often some version of the Augustinian/Thomistic idea that violence is wielded as a last resort to thwart the triumph of evil. Many make the point that they do not want to kill people. Pilots, in particular, report that they joined the military because they loved flying and wanted "to serve their country." They honed their aviation skills, only to find themselves flying aircraft that carry ordinance during wartime. This is, in one sense, the highest achievement: these are elite aviators flying the most technically sophisticated aircraft, and, by this reckoning, they are in a coveted position. On the other hand, being the bearer of the bomb was never part of anyone's aspiration. No one grew up wanting to drop the bombs that kill people. These young aviators have to struggle to overcome their abhorrence of killing people—perfect strangers—on the ground. Even if these are uniformed combatants, even if the target is cleared in accordance with rules of engagement, even if the mission is in close support of allied troops on the ground, these pilots do not want to kill, maim, and destroy.

One student—an F/A18 pilot—described how his conscious ambition had been to be a fighter pilot, not a killer. He recounted how the full realization seemed to unfold for him during Survival, Evasion, Resistance, and Escape (SERE) School. The "captors" at SERE school "would beat us and demand [to be told] why we were killing their children." As a student-captive, this aviator found that he did not know. His youthful aspiration of becoming a pilot had nothing to do with combat:

> I only wanted to be a pilot and did not realize that I might have to kill people, and I really had no idea what the United States' policies were on world issues. First, becoming a pilot is certainly a difficult endeavor. The training is very intense and trying. Flight students have very little control on what platform they will eventually fly. Ethical quandaries typically do not arise since it is out of our control. There is also no specific training on the perils of killing people whether intentional or unintentional as a result of us conducting our mission . . .[22]

Thus, although we might think it should be obvious that being a military aviator will involve violent combat and mortal danger, there is, at least in some cases, a disjunction between aspiration and reality. Rectifying this disjunction—forging the psychological and moral connections behind it—is a distinctive task for this profession.

In the context of reconciling everyday morality with apparently contradictory requirements in war, the idea of the "Sin Eater" has come up in my classes on more than one occasion. Students usually know the term from a 2012 film that is part of Robert Ludlum's Bourne franchise, *The Bourne Legacy*. In the relevant passage in the film, the character Aaron Cross is a sniper who was (apparently) involved in an operation where innocents were killed by mistake. Byer, the officer in charge, addresses Cross's vexation. Here is the dialogue:

> ERIC BYER: We need to talk. I need you to stop what you're doing and turn around, that's an order.
>
> [Aaron Cross ignores him, lowers the tailgate of a truck and deposits his sniper rifle, closes the tailgate, and turns to face Byer]
>
> BYER: We got screwed on the intel, okay? Nobody knew those people were in there. It would be perfectly normal for a person to have doubts about the morality of what we just asked you to do.
>
> AARON CROSS: Is that a question, sir?
>
> BYER: No, it's not. Tune in to what I'm trying to say to you. Do you know what a Sin Eater is?
>
> [Cross shakes his head]
>
> BYER: Well, that's what we are. We are the Sin Eaters. It means that we take the moral excrement that we find in this equation and we bury it down deep inside of us so that the rest of our cause can stay pure. That is the job. We are morally indefensible and absolutely necessary. You understand?[23]

Although the film does not develop this idea, it seems to resonate with something in my students: they feel that the soldier in combat—dare we say, the military professional—functions, metaphorically, as a Sin Eater. A Sin Eater is a person who ceremonially takes on the sins of someone else. Historically, the practice belongs to eighteenth- and nineteenth-century Europe, although it also bears some resemblance to the Jewish scapegoat ceremony. The Sin Eater was "a human scapegoat hired to take upon himself the moral trespasses of his client and whatever the consequences might be in the afterlife."[24] A Christian family would hire a Sin Eater to ritually consume a piece of bread that was placed on the body of a dead loved one, in the belief that the unforgiven sins of the dead person would be taken on by the Sin Eater. The village Sin Eater carried the sins of the deceased for the rest of his mortal life, becoming increasingly vile with each additional ceremony. He was usually driven from society, and lived in poverty and solitude.

The depth of the allusion in *The Bourne Legacy* to this delusory and revolting practice is unclear, so we will stick to the film character's own interpretation of the soldier's task: "[W]e take the moral excrement that we find in this equation and we bury it down deep inside of us so that the rest of our cause can stay pure." The "moral excrement," I presume, is the killing of innocents as a result of "bad intel." The casualties were accidental, in other words. In theoretical ethics, accidents do not carry moral blame. Moral responsibility requires that the agent *knowingly* cause something—the opposite of what is dramatized in this film. These soldiers were not morally responsible for harms they could not have known they would cause. But, of course, technical "exculpatory" conditions do not necessarily make us feel better. More generally, one might guess, "moral excrement" might refer to collateral damage that is "foreseen though not intended," as the doctrine of double effect would parse it. Here, too, the lack of intention may

be technically exculpatory, though I am not sure that this is cathartic for the psyche of the human soul involved.

The suggestion of the film character is that it is part of the job of the military professional to do more than bear this psychological burden; he must also "bury it deep down inside." In fact, "that is the job." Now, I am not suggesting that we take this movie character's assessment of what the job is; I believe, in fact, that he cannot be quite right. My point is that the military professional necessarily grapples with it, and that this is unique to the military profession. There are certainly some officers who agree with the film character's assessment. The student who first called this quote to my attention thought it expressed the warrior's duty to sacrifice his own peace of mind—perhaps even the sanctity of his own soul—in the course of battle. The warrior has to overcome his natural human sentiments and realize, as he put it, that "doing harm to others may be required and acceptable in order to achieve military objectives . . . things that in our personal lives would never be accepted."

The aim of the sin eating, in the film character's formulation, is so that "the rest of our cause can stay pure." This language reminds us of the language of the just war tradition: a morally justifiable war has a "just cause," a moral purpose. In abstract terms, that purpose is to prevent the triumph of evil. This moral purpose can be tainted by lapses in *jus in bello*; some have even argued that the morality of a just war can be nullified by immoral conduct on the part of the warrior.[25] If we think of the sort of eve-of-battle admonition exemplified in the famous speech of Lt. Col. Tim Collins, the warrior is often exhorted to keep the main cause pure.[26] The principle here is incontrovertible: you cannot violate human rights in the name of protecting human rights, and you cannot harm the innocent if you are truly fighting on their behalf. In practice, however, this principled consistency might never obtain.

V. A Singular Profession

My conclusions from all of this sound a chord with the conclusions of other authors in this section. First, the military officer is indeed in the situation of the traditional professional. I have been suggesting that the profession of arms may in fact be the most demanding of the professions in precisely the respects by which professionalism is delineated: knowledge, ethos, and public service. The military professional's activities require knowledge, skill, and discernment, which can only be acquired through sustained study and apprenticeship. And the military professional's need for knowledge, skill, and discernment seems to be expanding: the indispensible level of mastery, while obviously greatest for those at the highest echelons of command, is estimable for even the junior officer. Alasdair MacIntyre's example of Colonel MacFarland illustrates how, in contemporary war, the officer on the ground can be proxy for executive authority and political power.[27] Deep knowledge of history, cultural anthropology, political theory, religion, and philosophy—in addition to knowledge of military strategy—would not be wasted in such circumstances. Those in lower ranks are also exercising discretion in ways their predecessors were not. Here is how one of my students puts it:

> Prior to the recent conflicts the option to "refuse dropping a bomb" was not a moral decision typically placed in the hands of aircrew. If a soldier on the ground wanted a bomb, the pilot's job was to provide it. The best telltale of this shift in mindset is in previous wars aircrew received medals for dropping bombs. In Afghanistan I know of pilots who received medals for not dropping when legally capable of it. The asymmetric warfare confronting aircrew and soldiers today has pushed ethics into the cockpit. A squadron commanding officer used to say "one bomb will not win this war but one bomb may lose it."[28]

This young lieutenant is referring, obviously, to counterinsurgency doctrine, and he was happy to report that his command recognized, and tried to provide, something far beyond mere technical training.[29] The individual warfighter, with advanced communications systems and sensitive equipment, has astonishing information and control at his disposal, and he is being asked to exercise his own judgment in a way that is unprecedented. A corresponding level of expertise—and virtue—is accordingly being called upon. The pedagogical implications are clear. Real education—not just "training"—is *sine qua non*. People can be trained to externally comply with certain rules, but education at a theoretical level is necessary to develop the discretion and autonomy that sets a profession apart from a job within a bureaucracy. Unfortunately, education is neither quick nor easy. In an earlier era, all gentlemen who became officers were very well educated. That is no longer the case. Universities mainly do technical training these days—which is appropriate, because technology is complex today, and it requires sustained study. However, that has preempted John Paul Jones-style liberal education. Most officers these days are technical experts in some field, but may not come to the profession with the depth of education of their predecessors. The military, as an organization, is well served to the extent that it esteems and emphasizes such learning.

Consider now the ethos of the military profession. Again, like traditional professions, the military has a distinctive code that is inculcated and enforced within the profession itself. A particular set of virtues, or excellences of character, pertain to it. Other chapters in this section enumerate the specific virtues of character that the military exalts. I have tried to point out others that, from the vantage of an outsider, I see being practiced, even if they do not have well-known names. To a certain extent, the specifics of the military ethos emerge from the practice of the profession itself, but the ethos is also informed from the outside by treaties and conventions, plus the political will of the public it serves. I want to reiterate, in this connection, the unparalleled burden on the military as a profession. Today's military operates with a backdrop of never-again resolutions from the twentieth century (trench warfare, carpet bombing, Vietnam). They have to develop tactics for new kinds of warfare, and figure out how they can fight terrorism without becoming terrorists themselves. In recent counterinsurgency efforts, they have had to embody law and order among the local populace, to incarnate goodness itself. These may be signposts for a conceptual crisis, or paradigm shift, that Professor MacIntyre suggests may be upon us. Following MacIntyre's thesis, new warfare invites the military to rethink the profession, reassess its cardinal virtues, and add conceptually new ones to the ideal officer's outfit (such as political prudence).[30] In any case, we are seeing the old martial virtues—which were already difficult achievements—being put to rigorous new tests. Imagine responding only to "accurate fire" (as the Petraeus manual decrees), not pulling the trigger when every instinct you have is sensing danger. Imagine a rule of engagement (ROE) that allows a response to fire only where the shooter can be identified. The excellence of character that would enable a soldier to function in such a situation seems to be different from—and perhaps more than—the time-honored virtue of courage.

One thing is clear: nothing that goes by the name of "training" could prepare members of the military to handle such circumstances. Obedience (which might be equated with the good soldier on the bureaucratic, chain-of-command model of the military) would be a rather minor virtue in the picture I am sketching. There is certainly no rulebook or formalized code that can simply be applied in service of any of these ends. It is the task of any profession—including the profession of arms—to identify the relevant virtues, and to underwrite the excellences of character that will allow practitioners to achieve its ends. My own view is that this task requires considerable erudition, and calls upon learning in sociology, history, philosophy, and more. The profession of arms has to be, in other words, a learned profession.

At the same time, this is a singular profession, a learned profession like no other. One of the animating principles of what is known as military ethics is that the soldier is a full-fledged moral agent, rather than a mere pawn of the state. Hitler's henchmen (to cite the most egregious, albeit hackneyed, example) were not justified in their actions because they were "following orders." The military professional is honor-bound not to obey an illegal or immoral order. Note the de facto attribution here of some expertise in law and philosophy. We also conscript the military officer in a psychological conundrum: he must be reluctant to do the very thing that we need for him to do. His code cannot be a simple, *primum non nocere*. He wagers his own peace of mind—perhaps the sanctity of his soul—that he will be able to reconcile this dissonance. His sacred trust is to keep our cause pure. There is simply no comparable public service.

Notes

1 Four attributes of the professions commonly cited are: "(1) generalized knowledge, (2) primary orientation to the community interest, (3) internalized code of ethics, and (4) rewards which primarily symbolize work achievement." See B. Barber, "Some problems in the sociology of professions," *Daedalus* 92, no. 4 (1963), cited in J. A. Jackson, "Professions and professionalization: Editorial introduction," *Profession and Professionalization Volume 3: Sociological Studies* (New York: Cambridge University Press, 1970): 1–16. For a detailed discussion on the nature and sociology of the professions, see Elliott A. Krause, *Death of the Guilds* (New Haven, CT, and London: Yale University Press, 1996): 14–20.

2 This is the thesis of Don Snider's chapter "American military professions and their ethics" in this volume.

3 George Lucas, *Ethics and the Military Profession: The Moral Foundations of Leadership* (Upper Saddle River, NJ: Pearson, 2004): xi–xii.

4 In the U.S., civilian control of the military seems to belie the claim that the military is "autonomous" in the way that the traditional professions are. However, anyone who has ever worked near the U.S. military knows that it sets many of its own standards, from service values to rules of engagement. The UCMJ functions as a legal document, but stipulates many non-legalistic moral standards, such as "conduct unbecoming an officer and gentlemen" (Article 133). Military tribunals and the Judge Advocate General's Corps arguably exercise the self-regulation characteristic of a professional guild.

5 "A fiduciary duty is a legal duty to act solely in another party's interests. Parties owing this duty are called fiduciaries. The individuals to whom they owe a duty are called principals. Fiduciaries may not profit from their relationship with their principals unless they have the principals' express informed consent. They also have a duty to avoid any conflicts of interest between themselves and their principals or between their principals and the fiduciaries' other clients. A fiduciary duty is the strictest duty of care recognized by the US legal system." See: www.law.cornell.edu/wex/fiduciary_duty.

6 In nonprofessional contexts, a conflict of interest—indeed, even the appearance of a conflict of interest—is considered to be unethical. This standard is largely suspended, however, for professionals. Integral to our trust in the professional is that he will not allow anything to override the client's best interests. If we seek the services of an attorney, for example, we trust that zealous representation will be provided regardless of the lawyer's personal view of our case. Compare this to nonprofessional occupations. We do not suppose, for example, that a salesman who is extolling the virtues of a car in his showroom is putting the buyer's good before his own. A government employee, for another example, is required to materially demonstrate the absence of conflicts of interest having to do with any contract he awards. By contrast, the professional, almost by definition, is assumed to be above allowing any interests to conflict with the public interest.

7 The trust of the citizenry is a prerequisite for the effectiveness of its military in a democracy, and, in the U.S., the public's trust in the military has been documented repeatedly. For more on trust and the social trust professions, see Don Snider, "American military professions and their ethics" and Martin Cook, "Military ethics and character development," both in this volume.

8 The oaths taken by military officers vary from country to country, but the moral code of any military professional includes discrimination and some version of proportionality and restraint. See Shannon French, *Code of the Warrior: Examining Warrior Values Past and Present* (Lanham, MD: Rowman & Littlefield, 2003).

9 Michael Walzer, "On proportionality," *The New Republic* (January 8, 2009): www.newrepublic.com/article/politics/proportionality. See also "Responsibility and proportionality in state and nonstate wars,"

Parameters (Spring 2009): 51, where Walzer suggests that proportionality arguments must be accompanied by responsibility arguments: "What risks have [the soldiers] accepted in an effort to minimize the risks imposed on civilians?"

10. Marcus Luttrell and Patrick Robinson, *Lone Survivor: The Eyewitness Account of Operation Redwing and the Lost Heroes of SEAL Team 10* (New York: Little, Brown & Company, 2007).
11. See Department of the Army, *Tactics in Counterinsurgency* (2006): "Thus military personnel will need to accept greater physical risks to achieve military objectives than they would in conventional conflicts" (see vignette in FM 3-24/7-13) and "This risk-taking is an essential part of the Warrior-Ethos" (7-21).
12. See section IV of Don Snider's chapter ("American military professions and their ethics," in this volume), quoting Dr. James Toner: "even when soldiers are not dying, they must be preparing to die."
13. The Greek term *sophrosyne* is notoriously difficult to translate. In ancient literature from Homer to Aristotle, it means something like self-control, restraint, and discretion (although it can also name a common human virtue that might be adequately translated as moderation or temperance). I cite it here as the name of a characteristic virtue of the military professional because it is an excellence found at interface of character and intellect (as is *phronesis* or prudence) and because it is closely associated with self-knowledge.
14. There is no private property in Plato's "ideal" republic. Everything is held in common, including wives and children. This is stipulated in part to nullify the problem of rapacious Guardians (*Republic* 375 b–c, 416 a–c).
15. It is worth noting that dogs, even "noble puppies," could not be trained to exercise the "discrimination" of *jus in bello*. As Plato jokes, "a dog, whenever he sees a stranger, is angry: when an acquaintance, he welcomes him, although the one has never done any harm, nor the other any good" (*Republic* 376 a). The dog, in other words, distinguishes between familiars and strangers, rather than between those who are hostile and those who are innocent.
16. Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (New York: Little, Brown & Company, 2009): 30–42.
17. Philip Zimbardo, *The Lucifer Effect: How Good People Turn Evil* (New York: Random House, 2007). See also Sam Keen, *Faces of the Enemy: Reflections of the Hostile Imagination: The Psychology of Enmity* (New York: Harper & Row, 1986).
18. Quoted in Michael W. Brough, "Dehumanization of the enemy and the moral equality of soldiers," in Michael W. Brough, John W. Lango, and Harry van der Linden, Eds., *Rethinking the Just War Tradition* (Albany, NY: State University of New York Press, 2007): 152.
19. "Exploring the brain," *Think: The Online News Source for Case Western Reserve University* (Fall/Winter 2013): http://case.edu/think/fallwinter2013/discover/dehumanizing-the-enemy.html#.U_N2Fvk8Ar5.
20. Professor Anthony Jack, whose research in cognitive science at Case Western Reserve indicates that the brain operates differently when people objectify from when they dehumanize, adds: "We believe only psychopaths can permanently avoid re-examination of their actions from an empathetic perspective." Jack later continues: "Objectifying is a necessary but temporary fix. To feel fully human ourselves, we need to be able to reconcile our actions towards our fellow humans. That is easier to achieve if you have objectified in a limited way for a good reason, although it often still requires some readjustment and sorrow. The situation is much harder psychologically if you have descended into hatred and contempt." See: http://blog.case.edu/think/2013/06/06/a_way_of_thinking_may_enable_battle_but_prevent_war_crimes.
21. "The hardest ethical decision I have made was to commit to action against living targets on the ground prior to entering such an arena. I reverted to moral justification: that terrorism such as 9/11 happened and they will continue to attack us if we do not do what is requested of us by our superiors. In the heat of battle the justification was a pure matter of survival when being shot at: us or them." This is from a paper for a class called "Ethics and moral development" at the Naval Postgraduate School. The author, name withheld, was a Navy lieutenant commander at the time (2012).
22. This is from a paper for a class called "Ethics and moral development" at the Naval Postgraduate School. The author, name withheld, was a Navy lieutenant.
23. Tony Gilroy, director, *The Bourne Legacy* (Universal Pictures, 2012).
24. Bertram S. Puckle, *Funeral Customs*, Chapter IV (1926): www.sacred-texts.com/etc/fcod/fcod07.htm.
25. A cardinal principle of modern just war doctrine, strongly emphasized in Michael Walzer's concept of "the War Convention" in his seminal work *Just and Unjust Wars* (New York: Basic Books, 1977),

is that the principles of *jus ad bellum* (the justification for declaring war) and *jus in bello* (the conduct of combatants during war) are separate and distinct categories with no relationship. But this is not supported in either history or present practice. As early as the sixteenth century, the Spanish Jesuit scholar Francisco Suarez had replaced Thomas Aquinas's third category of "right intention" in *jus ad bellum* with the requirement for "right" or "proper" means of conducting the hostilities, arguing that the requisite commitment to right intention entailed specifically a commitment to prosecute just wars only through just means (*De Caritate*, discp. 13.1.4). This established a firm link between the two jurisdictions of justice in war, and certainly implied that no otherwise-legitimate or permissible armed conflict was morally justified if it were not pursued wholly through just means. [For both selections and thorough analysis of this text, see G. Reichberg, H. Syse, and E. Begby, Eds., *The Ethics of War: Classical and Contemporary Readings* (Oxford: Blackwell, 2006): 339–370.] In the current age of "hybrid," unconventional, or "irregular" war, this connection, and the prospect of undermining a just cause through the use of unjust means of warfare, has come to the fore. See, for example, George R. Lucas, Jr., "New rules for new wars: International law and just war doctrine for irregular war," *Case Western Reserve Journal of International Law* 43, no. 3 (2011): 677–705.

26. Lt. Col. Tim Collins, "UK troops told: Be just and strong," *BBC News* (March 20, 2003): http://news.bbc.co.uk/2/hi/uk_news/2866581.stm.
27. See Alasdair MacIntyre's chapter, "Military ethics: A discipline in crisis," in this volume. MacIntyre also cites Emile Simpson in connection with the thesis that officers in the field now make both military and political decisions.
28. This is from a paper for a class called "Ethics and moral development" at the Naval Postgraduate School. The author, name withheld, was a Navy lieutenant.
29. Here is how he describes the educational exercise: "I was fortunate to participate in a few of these discussions prior to my last deployment. Our [carrier wing's l]eadership designed case studies and implemented them through a Socratic template to help aircrew articulate and self-criticize their answer to a very important question in combat, 'Under what circumstances will you refuse to drop a bomb at the request of a soldier on the ground?' The complexity of that moral question is difficult to confine to the limits of this paper. It requires a comprehensive understanding of tactical doctrine, standard operating procedures (SOP), and rules of engagement (ROE). What is easy to understand is that it calls upon interwoven beliefs, norms, and universal moral certainties to arrive at that decision."
30. See Alasdair MacIntyre's chapter, "Military ethics: A discipline in crisis," in this volume for his discussion of political prudence.

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PART II

Jus Ante Bellum

Preparing the Military Profession for its Moral Obligations

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4

THE ETHICS OF MILITARY ETHICS EDUCATION[1]

Richard Schoonhoven

I. *Jus ante Bellum*

Somewhat ironically—and sadly—a decade or more of ill-advised wars has been very good for the study of military ethics and the just war tradition. More seems to have been written on the subject in the last 10 years than in the entire preceding 30 years since the publication of Michael Walzer's seminal *Just and Unjust Wars*. That proliferation of the literature has brought with it an expansion beyond the traditional areas of concern of *jus ad bellum* and *jus in bello*. Perhaps most familiarly, a number of authors[2] have championed the cause of *jus post bellum*, arguing that more attention needs to be paid to the phase after the end of the war proper, and for a mutual interdependence between all three areas of concern.

Perhaps less familiarly, this expansionist pressure is being felt in the opposite direction as well, toward the moral obligations attendant upon the preparation for war—what some have called *jus* ante *bellum*, or justice *before* the war. Yet neither the content nor even the *bona fides* of this last area are entirely clear. Steven Haines (2010), for example, doubts whether there is any such domain properly so-called, at least in part because there is no legal regime to cover it, and because the *in Bello* rules already require that combatants receive training in the rules of war. And Seth Lazar (2010) argues that what is needed is not a notion of either *jus ante bellum* or *jus post bellum*, per se—which in any case would be too myopic and constrained in their focus—but a broader ethics of peace-building. But of course it is hardly news that the legal and the moral fail fully to coincide, and it is easy to imagine that a nation's moral obligations outrun the simple legalistic training required under international humanitarian law. Thus, it seems possible to identify an area of concern that deals specifically with the way a nation goes about preparing itself and its combatants for war, what the eminent moral philosopher Roger Wertheimer (who actually initiated this particular discussion) terms *jus in disciplina bellica*.[3]

One place where the existence of such considerations is fairly obvious is in arming and equipping and training—and for now, I mean this strictly in a military, nonmoral sense—a nation's combatants. Despite the grain of truth in a U.S. Secretary of Defense's famous assertion that "you go to war with the Army you have,"[4] it has seemed obvious to many that states have an obligation—a moral obligation—to provide their troops with the best training and equipment they can. It just seems irresponsible to do otherwise. For doing so not only increases the troops'

own survivability, but also frequently allows them to be more precise and (therefore) more discriminating in their application of force, thus allowing them to adhere more closely to the rules of *jus in bello*.[5] Indeed, plausibly, these two considerations—protecting our troops and protecting noncombatants—can be mutually reinforcing. For example, to the extent that combatants' survivability has been enhanced—to the extent that they feel themselves less at risk—they may psychologically feel themselves more able to discriminate: if they do not feel faced with a choice between their own lives and those of noncombatants, they may be more willing to take care to avoid harming those noncombatants.

But these considerations can also come apart, can pull in opposite directions, as it were. One can increase precision and therefore discrimination by exposing combatants to greater risk, as when clearing buildings room by room rather than just leveling them. And, of course, one can improve force protection by being less discriminate—in the extreme, one could avoid committing troops altogether by simply incinerating massive numbers of civilians, as the U.S. did with its use of atomic bombs against Japan at the end of WWII.[6]

I do not intend to enter into this particular debate here. The exact balance between risk and discrimination, between force protection and noncombatant immunity, between what we owe to our combatants and what we—and they—owe to noncombatants, strikes me as an extremely difficult and delicate issue, turning on the moral status of (those) combatants, the deep moral grounding (if any) of the rules of war, and a number of other factors.[7] But that is rather the point.

Or rather, that brings me—finally—to my point: the teaching of military ethics. For it is precisely here that people turn to military ethics and military ethics education to settle such issues. Combatants well versed in the law of armed conflict/international humanitarian law (LOAC/IHL) will well understand the limits and rules regarding permissible targeting, after all. But understanding is a two-edged sword, and I want to claim that an analogous tension lies in the very practice of military ethics education itself.

II. Military Ethics Education

Just as we can profitably divide *jus ante bellum* questions about the equipping and training of combatants into questions about the moral obligations a nation has to its own combatants in preparation for (a potential) war, and its obligations in this regard vis-à-vis other nations, so too we can divide questions about military ethics education into questions about who its primary beneficiary ought to be: our own combatants, or the citizens of the nations against whom we war. And just as in the first case while we might hope there will be considerable overlap, we cannot rule out the possibility that the two will come apart, so too in the second. To put it bluntly, the military ethics education that is best for our combatants might not necessarily be best for those against whom they fight, and vice versa.[8]

One reason we might want to teach ethics is to ensure adherence to the rules of war, and thereby, for example, to protect the innocent. But there are various ways one might accomplish this. For example, teaching the rules of *jus in bello* has actually been a good bit easier during the latest conflicts in which the U.S. has been involved. It turns out that one of the best strategies for winning at counterinsurgency warfare is scrupulous adherence to the rules of *jus in bello*, in particular Noncombatant Immunity. If you want to win the hearts and minds of a people, you have to be careful not to kill too many of them. And this is true even if it increases the risk to you and your troops. This fact has been much touted of late; it makes it a great deal easier to get "buy-in" to the rules. What students and soldiers might be reluctant to accept as a consequence of abstract moral theorizing, they are often more than happy to accept as a principle

of good tactics. They are, after all, very used to the idea of risking their own lives and those of whom they command for the sake of mission accomplishment. But, of course, this is not the primary reason to avoid killing young babies or the elderly. The primary reason is because it is wrong. So one might reasonably worry that by stressing the prudential aspects of these rules over their moral grounding, commitment to them might falter when the tactical situation changes. What we want, then, is young men and women who, as Aristotle said, do the right thing *for the right reasons*. This, then, requires us to pay attention to *moral* considerations.

On the one hand, this might also be good for these combatants, in a fairly straightforward way. Pete Kilner, among others,[9] has argued that incidents of PTSD can be decreased if we explain to our soldiers why the killing they do is justified, and Nancy Sherman, for example, has written a great deal about the notion of "moral injury."[10] Apparently, feelings of moral guilt can be exacerbated by not understanding why what one did was in fact the right thing to do—or was at least morally permissible. But however that may be, there is clearly a question being begged here. What if the killing our combatants do is in fact not morally permissible? For example, what if the war in which they are fighting is an unjust war, and the revisionist just war theorists are right that soldiers who kill in such wars can be morally culpable? To put it bluntly, what if they *should* feel guilty?

Granted, it might in some sense be good for them nevertheless to believe they are justified, if Kilner et al. are right. If someone does not develop PTSD because she believes (even falsely) that what she did is right, that is clearly something that is good for her. So we could try to ensure that our combatants are inalterably convinced of the justice of the wars they fight, and of the rectitude of the killing they do. But, of course, this is not really to teach ethics; it is propaganda, manipulation. Real ethical teaching requires engaging with the issues in a critical way.

III. Risks

I have been teaching ethics at a military academy for almost 15 years now, and I have become more and more convinced that we owe it to our future officers—and indeed to combatants at all levels, although I grant that the approach may have to be adjusted for different constituencies—to give them the wherewithal and to cause them to think deeply and critically about the profession they are entering into and about what it is that they may be called on to do. These are people who might be more or less directly involved in killing other human beings and otherwise devastating lives, possibly on a grand scale. And this obligation on our part remains even if that killing turns out not to be justified: if they kill unjustifiably, then other things equal they should realize it and they should feel guilty. Combatants remain moral agents even when they act in the service of the state. Gone are the days when soldiers are but instruments of the state, with no moral agency of their own.[11] Killing—especially on the scale of war—is serious business, and if anything in life requires serious moral reflection, surely such killing does. Thus, we owe our combatants more than simply feeding them the party line. Autonomy is obviously not something normally highly prized by militaries, but if we are to respect those who do our killing as persons, then we have to take them seriously as autonomous moral agents. But this approach has risks.

The risks in one direction are obvious. Take, for instance, the case of Ehren Watada. Watada was a 1LT in the U.S. Army, ordered to deploy to Iraq in 2006. For various reasons, however, he educated himself about the reasons for the U.S. invasion, and came to the conclusion that the war was unjust. He therefore refused to deploy. And even a cursory examination of the justice of that war might have led others to the same conclusion. Thus, we have to be open to the possibility that genuine military ethics education might occasionally lead combatants to balk,

if not at war in general, then at least to this or that particular war.[12] Something similar may happen on the *in bello* side. Suppose considered and sincere moral reflection leads a combatant to be more discriminating than the rules of engagement and international humanitarian law require—suppose, for example, she refuses to kill Walzer's "naked soldier;" that is, a soldier who at the moment is utterly defenseless and poses no threat—taking a bath, say.[13] I think we have to be open to this possibility as well; in fact, depending on the actual circumstances, I might even applaud it.

But my main worry here lies in the opposite direction: that deep moral reflection may lead to more and worse killing—or at least to violations of the laws of war. How can that be? It initially sounds perverse, to suggest that moral reflection may have such an effect.

Part of the problem is that there is no single, monolithic just war theory; rather, there is a collection of partly overlapping views. In many ways, the field is in flux. Take, for example, the views of the so-called "revisionist" just war theorists on the moral equality of combatants. This principle, a cornerstone of the tradition as represented in Walzer's book, is now widely rejected, even though it is in fact what is largely reflected in IHL. But suppose a young officer or officer-to-be reads the revisionists and finds their arguments compelling, and therefore begins to look upon enemy combatants as morally inferior. Might this affect the way she treats them?

The notion of a combatant with which we work in JWT and LOAC/IHL is, I would suggest, in any case somewhat arbitrary and artificial. A cook sleeping 50 miles behind the front lines is a legitimate target, while a goat herder who has just discovered one's position and seems determined to alert the enemy is not. Take, for example, a case like that of SEAL Team 10, as recounted by Marcus Luttrell in his book *Lone Survivor*.[14] In the incident that forms the core of that book, a four-man SEAL Team operating in a remote area of Afghanistan has their position compromised by a pair of civilian goat herders and a young boy. Not wanting to slaughter their prisoners, and apparently feeling themselves to have no other options, they let the three go. As a likely result, they soon find themselves embroiled in an intense firefight that leaves Luttrell wounded and his teammates dead.[15] What do we say to the student who responds to a situation such as this (perhaps with a few details changed—perhaps we need to stipulate that the three are all adults who evince a clear intent to alert the Taliban to the SEAL Team's presence) by rejecting the notion of noncombatant immunity in a case such as this? At its most sympathetic, one could see this playing out as a (future) commander insisting on the moral innocence of those under his command, while simultaneously rejecting the innocence of the goat herders.

What does one say to such a student? One can give counterarguments, present principles, and a number of other things, in an effort to lead such a student to the "right" answer, but it would be an unwarrantedly optimistic view of philosophy that it could change everyone's mind in every case. Disagreement about moral matters is persistent and pervasive, and not just among the ill informed; think about the long-standing and apparently intractable differences of opinion about the morality of abortion or the existence of God.[16] So we might yet have students who remain unconvinced of the "approved solution," and not just because they are stupid or irrational; there are some things about which reasonable people apparently can disagree. We might even think of an analogy with the "selective conscientious objection" and "naked soldier" cases here. Many of us might respect someone's decision not to fight in a particular case, even if we disagree with him. Parity of reasoning would then seem to suggest that we might—at least in some cases—need to extend the same courtesy to some people who think that the latitude of permissible killing is broader than we do.

To be clear: I am not saying we should permit such killing, but I am saying that we might in some cases have to view the position as reasonable, even if we think it is wrong. And so I am *not* advocating relativism or subjectivism here. Rather, I mean to be recognizing the existence

and persistence of informed disagreement, and the limits of philosophy—even of rationality—to resolve philosophical disputes. And this even between people who have much in common—a culture, a shared moral or religious tradition, and so forth. The situation is, of course, even worse when we cross cultural boundaries. Think, for example, of the so-called human rights regime. For all that many of us consider human rights to be legitimate and even objective, they are viewed by some as a Western cultural imposition. And such disagreement is not always grounded in mere bigotry. It is always tempting, but we simply cannot convict everyone who disagrees with us of irrationality or bias or some other gross cognitive failing.[17] Hence, we cannot just take it for granted that everyone will come to the same conclusions that we do—or that IHL/LOAC does.

IV. Conclusion

It might be objected that I am just borrowing trouble here, that any danger is more apparent than real. There is, after all, still the curb of IHL/LOAC, the risk of punishment, and there is probably not that tight a connection between philosophical theorizing and action anyway. So perhaps we should take a note from the civilian sphere and insist on compliance, but not understanding. We care that people obey traffic laws; we care much less whether or not they understand the reasons behind them. But the problem is that the stakes are much higher in war, both in terms of the importance of compliance and—as I have suggested above—in the importance of understanding. Simply to insist that combatants follow the rules out of a fear of punishment, whether or not they agree with them, seems to risk the kind of cognitive dissonance that can breed cynicism, and it seems to fail to take seriously their status as moral agents. What more can we do? Perhaps the answer lies in some notion of full disclosure and informed consent. Much has been written lately about the notion of a military contract or covenant.[18] At a minimum, it seems, we should make it clear to our future combatants that adherence to the rules of at least *jus in bello* is part of what they agree to when they consent to military service, to whatever extent they do consent.[19] Moreover, to the extent that their disagreement with those rules is in fact reasonable, they should to that extent be willing to view the rules with which they disagree as reasonable as well. Thus, a healthy dose of humility—another virtue the military is not always careful to prize—may be called for. This is not quite to say that combatants should subsume their personal morality to the state's, but that in cases of reasonable disagreement they should perhaps be willing to defer. So while we might encourage our combatants to criticize, at the same time we should remind them that the rules are the rules, and compliance with those rules is part of what it is to be a legitimate combatant. From a moral point of view, this strikes me as the least we can do. It may also be the most we can do.

Notes

1. The views expressed herein are those of the author and do not necessarily reflect those of the U.S. Government, the Department of the Army, or the United States Military Academy.
2. See, for example, Brian Orend, *The Morality of War* (Peterborough, Ontario: Broadview Press, 2013); Carsten Stahn, Jennifer S. Easterday, and Jens Iverson, Eds., *Jus Post Bellum: Mapping the Normative Foundations* (Oxford: Oxford University Press, 2014).
3. Roger Wertheimer, Ed., *Empowering Our Military Conscience: Transforming Just War Theory and Military Moral Education* (Burlington, VT: Ashgate, 2010): ix.
4. Donald H. Rumsfeld, "Secretary Rumsfeld town hall meeting in Kuwait" (U.S. Department of Defense Website, 2004): www.defense.gov/transcripts/transcript.aspx?transcriptid=1980.

5. It therefore strikes me as an interesting question to what extent nations have an obligation to invest in research aimed at developing, or an obligation simply to procure, more precise and potentially less lethal weapons systems. It may go too far to say that nations have an obligation to prepare for war, but it does seem that if they are going to prepare for war at all, then they ought to prepare to fight morally.
6. This debate has recently played itself out in the drone literature, for example. Bradley Jay Strawser in "Moral predators: The duty to employ uninhabited aerial vehicles," *Journal of Military Ethics* 9, no. 4: 342–368 (Winter 2010), for one, has argued that we may have a moral obligation to use drones in order to safeguard our pilots. Others have pushed back, arguing that the use of drones is actually less discriminate, and therefore violates notions of proportionality. (And, of course, the use of drones has been decried for a host of other reasons as well: they do not foster the right sorts of virtues, for example, or they do not accord with certain romanticized notions of what a "warrior" should be. I ignore these other objections here.)
7. For example, it seems to me that—especially given the recent tendency among just war theorists, myself included, to reject the doctrine of the moral equality of combatants—the notion of force protection has not been given due consideration, in theory if not in practice. See below, and my "Noncombatant immunity and Truman's decision" (unpublished manuscript).
8. It is tempting to view the tension I have in mind as a straightforward conflict between deontologically based notions such as autonomy and respect, on the one hand, and consequentialist considerations, on the other. But that would almost surely be to work with an overly simple version of both theories. It is worth noting, however, that many militaries favor an approach to ethics education grounded in virtue ethics, and this might be thought to avoid the worry altogether. But I do not see how this can be so, for precisely what is at issue is how the virtuous person will behave. See below.
9. Peter Kilner, "Military leaders' obligation to justify killing in war," *Military Review* 82, no. 2 (2002): 24–31. Also, for example, see H. R. McMaster, "Preserving soldiers' moral character in counter-insurgency operations." In *Ethics Education for Irregular Warfare*, Eds. Don Carrick, James Connelly, and Paul Robinson (Burlington, VT: Ashgate, 2009).
10. See, for example, Nancy Sherman, *The Untold War: Inside the Hearts, Minds, and Souls of Our Soldiers* (New York: W.W. Norton & Co., 2010).
11. See, for example, Roger Wertheimer on the legacy of Jeffersonian liberalism in this regard. Wertheimer identifies another reason for "demanding that our officers get some intellectually serious schooling in moral reasoning and understanding." He argues that "it is a bulwark of a free, democratic society that its military leaders have an enlightened conscience," and that "[o]nly politicians bent on mischief could have anything to fear from empowering our military conscience with the analytical tools for evaluating its basic values and principles." Roger Wertheimer, Ed., *Empowering Our Military Conscience: Transforming Just War Theory and Military Moral Education* (Burlington, VT: Ashgate, 2010): 167.
12. It is for this reason that I join the chorus of those who call for some sort of system of selective conscientious objection. I do not see how you can morally ask young men and women to kill without causing them to think deeply about what they are doing. But having done so, it seems perverse to force them to fight if their own considered moral reflection tells them not to do so.
13. See Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 2006): 138ff.
14. Marcus Luttrell, *Lone Survivor: The Eyewitness Account of Operation Redwing and the Lost Heroes of SEAL Team 10* (New York: Little, Brown & Company, 2007).
15. There is the further fact that the helicopter sent to rescue the team was shot down, resulting in an additional 16 American deaths. But it seems illegitimate to me to count these deaths in the calculus evaluating the SEAL Team's decision. Granted, these combatants might not have died had the SEAL Team decided differently, but they were themselves Special Forces Operators doing exactly what Special Forces Operators do, and it is also true that had we not invaded Afghanistan in the first place, they probably would not have died. Of course, the question of precisely which consequences of an action ought to be taken into account in such an evaluation is a thorny matter—and properly the subject of another chapter.
16. There is a considerable philosophical literature on this subject. See, for example, Richard Feldman and Ted A. Warfield, Eds., *Disagreement* (Oxford: Oxford University Press, 2010); Peter van Inwagen, "Is it wrong, everywhere, always, and for anyone to believe anything upon insufficient evidence?" In *Faith, Freedom, and Rationality: Philosophy of Religion Today*, Eds. Jeff Jordan and Daniel Howard-Snyder (Lanham, MD: Rowman & Littlefield, 1996).

17. In a talk at West Point several years ago, Hilary Kornblith referred to this as "inference to the least flattering explanation."
18. See, for example, Sarah Ingham, *The Military Covenant* (Burlington, VT: Ashgate, 2014); Patrick Mileham, "Unlimited liability and the military covenant," *Journal of Military Ethics* 9, no. 1: 23–40.
19. Without meaning to toot the horn of one's home institution, it does seem to me much to the credit of West Point that all cadets are required to take what is in effect a course in military ethics and the just war tradition *before* they incur any service obligation. The situation is, of course, more complicated with combatants who are conscripted, although here too I would argue that due regard for them as persons still requires explaining not just what the rules are, but why we have the rules we do.

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5

JUS ANTE BELLUM

Principles of Prewar Conduct

Roger Wertheimer

In his brief talk at a 2010 New York University Law School conference, Steven Haines, a British "academic international lawyer," relates how he accepted the invitation to speak on the topic of *jus ante bellum* despite having never encountered the term or the concept.[1] Nothing daunted, Haines tried researching the topic and found only a solitary citation of my then recently published *Empowering Our Military Conscience: Transforming Just War Theory and Military Moral Education*. That work is an anthology, partitioned with the labels *Jus ad Bellum*, *Jus in Bello*, and *Jus ante Bellum*. That third part is two essays by me.[2] After discovering nothing useful therein, Haines decided he "had no option" but to try to define the term on his own.

Haines stays silent why he "had no option" to ask his NYU host what (the host thought) the term meant. Nor does Haines evince any wonderment why on earth: (a) NYU wanted him to talk on a topic that he knew nothing about; and (b) why NYU wanted someone to talk about something well-nigh no one had talked about. As for the latter, I have made inquiry of his host, but received no response. Absent testimony to the contrary, it seems a safe bet that the conference organizers somehow got wind of something in the air, a puff of the *zeitgeist*.

The puff was an unprecedented gale of publications and conversations during the first decade of the 21st century discussing matters of *jus ante bellum*, mostly without using that Latin name. Talk of war was transformed by the emergence of a single superpower wielding full spectrum dominance over an entire planet. The prior decade began with the whole world watching a 100-day demonstration that conventional war against the military the U.S. commands is asymmetric warfare with a doomed strategy. A dozen years later, that lesson was retaught by televised devastation using fewer allies and unprecedented destructive precision. Lesson learned, what remains to talk about are: (1) armed humanitarian interventions, responses to terrorism, and other forms of "irregular" ("unconventional") warfare; and (2) the dominant powers' distortion and defiance of the rules of war, moral and legal, *jus ad bellum* (the justice of entering war), and *jus in bello* (the justice of conduct within a war). What has changed for all involved are the military strategies and policies that have reasonable prospects of success. What calls for reconsideration are the antecedent conditions of armed conflict.

The accelerating conversations about norms of prewar conduct often intersected coincident accelerating conversations about norms of postwar conduct. Talk of *jus post bellum* took off at

the start of the century,[3] and as the term gained acceptance as the name of a third subject of just war discourse, some idea of *jus ante bellum* and the name of it was bound to occur to someone. It is a signal fact of our history that as the decade progressed, the term occurred to a noteworthy number of people utterly unbeknownst to one another.[4] Interest in the topic so grew that, by 2011, a projected anthology on just war theory put out a call for papers on *jus ante bellum* along with the theory's new triad of established parts.[5]

The brief history of thought and talk about *jus ante bellum* makes a nice lens for looking at new directions in the just war tradition. As a bonus, the history has its amusing moments.

I. Constraining *Jus Ante Bellum*

Doubtless, NYU picked Haines to talk on *jus ante bellum* because he is an internationally recognized expert on the law governing the use of force and the conduct of military operations, and in particular on humanitarian interventions.[6] Yet Haines "had a nervous feeling that [he] had missed something substantial in the field," and he wondered why. The evident answer is that the talk about matters of *jus ante bellum* was outside the literature produced and perused by the practitioners and professors of international law, and Haines tells us, in so many words, that he does not read much outside his profession's literature.

The telling remark comes after Haines tries to give content to *jus ante bellum* by proposing a moral obligation states have regarding their prewar conduct. Then, without criticizing his proposed principle, Haines dismisses the whole idea of *jus ante bellum*. He tells us that his proposed obligation (and presumably any other) could not merit being ranked with *jus ad bellum* and *jus in bello*, because, he says, the latter terms "are these days understood to be labels describing particular bodies of law." Ergo, the absence of international conventions regulating prewar conduct entails the nonexistence of *jus ante bellum*. So, too, the paucity of postwar positive law moves Haines to question the concept of *jus post bellum* as well.

Now, as a lawyer addressing a law school audience (attendance "by invitation only"), Haines is entitled to rely on the linguistic practices of the legal profession. Still, the instructive fact here is that a widely respected expert on the laws of armed force declared himself unaware that during "these days" of the last decade, the terms *jus ad bellum* and *jus in bello* were commonly used to refer to moral principles—norms that may or may not be recognized by any "bodies of law." In fact, the terms were being so used far more frequently than ever before in human history! If they were not so commonly used, the terms, *jus post bellum* and *jus ante bellum*, would not have seemed so natural and been so readily invented, understood, and accepted.

Haines could learn the linguistic facts from my anthology's lead essay: Michael Walzer's "The Triumph of Just War Theory (and the Dangers of Success)." From the anthology's next essay (George Lucas's "'Methodological Anarchism': Arguing about Preventive War"), Haines could learn that he was not alone in his linguistic and conceptual isolation. Haines's talk merits attention if only for its stark confirmation of Lucas's thesis that what is called "just war discourse" has split into separate conversations.[7] The original and recently reinvigorated conversation among Catholic and, more broadly, Christian thinkers continues to work with the conceptual tools and constraints of Christian moral theology. The great legacy of that tradition is our international laws of armed force, but the legal discourse became a distinct conversation with the conceptual tools of juridical analysis and the constraints of the empirical contingencies of legal history. Most recently, a third dialectic emerged within the world of secular, academic philosophy due to the "school" that Walzer attended.[8] This upstart conversation retains the religious tradition's focus on moral principles, but it reads "JWT" as an acronym for "Just Walzer's Theses." Just war discourse is now (at least) three conversations using the same terms with different referents or

different conceptions of them, and yet, however difficult, with some mutual respect and charity, they can still communicate with and contribute to one another.

Recent history has been hard on all the traditional talk by forcing a focus on different occasions and forms of armed force (or its threat) that people have reason to use. Categories such as *war* and *sovereignty* have become less clearly applicable and useful when evaluating the current urgent moral demands and live military options. The new orthodoxy is that the old orthodoxy is in trouble. The ruling platitude of this century is that the just war tradition is in crisis. It is said, with some exaggeration, that once upon a time, the categories of just war thought were stable, well defined, and widely accepted, but now Babel has befallen.[9] Amid this turmoil, and contributing to it, attention gets directed to previously under- appreciated moral concerns about both the aftermath of war, and also its antecedents. Inevitably, those concerns get formulated with the newly fashionable vocabulary of just war discourse.

Plainly, when people claim that some alleged norm is a principle of *jus ante bellum*, they mean to be making a substantive claim of some significance. They do not mean to be stipulating an arbitrary verbal convention. They are confident that their new term is just like the old established terms. They rarely consider the differences.

Haines is surely right about one thing. If *jus ad bellum* and *jus in bello* did now describe only bodies of law, that would be a good (albeit not conclusive) reason for insisting that *jus ante bellum* and *jus post bellum* be used accordingly. Haines is also right about something further, though he takes it to extremes. While just war principles need not be recognized by current international law, most of the modern talk about principles of *jus ad bellum*, *in bello*, and *post bellum* has centered on norms that *could* be and *should* be enforced by international conventions.[10] That is a good (albeit not conclusive) reason for requiring the same of any suggested principle of *jus ante bellum*.[11]

What is meant here by *could* and *should* is, roughly, that we may reasonably hope that eventually all or most states will commit themselves to the norm and agree to submit to sanctions for violations of it. The reasonableness of the hope requires a mutuality of the benefits from compliance with the rule. The mutuality means that a nation need not directly benefit from its own compliance; rather, nations must benefit from the compliance of other nations.

Thus, traditional rules of *jus ad bellum* and *in bello* prohibit only wrongs to (the people of) other states, not wrongs to a state's own people. A derelict military commander might inflict on his subordinates much the same injustices as he might inflict on captive enemy combatants: starvation, torture, medical experimentation, religious conversion. *Jus in bello* rules prohibit only harms to the enemy. Wanton abuse of one's subordinates is not less egregious than a comparable abuse of enemy prisoners. It may well be more egregious. It may be so severe and on a scale as to warrant a humanitarian intervention. Still, it is not a violation of *jus in bello*.

Evidently, excluding some salutary moral prescription from the pot of just war principles is not a denigration of it or diminution of its importance. Nor is just war theory incomplete or defective for "failing" to issue edicts outside its purview. One virtue of classical just war theorizing has been the modesty of its scope and ambitions. Another is its epistemic consistency. However derived, the justice of rules of war is best tested by their acceptability to potentially antagonistic states.[12]

My suggested conservative requirement on just war principles will be too conservative for many who have talked of *jus ante bellum*. They seem to have begun with some prescriptions they wanted to promote, and then thought the prescriptions could be better promoted by packaging them as principles of *jus ante bellum*, as though a norm inherited some heft by association with the prestigious norms of *jus ad bellum* and *in bello*. All of these writers intend to expand the content of just war theory. Some of them mean to transform the character of the just war tradition. Others do not recognize that their prescriptions have that consequence.

My conservative constraint on just war principles seems minimal, but it might possibly suffice to rule out any proposed *jus ante bellum* principle—and if it does not, possibly some further reasonable requirement would rule out the remainder. As things are, we really do not know whether there are any *jus ante bellum* principles, or if there are, what they are, or if there are not, why there are not. These are intelligible questions about matters of obvious significance. So, *jus ante bellum* may well be a subject of worthwhile study without there being any *jus ante bellum* principles.

Still, the best introduction to the subject—and conceptions of the subject—may often be to examine proposed principles.

II. Peacemaking

Some idea of *jus ante bellum* appears as far back as the Harvard political scientist Stanley Hoffman's 1981 pronouncement that: "Today, in many instances, morality requires not only a *jus in bello* and a *jus ad bellum*, but a *jus* or rather a praxis—*ante et contra bellum*."[13] A quarter-century later, Maureen O'Connell, a Fordham theologian, had a similar thought, but she wanted to call a praxis of peacemaking *jus ante bellum*. Her paradigm praxis is the "faith-based diplomacy" practiced by Douglas Johnston and the International Center for Religion and Diplomacy founded in 1999.[14]

Two Christian clergymen, Mark Allman and Tobias Winright, try to further O'Connell's ambition of strengthening the two competing, recently reinvigorated Christian traditions regarding war: the just war tradition and pacifism. They all hope to help both traditions by bridging the gap between their principles with a praxis of peacemaking under the name of *jus ante bellum*.[15] Allman and Winright welcome O'Connell's term as a label for the 10 principles of the praxis of "just peacemaking" promoted by Glen Stassen since the 1980s.[16] Stassen's directives are a pragmatic program addressed more to individuals than nations. Some are attitudinal precepts. They are not designed to be international conventions.

Yet, some of Stassen's prescriptions resemble political principles proposed for *jus ante bellum* by secular thinkers. Like Christian pacifism and just war theory, cosmopolitanism has recently been thriving, and, like Christianity, cosmopolitanism is disposed to be drawn both to pacifism and just war theory. Not surprisingly, a couple of cosmopolitans, Garrett Wallace Brown and Alexandra Bohm, have proposed Stassen-like principles aimed at eradicating the structural socioeconomic injustices that motivate violent conflict. This they call *jus ante bellum*.[17]

While the idea here may have special appeal to Christians and cosmopolitans, the basic thought needs no distinctive assumptions. Whether you think that war is never justified or that it is justified only as a last resort, we might all agree that we had best work to make and keep peace. Harry van der Linden, a secular academic moral philosopher, has elaborated and expanded this idea by examining the risks and costs of U.S. military hegemony. In a series of essays, he propounds six principles that define what he calls "just military preparedness."[18] He also calls it *jus ante bellum*, and claims that it is a fourth part of a proper just war theory.[19]

Van der Linden's justifications of his principles are reasonable enough, but they do not argue for the reasonableness of including the principles in the law of armed conflict or a comparable part of international law. That is partly because his conception of *jus ante bellum* focuses primarily on *intra*-national matters. Consider his fifth principle: "The value of security (against the threat of massive human rights violations by armed force) and the resources committed to this value must be balanced against other human values (e.g., education and health) and the resources set aside for their realization." That seems sensible, indeed truistic. Certainly, security must be balanced—properly, correctly balanced—against other goods, as the value of anything must be properly balanced against the value of other things. Notoriously, persons and peoples favor

markedly different weightings. That is a common cause of conflict, within persons and between them, and within nations and between them. Van der Linden thinks, and I agree, that America's lexical prioritization of security is massively irrational. But, how, concretely, is that matter to be decided? Is the propriety of a nation's balancing of its security something sensibly left to a world court to decide? Is that a properly judiciable issue? It seems to be an irremediably political question best decided by a political process. Moreover, that process better be primarily intra-national. Nations and individuals have little sovereignty or autonomy when they are not responsible for balancing their own values.

Similarly, van der Linden's first principle says, in effect: (1) a nation's basic defense structure should accord with its purpose of using military force only for a just cause; and (2) the only just cause for such force is "protecting people against massive human rights infringements caused by large-scale armed violence." That first condition is near truistic. The second, the specification of just cause, is a controversial thesis of *jus ad bellum*.

Trouble comes with determining the application of this *jus ante bellum* principle. Consider a real, risible example. Michael Sean Winters is another independent inventor of the term *jus ante bellum* to refer to "conflict prevention."[20] He is persuaded that the U.S. would not have invaded Iraq if it had understood Iraqi culture better. So, his prime example of a *jus ante bellum* prescription is that the U.S.: (a) provide tuition-free college education for students majoring in the culture and language of countries posing potential threats, such as China, North Korea, and Pakistan; and (b) forgive the education loan debts of those who teach such subjects in American schools for a couple years.

Now, never mind that the U.S. leaders got knowledgeable advice about Iraq from the area experts, but ignored it. And never mind that knowledge about one's enemies is a dangerous commodity prized by aggressors. The real question in this and every such case is: How is it determined whether the proposed practice would be part of a nation's defense structure that uses military force only for protection against human rights violations?

Van der Linden's first and fifth principle are not rules international courts are competent to apply. He implicitly agrees, for his last principle says that compliance with his other five principles is to be determined by a competent authority with right intention, and he means a competent authority within a community, not the authority of the international community, and further he means a legislative authority, not a judicial one. That is surely right, and that is some reason for disqualifying his principles from just war theory.

Van der Linden's *jus ante bellum* focuses more on intra-national relations. Cosmopolitan and Christian conceptions of *jus ante bellum* have focused more on international relations. They all face similar challenges formulating prescriptions of peacemaking suitable as just war principles. Well-defined prescriptions (like as Winter's) may be plausible (unlike Winter's) but too particular to be suitable just war principles.

Prescriptions of sufficient generality may be plausible, but not operational rules. The basic directive is something like: *Make peace, not war.* That affirms a positive general duty to promote a kind of good. Such duties are fulfillable in various ways, no one of which is required. Monitoring and enforcing such duties is a dicey business.

The directive may be reformulated as a negative, "perfect" duty, but it cannot be a blanket: *Don't endanger peace.* Peace may be secured by impoverishing a nation, depleting its capacity to battle, so peace may be endangered by enriching a nation. Prosperity may imperil peace. Like going to war, endangering peace is sometimes permissible, sometimes mandatory, and commonly controversial. But while there is considerable consensus on which events are wars, whether an act endangers peace is a common subject of political dispute—one that must be settled before its justice can be broached.

Endangering peace is a complex causal relation difficult to define and measure. Competition for scarce resources is a fact of life and ubiquitous source of conflict. Any act adversely affecting another country might displease it and endanger peace to some degree. Whether and to what extent it actually does depends on what other nations do. Generally, whether on balance an act or policy endangers peace to a dangerous degree is not reliably predictable. Whether it does so unjustly resists specification in operational terms.

Formulating general prescriptions of peacemaking—not mere hortatory principles, but rules suitable for enforcement by the international community—is not a simple task.

III. Force Other Than War

In her 2010 dissertation, *A Rossian Just War Theory*, Patricia Steck applies W. D. Ross's conception of prima facie duties to "a new area of the just war tradition" she calls *jus ante bellum*.[21] The subject of Steck's *jus ante bellum* is the justice of activities she calls "pre-war coercion": activities such as embargoes, blockades, economic sanctions, trade restrictions, electronic warfare, targeted air strikes, and so forth.

Steck attributes her idea of this new area to a discussion with Michael Walzer in 2005 or 2006. Throughout, she relies on the 1977 first edition of Walzer's *Just and Unjust Wars*. Blissfully or not, she is plainly unaware that Walzer's 2006 "Preface to the Fourth Edition" discusses more briefly much the same activities of prewar coercion under the headings of "measures-short-of-war" and, more narrowly, "force-short-of-war."

Walzer does not talk in terms of *jus ante bellum*, but he says "force-short-of-war obviously comes before war itself." Actually, on one natural, reading that is obviously false. Wars often begin without any of the activities Walzer and Steck have in mind. Often, such activities are initiated (if at all) only after war has begun, and are as much a part of the war effort as any pitched battle. Some of these activities are in themselves acts of war in international law. And sometimes they are used after a war to enforce and stabilize the peace.

Walzer and Steck may consider them prewar acts because they consider only their use apart from war, not as part of a war. They regard them as peacemaking activities intended to preempt war by achieving some goal with less risk and cost. Walzer's immediate concern was with changing a regime that is not awful enough to warrant an armed invasion, where some less violent measures might be justifiably tried. As peacemaking efforts, such acts precede the war they intend to preempt so they might be considered *prewar* acts when they succeed and no war follows.

However, unlike the activities promoted by Stassen, O'Connell, van der Linden et al., Walzer and Steck's prewar coercive forceful acts are *peacemaking* activities only *per accidens*. They are not themselves peaceful acts. They are ways of getting one's way by harming (or threatening to harm) another people. They may be used when they are (thought likely to be) less costly than other ways of getting one's way. Whatever their intent, they may endanger peace. They can start a fight. The response may be an escalation of conflict. These acts may be intended to preserve peace or to provoke a war. They may be intended to achieve all kinds of goals where the threat of war is too remote to factor in the planning. Such acts do not essentially involve any intentions about war.

Walzer says: "We urgently need a theory of just and unjust uses of force." What sort of theory he is envisaging is left unexplained. He does not mention any of the large literature on international justice or the body of international law on blockades, embargoes, and the like; no hint is given how all that is lacking. The little Walzer does say suggests that the principles of this theory would be basically the same as those of (some unspecified) just war theory, except that it would be somewhat more "permissive" regarding force-short-of-war. The latter sounds

like a plausible generality, but Walzer makes it a nearly empty definitional truism by saying that "short-of-war means without war's unpredictable and often catastrophic consequences."

Actually, war is like baggage: its constituents are very variable. Wars differ from blockades, embargoes, targeted air strikes, and other ways of harming others, not by being more unpredictable or devastating, but rather by *consisting of* any of the other ways of harming others. Walzer's forces-short-of-war are acts apart from war of a kind that can be parts of a war. They are *ante bellum*, not temporally but ontologically, because any of them can occur independent of war, whereas war cannot occur without some of them.

Wars cannot be put on the same scales as the kinds of force they may contain. A part cannot be as dangerous or devastating as the whole it belongs to—but it may in itself be far more dangerous and devastating than other wholes.

Fifty years ago, the U.S. blockade of Cuba repelled not a violent assault upon the U.S., but only a threat to the U.S. advantage in destructive capabilities. Kennedy's "quarantine" could have been the start of a war, and thus a part of a war. As it happens, it was an act of aggression but not a part of a war. Still, it ranks among the most dangerous military actions in human history, right up there with the bombing of Pearl Harbor and the Normandy invasion. The blockade's consequences were more unpredictable than the consequences of the war the blockade might have provoked. (That is because the consequences of that war are consequences of the blockade.) Those consequences could well have dwarfed the catastrophes of all previous wars combined. The blockade was nearly bloodless, but nearly holocaustic. Doubtless, the blockade was "more permissible" than a violent assault that would more certainly initiate a war. That is only because more harmful and risky means should not be used before trying a less harmful and risky means with a good chance of succeeding. Still, could that blockade be justified if the war it almost sparked would not have been justified?

Again, that war might have dwarfed the devastation of all prior wars. Should that blockade not need a justification weightier than that for other wars (for example, the Falklands War)?

The 1990s Iraq embargo resulted in more civilian deaths than the wars preceding and succeeding it resulted in combatant deaths. Walzer thinks it was more permissible than they. He does not explain how the embargo could be more permissible despite being more deadly.

Walzer and Steck have some conception of an extension of just war theory consisting of the principles governing the use of force-other-than-war paralleling the principles of *jus ad bellum* and *jus in bello*. Steck calls this extension *jus ante bellum*. Walzer does not. And he would likely dissociate himself from some of Steck's proposed *jus ante bellum* principles. Elsewhere, Walzer has thought of just war principles as rules properly enforceable by the international community upon its members. Generally, Steck's principles seem unenforceable by international law. For example, her "final requirement is that all persons involved in the coercion accept the fact that *war is not inevitable*." More generally, her principles are directives addressed to "everyone," not specifically to rulers and their military agents.

Some Steck principles might be enforceable and acceptable to Walzer. They resemble familiar principles of *jus ad bellum* and *jus in bello*. Steck sees the resemblance as evidence of her principles' plausibility. She does not see how the resemblance threatens her conception of *jus ante bellum* as a new wing of just war theory.

Actually, that resemblance confirms what should be expected. Just war theory is a sub-theory, a proper part of a general theory of political justice whose basic principles apply to any instance of harming other peoples. Any harming of others should be necessary and not excessive. And the goods it begets better be enough to warrant the harm. And the harming should be discriminatory in its targeted effects. And have a rightful intention. And have reasonable prospects of achieving its legitimating goals by legitimate means. And be a last resort in that no lesser harm

would meet these requirements. Further, many harms should be inflicted only by a legitimate authority. And many should be publicly declared.

War is special regarding the requisite just causes for it if only because a whole is not justified unless its parts are, while any part might be justified when the whole is not. However, again, some acts of force-other-than-war have had far greater costs and risks than some wars, so their justification should have weightier reasons.

None of this suggests that the principles governing prewar coercion are usefully understood as an extension of just war theory called *jus ante bellum*.

IV. Professionalism

My book, which Haines mentions, describes some of the moral conflicts and uncertainties within military professionalism, and claims that these observations contribute to a field of study properly called *jus ante bellum*. No definition of the field is suggested, and no suggestion is made that military professionalism is the only or primary subject within that field. The second of my two chapters is about conflicts and uncertainties within the mission of Professional Military Ethics Education (PMEE); the subject belongs to a sub-field I call *jus in disciplina bellica* (the ethics of educating for warfare).[22]

Throughout, I was intent not on promoting some principle for the international community to enforce, but rather on describing some of the challenges of accommodating the ethos of professionalism with the organizational imperatives of a military. Professionalization has been a core project of Western militaries for two centuries. It is an *ante bellum* activity, pursued in peacetime (often prompted by failings in a prior war) to improve proficiency in war. It is a world-historic alteration of the operational and moral character of the military that is not well understood. I meant to direct attention to unanswered questions about the import of military professionalism for just warfare and a theory of it.

A theory of just warfare is centrally about a kind of conduct. It is incomplete without a conception of a kind of character, the just warrior. It should explain whether, when, and how a just person can be a warrior. The (in)justice of a community's warring has attenuated significance if it does not argue for the (in)justice of its members' participation. If the injustice of a community's warring does not entail the injustice of an individual's participation, the theory should explain the discrepancy.

A theory of just *modern* warfare must explain when and how a *professional* can be a warrior. In the U.S. and elsewhere, the military's self-conception as professional is systematically institutionalized. Our military pride themselves on being professional. Their sense of propriety is filtered through their conception of professionalism. Their conscience harkens to worries about when service in war is unprofessional, and when refusal to serve is unprofessional. As things are, their professionalism is unequipped to answer such questions. The profession of arms is, metaphysically and morally, categorically unlike civilian professions.

The metaphysical contrast is stark. In civilian professions, membership is due to acquiring an expertise, an occupational skill set. Membership in the profession of arms is due to membership in an organization with an expertise that members contribute to but need not share. Military doctors, teachers, lawyers, chaplains, police, purchasing agents, and so on all belong to the same military profession as the captain of a frigate and an infantry lieutenant. They share not a skill, but a subordination to a command structure.

Consequently, civilian and military professions have contrasting normative structures. The distinctive expertise of a civilian professional is fitted to serve a distinctive interest, such as health, wealth, education, justice, and so on. The special capabilities are designed to achieve some

specific good, often an intrinsic good. Normally, their exercise is benign; any harm to others is incidental or accidental. The profession's code of ethics is founded upon and framed by the moral propriety of its inherent ends and means.

The distinctive military capabilities are designed to serve a community's interest in defense against violent assaults—and, more generally, to serve any of a community's interests that may be furthered by violence, however legitimate the interests may be. The military is defined not by some distinctive good it achieves, but by its (threat of) use of violence and lethal force to achieve whatever goals its commanders deem worth pursuing by these means. Whatever the warrior's ends, his forte is attaining them by threatening or inflicting great evils on others. The suffering wrought by the warrior's work is not an incidental or accidental outcome. His acts are inherently grave wrongs of others unless redeemed by some weighty justification.

This is not an indictment or disparagement of the military. Military capabilities can serve benign and noble ends. So, too, civilian professional skills can serve evil ends. Medical expertise may be used for undetectable murders. But that is a perversion of the medical profession. The excellence of a physician and her tools is measured by their proficiency in promoting health, not by an enhanced power to cause suffering and death. In contrast, the excellence of a warrior and her weapons is measured by a proficiency to cause incapacitation, destruction, and death, not by a power to promote well-being. That military proficiency is independent of the value and legitimacy of the ends it serves.

It is of the essence of the military profession that aggressors and defenders can be members of the same profession. Professional standing need not be jeopardized by the injustice of the cause served—except perhaps for extraordinary injustice. Our rules of *jus in bello* institutionalize this amorality: they are, and are intended to be, indifferent to the justice of a belligerent's cause.[23]

The plight of the warrior is a peculiar moral precariousness. Her job is to do godawful things to other people. Sometimes that is justifiable. Sometimes it is not. Unlike civilian professions, the nature of her skill does not supply guidance about its proper use.

Whether the decision to war is justifiable is not the first thought that comes to the warrior. Unlike civilian professionals, military professionals are trained to obey. Unlike civilian professions, military success has been mainly a matter of size. Militaries are massive organizations with tightly regimented command structures to maintain discipline and rapidly execute complex, coordinated activities in the face of mortal peril. The mission of a military disposes it to be authoritarian.

Members of a military are expected to obey authoritative orders because they are authoritative orders. This is expected of all military personnel, whatever their own expertise. Their membership in the military profession is a subordination in an organization impelled to prize obedience, loyalty, and discipline. Such traits are not disparaged in civilian professionals, but they do not make the list of lead virtues in their codes of ethics.

The warrior's plight is exacerbated by professionalization. A military's organizational imperatives favor professionalism for its contributions to military proficiency and the success of the military's missions. Proficiency is specially prized in the military, for a failure of its military may be catastrophic for a community. Yet that increased proficiency threatens a subversion of authoritarianism. Professionalism has a progressive character that is prone to question arbitrary, unreasonable, or ineffective policies, procedures, and directives. Professionalism compels recognition that blind obedience to authority can be disastrous. It prizes free, independent thought.

Further, professionalism's concerns are not restricted to efficiency. It has an ethical edge. Increasingly, professionalism has been taking the tyranny out of the military. In the U.S. and elsewhere, gone (or closely confined) are the ancient traditions of abuse, humiliation, and hazing in the training at boot camps and academies. The new model of leadership is managerial: effective authority leads not by fear, but by respect down the line licensing loyalty and respect up the

line. All this is of a piece with the military professional's recognition that she remains an autonomous agent with ultimate responsibility for her own actions. No self-respecting professional can believe her hands clean because of a mythical "invincible ignorance" about the (in)justice of her nation's war: she confronts decisions with far greater ignorance and uncertainty as a parent or spouse or leader in battle. Her obedience and loyalty is absolute and unquestioning only if she so chooses. So her professionalism puts moral pressure on her when she is commanded to contribute to grave injustices. But it does not answer the hard questions.

It may, however, limit those questions. One popular conception is that absolute commitment to the organization is a core demand of military professionalism. An ingrained military professionalism may make disobedience and disloyalty unthinkable. Civilian professionalism has no comparable tendency.

That tendency is mutually reinforced by a still more salient peculiarity of military professionalism: its commitment to civilian control of the military. This conception of military professionalism may be most entrenched in the U.S., whose IMET (International Military Education and Training) program has been a four-decade fixture of U.S. foreign policy tasked to professionalize foreign militaries and proselytize this conception of professionalism's commitments. The program aims to reduce intra-national instability and thereby reduce international instability. If that commitment to civilian control does indeed have such effects, it may be a moral imperative.

However, as with professionalism in general, what exactly civilian control of the military entails has been variously understood. That control may be considered an absolution of accountability for the evils the military inflicts. Instead, or in addition, acceptance of that subordination to civil authority may be thought an abdication of responsibility. Actually, withdrawal from the community's process of deciding to war (except as technical advisers) need not be taken as anything so personal and radical.

Currently, there is, I think, nothing near consensus on the specifics of the ethos of military professionalism. When it comes to the most basic moral decision military professionals may confront, their individually distinct professional consciences are highly personal, not collective. There is only a general, if not universal, recognition of what I call the moral singularity of military professionalism: knowingly contributing to an unjust war need not be unprofessional. This may be conceded even by opponents of war in general or some specific war who urge refusal of service. They may earnestly condemn such service while being reluctant to revile and utterly dissociate from those who serve—unless that service aided exceptionally blatant and horrendous wrongs. At the other extreme, many people condemn and revile as unprofessional and dishonorable any refusal of service—except perhaps by an enemy warrior serving a leader whose injustices are more monstrous than their own leaders would ever contemplate.

All may agree on the bald generalities that military service in an unjust cause need not be unprofessional, and that the shamefulness of service may vary with the severity of the injustice served. But military professionalism has no principles determining which injustices are beyond the pale.

Current military professionalism recognizes that it must leave that determination to an individual's conscience. It cannot find within itself the resources for constructing a compelling answer to its most existential question.

Military professionalism's relation to justice is a question of *jus ante bellum* that has long been with us waiting to be asked. I have no answer. My essays do not hazard principles or solutions.[24] They are meant to present problems and topics for a theory of just warfare to address.

I did assert that a state has various legitimate interests in the moral education of its military officers that it lacks regarding other citizens. One interest is self-protection: "a state's last line of defense—its defense against its own defense force—is the honor and humility of its military

leaders." Additionally, a state may be morally obliged to morally educate its officers, for it may otherwise be doing an injustice to various parties (for example, other peoples, military subordinates) who may be at the mercy of an officer's moral sense.

However, my analysis of PMEE provides reasons aplenty for skepticism about any international convention requiring states to morally educate their military officers. Here is one: we simply do not understand the requirement well enough to impose it. We cannot sensibly require a nation to have programs developing its officers' moral character until we have some reliable means of determining which programs have which effects on moral character. Military academies may have the declared mission of developing leaders of high moral character but they have nothing like a metric with which to gauge: (1) the character of those who enter an academy; (2) the character of academy graduates; (3) the character of entrants of officer training programs at civilian colleges; and (4) the character of officers thusly commissioned. There is no shortage of confidence about which programs have which effects on character development, but those convictions owe little to scientifically respectable evidence. Nations may muddle along with their own earnest efforts at PMEE. They have little reason to cede to an international authority the determination of whether their efforts are appropriate and adequate. Walzer's seminal book has been required reading at all American military academies' required ethics courses. We are not ready for the UN to sanction a nation whose military syllabus omits Walzer.

If there comes a day when we have substantial knowledge how to measure character growth and decline, so we have substantial knowledge how to morally educate, it may become sensible for the international community to pressure its members to morally educate their military officers. If so, we might have a principle properly considered a norm of *jus in disciplina bellica*, and, more generally, of *jus ante bellum*. My suggestion was only that whether there might be such a principle is a question of *jus ante bellum*.

V. Preparation for Success

Haines has his own darkly entertaining conception of *jus ante bellum*. His talk is informal in tone. It is a "working paper," thrown together in a few weeks, "rambling," laced with reminiscences and repeated dramatic fretting whether he has accepted a "poison chalice" and disclaimers: "I am not a moral philosopher." It is indeed a neat bit of deadpan British wit.

The tip-off is his cleverly comical title: "*Jus Ante Bellum*: Myth or Reality?" Of course, the joke here is that, however erroneous or empty, one thing a new idea cannot be is "mythical."

Haines was likely taking his cue from his hosts, who were honoring a 1977 publication with a conference, held in November 2010, entitled: "The Enduring Legacy of *Just and Unjust Wars*—35 Years Later."

The talk begins with reminiscences, followed by a research report: an amusing abrupt dismissal of the only thing Haines read on a subject on which he professes utter ignorance.[25] Haines then declares he must discover the nature of *jus ante bellum* on his own. He slowly builds to his punch line. His best effort to find some content in the concept of *jus ante bellum* is an earnestly straight-faced elaboration of a perfectly preposterous moral prescription.

Haines discovers a mandate of prewar conduct implicit in the venerable *jus ad bellum* requirement (that recurs in *jus in bello*) that people engage in harming other people only if they have *a reasonable prospect of success* in achieving their legitimate goals at a reasonable expense. From this, Haines infers that each nation must have an *ante bellum* obligation to adequately prepare for war. That is, a nation has no right to war unless it has *adequately prepared* for it, prepared sufficiently to have a reasonable prospect of success.[26]

Haines would have us imagine an international legal order that would sanction a nation for violating the *ad bellum* prohibition of going to war without a reasonable prospect of success,

and further sanction that nation for violating the *ante bellum* requirement to adequately prepare for war. That is a nasty double indemnity. It has got to be a joke.

Surely, compliance with an *ante bellum* requirement should be determinable prior to hostilities. Haines must be inviting us to imagine a UN commission monitoring the peacetime military preparedness of nations.

And, of course, being *adequately prepared for war* is a term without concrete content apart from some specification of the military preparedness of the enemy, along with other factors. The obligation must be something like a requirement to have reasonable prospects of success against any current likely threat. Each nation and its competitors are to be under that obligation. So they are all morally obligated to participate in a perpetual worldwide arms race!

Haines's principle is a deliciously ludicrous contribution to just war theory. It gets still darker and more deracinated. It says not merely that weak nations have no right to defend themselves against the strong. It says further that in peacetime, the weak should be liable to sanctions for being weak and inadequately prepared to resist the strong.

Haines's vision of *jus ante bellum* is a rollicking *reductio ad absurdum* of a venerable just war commandment that denies a nation the right to resist when its prospects of prevailing are too poor. Whether applied *ad bellum*, *in bello*, or *ante bellum*, the principle cannot be quite right. Yet there is surely some truth to it.

Requiring reasonable prospects of success can seem perfectly rational, both moral and prudential. After all, however just and righteous your cause, however awful the disaster you seek to avoid, you most likely will only make matters much worse when you fight without reasonable prospects of success. A government gravely wrongs its citizenry when it compels them to suffer a catastrophe in a hopeless cause. And it may wrong innocent third parties if its futile resistance harms them, intentionally or unintentionally. And harming the assailants—many of whom may be blameless individuals—only adds to the totality of misery to no good effect.

Yet, despite all that, though it may do no good, adding to the misery need not be an injustice. Sometimes, third parties are not threatened. And a community may let everyone surrender who wishes to, so all resistance is voluntary. When all hope of victory is defeated, a victim might rightly abandon resistance, but assailants do not acquire a right to assail. Resistance may increase the suffering of resistors and assailants without wronging anyone.

Still, despite doing no one an injustice, futile resistance may be a senseless waste. Surrender can be graceful, maintaining dignity while submitting to defeat. Surrender may be morally permissible. It may be honorable and admirable. It may sometimes be morally mandatory.

But is surrender to overwhelming force always mandatory? Is it ever mandatory when no one is wronged by resistance? Can it be mandatory—or permissible—when it cannot be dignified, graceful, honorable? To my knowledge, just war theory has no good answers to such questions.

Haines hints at none. Haines has no serious proposals about *jus ante bellum*, but he sets us thinking about a cluster of hard questions of *jus ad bellum* and *jus ante bellum*: When may we surrender? When must we?

Lest there be doubt of the tongue in his cheek, Haines clinches his intent by escaping his grim conclusions with a doubly comic maneuver. Recall his saying that his proposed principle is not on a par with *jus ad bellum* and *jus in bello* principles simply because it is not now a legal principle. That is a doubly funny reason. First off, if the only relevant reason Haines's principle does not rank with legally recognized principles is that it has not yet been recognized, then that seems reason enough for us to legally recognize it and correct this unfortunate shortcoming. Rather than disparaging his principle, Haines may be backhandedly urging enactment of it.

In the same breath, Haines is also saying something far funnier. Recall that his talk is delivered at a conference honoring the "enduring legacy" of Michael Walzer's book, with Walzer as guest of honor. And now let us remember that its preface declares the book's aim and earnest ambition to "rescue" the language of just war theory from the lawyers and restore its original use in our moral and political discourse. It is the success of that rescue that Walzer's essay (mentioned above) refers to as "The Triumph of Just War Theory." To announce, at an occasion honoring the book's "enduring legacy," that three decades after the book's publication, the terms *jus ad bellum* and *jus in bello* have only legal reference, is to pronounce the book's legacy stillborn. That is a zinger with the ring of Don Rickles at a Friars Roast.

Notes

1. See: www.nyutikvah.org/events/docs/papers/Haines_Jus_Ante_Bellum.pdf.
2. See: "The moral singularity of military professionalism" and "The morality of military ethics education," in Roger Wertheimer, Ed., *Empowering Our Military Conscience: Transforming Just War Theory and Military Moral Education* (London: Ashgate, 2010): 133–196.
3. Michael J. Shuck's "When the shooting stops: Missing elements in just war theory," *The Christian Century* (October 24, 1994): 982–984, preceded Brian Orend's essay, "*Jus post bellum*," *Journal of Social Philosophy*, 31, no. 1 (Spring 2000: 117–137), and his book, *War and International Justice: A Kantian Perspective* (Waterloo: Wilfrid Laurier University Press, 2000), but *jus post bellum* won recognition only after Orend's publications.
4. Haines aside, only two authors credit a prior use of the term (see below). Six authors credit no one. One or two of them might possibly have gotten the term from George Lucas or Michael Walzer (contributors to my anthology who vetted my own contributions), but I would not bet on it. Appearances to the contrary notwithstanding, this chapter is not a brief for my originality. What merits some musing is not who was "first," but why so many separate coinages coincided.
5. The call appears to have been premature, as the term does not appear in the published anthology: Adam Henschke, Nick Evans, and Fritz Allhoff, Eds., *Routledge Handbook of Ethics and War: Just War Theory in the 21st Century* (Abingdon: Routledge, 2013).
6. In 2009, Haines was elected to membership of the International Institute of Humanitarian Law (Sanremo, Italy), the preeminent institute concerned with international humanitarian law, membership to which is awarded as a distinction by the Institute.
7. Lucas credits much of his analysis to predictions made two decades earlier by J. Bryan Hehir, "The ethics of intervention: Two normative traditions," in Peter Brown and Douglas MacLean, Eds., *Human Rights and U.S. Foreign Policy* (Lexington, MA: Lexington Books, 1979): 121–139.
8. Walzer's *Just and Unjust Wars* begins its "Acknowledgments" of its influences thusly: "Over the past nine years I have gone to school with the members of the Society for Ethical and Legal Philosophy . . . [who] have collectively had a great deal to do with the writing of [this book]." Few readers get a proper feel for Walzer's work without understanding that the SELF "school," formed amid the Vietnam War and urban and campus strife, was an exclusive, intensive, monthly, four-hour, good-humored, ruthless dissection of a current project of one of its roughly 17 members, who included Thomas Nagel (*The Possibility of Altruism*, 1970), John Rawls (*A Theory of Justice*, 1971), Judith Thomson ("A Defense of Abortion," 1971), Robert Nozick (*Anarchy, State and Utopia*, 1974). Ronald Dworkin (*Taking Rights Seriously*, 1977), Gilbert Harman (*The Nature of Morality*, 1977), Michael Walzer (*Just and Unjust Wars*, 1977), Thomas Scanlon ("Contractualism and utilitarianism," 1982), Charles Fried (*Right and Wrong*, 1982), Derek Parfit (*Reasons and Persons*, 1984), and occasional invited visitors such as Bernard Williams (*Problems of the Self*, 1973). The spirit of the school survives in the journal it founded in 1971, *Philosophy and Public Affairs*. The school's history and impact on moral, political, and legal thought needs to be written before many more of its members die off.
9. In addition to Lucas's account referenced above, see Alasdair MacIntyre's depiction in this volume of this same sort of "crisis" in military professional ethics, framed along the lines of his previous analyses of the underlying linguistic incoherence in contemporary moral philosophy generally.
10. The primary exception is that legal systems do not and should not make "right intention" a precondition of permissible conduct. Legal systems may properly make wrongful intention a precondition of a criminal act, but no sensible legal system condemns an otherwise justified, rightful bit of behavior for its morally condemnable intention.

11. Perhaps this should be otherwise. To date, just war theorizing has concentrated on international armed conflicts with little attention to civil wars. This may be a defect that needs rectifying. That might require some adjustments to the arguments of this chapter, which focus on current conceptions of *jus ante bellum*, which all share the traditional focus on international war. The adjustments might be minor because civil wars might be best regulated by international agreements and impartial international tribunals. The adjustments might be major because each state might have responsibilities regarding the preconditions of its civil armed conflicts that no state has regarding the preconditions of international armed conflicts.
12. Our best test is, per usual, fallible. Still, contractarian analysis is a more compelling indicator of the justice of international war conventions than any alternative such as cost-benefit analysis or natural law. One sign of its superiority is that the dictates of contractarian reasoning about *jus in bello* diverge from our moral common sense about personal responsibility for peacetime assaults. I, for one, find myself possessed of markedly few confident immediate gut judgments about a combatant's moral responsibility for his involvement in wartime assaults. My own firmest intuition is that the circumstances of wartime assaults are morally unlike those of peacetime assaults. Evidently, in theory and practice, military combatants may feel no cause for animosity toward any individual antagonist intent on killing him and his comrades. Both sides may be (thought to be) just doing their job, filling their social role, and neither need have any ill will or disrespect for the other. Their enmity may be impersonal. (Enemy soldiers have shared the fellowship of nighttime conversations across a stream, for example.)
13. *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse, NY: Syracuse University Press, 1981): 82. The line is approvingly quoted in David Hollenbach's "The role of the churches in the American search for peace," in George Weigel Jr. & John P. Langan, Eds., *The American Search for Peace: Moral Reasoning, Religious Hope and National Security* (Washington, DC: Georgetown University Press, 1991): 253–254.
14. "*Jus ante bellum*: Faith-based diplomacy and Catholic traditions on war and peace," *Journal for Peace & Justice Studies* 21, no. 1 (2011). Originally presented at the 2007 annual conference of the Catholic Theological Society of America.
15. *After the Smoke Clears: The Just War Tradition & Post War Justice* (Maryknoll, NY: Orbis Books, 2010); "The growing edge of just war theory: *Jus ante bellum*, *jus post bellum*, and imperfect justice," *Journal of the Society of Christian Ethics* 32, no. 2 (2012): 173–191.
16. Glen Stassen and David Gushee, *Kingdom Ethics: Following Jesus in Contemporary Context* (Downers Grove, IL: InterVarsity Press, 2003).
17. "A responsibility for the symptom or the cause: *Jus ante bellum* and reevaluating the cosmopolitan approach to humanitarian intervention" (2013): www.sheffield.ac.uk/polopoly_fs/1.273729!/file/BrownandBohmIntervention.pdf.
18. The essays span 2007–2010. Assuming his latest statement to be his most well considered, I rely on his 2010 "Just military preparedness and irregular warfare": http://isme.tamu.edu/ISME10/Linden10.pdf.
19. Van der Linden also calls it *jus ad potentia bellum*, a term he gets from Mark Woods, "The nature of war and peace: Just war thinking, environmental ethics, and environmental justice," in *Rethinking the Just War Tradition*. Eds. Michael W. Brough, John W. Lango, and Harry van der Linden (Albany, NY: State University of New York Press, 2007). Woods's term has not otherwise caught on. Like O'Connell, Brown, and Bohm, van der Linden cites no source for his use of *jus ante bellum*.
20. *Left at the Altar: How the Democrats Lost the Catholics and How the Catholics Can Save the Democrats* (New York: Basic Books, 2008).
21. Philosophy Doctoral Dissertation, University of Nebraska-Lincoln.
22. I owe the term to Bonnie Kent, a specialist in medieval philosophy.
23. Cf. my original essays for responses to common objections to the civilian-military contrast: for example, that legal expertise may also protect the guilty as well as the innocent.
24. Professionalism might itself be the subject of *jus ante bellum* principles. Consider: might there be some injustice in a modern nation failing to professionalize its military? Might it be a principle of "just peacemaking" that a nation should professionalize its military and maintain civilian control of it? Might it be that the United Nations should (eventually) take over the U.S. mission and adopt measures promoting and prescribing military professionalization?
25. Haines cannot be serious when he says my Part III on *jus ante bellum* "represents little more than a critique of American military academies . . ." That is something of an in-joke, a wildly absurd summation of the two essays described above. Only one essay mentions America's military academies,

and that is mainly to illustrate conflicts inherent within the mission of PMEE. That essay became assigned reading at an Australian military academy.

26. More fully, Haines says adequate preparation is "the full range of preparations necessary to produce a competent and effective force capable of successfully delivering all of the phases of a just war." (His inference is enthymatic. Presumably, he assumes, plausibly enough, that a ruler has a duty to defend its subjects from aggression.) Haines adds to the silliness of his principle by seemingly suggesting that officers and subordinates are adequately equipped for the moral challenges of war by the training in the laws of war currently mandated by the laws of war.

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6

SELECTIVE CONSCIENTIOUS OBJECTION

Paul Robinson

Pacifists who object to all wars are what one might call "general conscientious objectors." People who have no objection to participating in war in general but who refuse to fight in a specific war on the grounds that it is unjust are "selective conscientious objectors." This chapter examines whether the actions of the latter are compatible with professional military ethics.

The question of how much accommodation liberal democracies should make for individual conscience is extremely controversial. In some cases, the controversy concerns aspects of personal behavior that are seen as contrary to liberal values, such as women wearing face veils. Other cases involve individuals refusing to perform professional acts that they believe are prohibited by their religion or their personal morals, such as: pharmacists refusing to dispense contraceptives; doctors refusing to perform abortions; public officials refusing to marry same-sex couples; and cashiers refusing to sell alcohol.

Demands that institutions accommodate such behavior spring from the view that a liberal society should allow its citizens to follow their own chosen path in life and that the individual is guardian of his or her own conscience. Military institutions are not isolated from the spread of this view. In the past two decades, there have been a number of instances of soldiers disobeying orders to serve in wars or military operations that they considered unjust, claiming that participation would be contrary to their conscience. Examples include: Israeli soldiers refusing to deploy to the occupied territories during the Palestinian Intifida; British and American soldiers refusing to fight in the war in Iraq; and German military personnel objecting to specific operations in Afghanistan.

These soldiers are in effect following the counsel of Francisco de Vitoria, who, in a lecture delivered in 1539, commented that:

> If the war seems patently unjust to the subject, he must not fight, even if he is ordered to do so by the prince. This is obvious, since one may not lawfully kill an innocent man on any authority, and in the case we are speaking of the enemy must be innocent . . . if their conscience tells subjects that the war is unjust, they must not go to war even if this conscience is wrong.[1]

The vast majority of states do not accept Vitoria's position. While most permit general conscientious objectors to avoid military service, only Australia and Germany grant similar license

to selective conscientious objectors (and, in Australia's case, only to conscripts, not to volunteers).[2] In recent years, this distinction between general and selective conscientious objection has been challenged for a number of reasons,[3] including the experience of the Iraq War, which undermined arguments that soldiers and citizens should trust their political masters. The matter is thus of considerable contemporary relevance.

The traditional opposition to selective conscientious objection rests on a variety of different arguments, which include: variations of social contract theory, which would suggest that citizens should abide by legal decisions of the state, including the choice to wage war; the historic split in just war theory between *jus ad bellum* and *jus in bello*, which implies that soldiers are not morally responsible for decisions to fight wars, but only for their behavior during them, and may therefore fight with clean consciences even if on the unjust side; the collective nature of military institutions, which requires that the conscience of the individual be subordinated to that of the group; consequentialist arguments that selective conscientious objection will undermine states' ability to defend their citizens; claims that states are better placed to determine the justice of wars than individual soldiers, who are "invincibly ignorant" about such issues and so should accept the judgments of their superiors; and appeals to military virtues, such as obedience and loyalty.

Supporters of selective conscientious objection deny the validity of these arguments. They claim, for instance, that the *ad bellum/in bello* divide is not as clear-cut as claimed, that soldiers are as capable as state leaders of determining the justice of a war, and that neither the social contract nor the collective nature of military institutions should deprive soldiers of their moral autonomy. Furthermore, some argue, forcing selective conscientious objectors to fight in wars that they consider unjust undermines their autonomy and causes them psychological damage.[4]

Space does not allow this chapter to repeat all of these arguments in depth. Rather, it builds upon them and develops the thesis that acts of selective conscientious objection are different from most of the other examples cited above, in that they are acts of professional as much as of personal conscience. The cashier who refuses to sell alcohol because he or she considers facilitating alcohol consumption to be contrary to his or her religious conscience is manifesting a personal belief rooted in a principle that lies outside of the profession of being a cashier. The soldier who refuses to fight in an unjust war, by contrast, is manifesting principles that lie at the heart of the moral purpose of the military profession. Putting aside the question of whether liberal society should nevertheless accommodate the former, the latter can justify his or her behavior in terms of professional ethics in a way that the former cannot.

To show why this is so, this chapter examines the foundations of professional military ethics and the place of conscience within them. It assumes for this purpose that the subjects of discussion are the armed forces of liberal democracies, and analyzes both the values of liberal democracy and the functional virtues associated with military service. Given that most liberal democracies have professional rather than conscript armies, the chapter limits itself to discussing what constitutes appropriate behavior for volunteers who are already in the armed forces. The conclusion is that military personnel whose conscience tells them that the war in which they are being told to participate is unjust are not contravening the ethics of their profession if they refuse to fight; on the contrary, they are acting in accordance with those ethics.

I. The Foundations of Professional Military Ethics

Professional military ethics rest on two foundations: first, the values of the society that the military serves; and second, the functional requirements of military efficiency, from which flow a requirement for the display of certain virtues, or dispositions of character, by those in military service.

The relationship between the two is the subject of considerable disagreement. At one extreme is the idea that the values of the military must be totally congruent with those of society. The German concept of *Innere Führung*, which views the soldier as a "citizen in uniform," comes close to this position.[5] At the other extreme is the idea that such congruence is impossible, even harmful. As Richard Gabriel puts it, "Many of the practices, values, and norms of civil society simply will not work in the military environment."[6] "There is no demonstrable requirement that the values of military professionalism be inextricably tied to the values of the larger society," Gabriel claims.

I favor a position closer to the first of these views than the second. The reason lies in the purpose of the armed forces. In the eyes of some, they exist simply to serve the state as a political institution. For instance, John Nagl, Tony Pfaff, and even Don Snider (a decade ago) wrote that the "organizational purpose" of the American army should be seen "simply as serving the American society and fighting the conflicts they approve, when they approve them."[7] An army that serves its state by fighting unjust wars is, in this interpretation, behaving just as ethically as one that fights just ones.

This is not a comfortable conclusion, and it is not surprising that many disagree with it. Martin Cook, for instance, argued against all three at the time that "simply serving society's requests can never be an adequate definition of any profession."[8] That profession must serve some higher moral purpose, he suggests. Arguments against selective conscientious objection often rest on some variant of social contract theory.[9] But, as Cook notes, an implicit part of the state's contract with its soldiers is that the state will only employ its soldiers in pursuit of just goals. "It is because of the ends to which their expertise and commitment will be devoted that officers are able to justify to themselves the grounds of their service," Cook writes, "It is because they see themselves as engaged in defense of the values, security, and prosperity of their family and nation that their service has moral meaning."[10]

"An officer's allegiance," writes Marybeth Peterson Ulrich, "is not just to the state, but to the democratic character of the state."[11] "Military professionals in service to democratic states . . . must be as functionally competent as possible," she comments, "Additionally, they are simultaneously charged with performing this function within the societal context of liberal democracy. Their responsibility is to defend the state while concurrently appreciating that the pursuit of national security is affected by national values, national character, and the ideology of the state."[12] "Professional autonomy in a democracy does not mean that the profession can regulate itself in ways that are incompatible with democratic values," Ulrich concludes.[13]

The publication *Duty with Honour: The Profession of Arms in Canada*, produced by the Canadian Department of National Defence, concurs. "The legitimacy of the profession of arms requires that it embody the same values and beliefs as the society it defends," it says. "Because the profession is not an entity unto itself and military members come from and return to civilian life, the values of the profession must be in harmony with the values of its parent community, limited only by the functional requirements of the military."[14]

In short, because our armies serve liberal democracies, the values that underpin professional military ethics must be liberal democratic ones.

At the same time, it must be admitted that all professions impose special ethical requirements on their members. Doctors, lawyers, and priests, for instance, have unique obligations of confidentiality toward their patients, clients, and parishioners. Military life similarly imposes special duties upon soldiers. The definition of what constitutes a proper professional military ethic should therefore include not only the values of liberal society, but also the virtues required of soldiers if they are to function effectively in their roles. In other words, professional military ethics contain a combination of both general morality and role morality. Difficulties arise when the two appear to clash.

Selective conscientious objection is sometimes portrayed as an example of such a clash of general and role morality. Gabriel, for instance, remarks that "The soldier must be aware that while he or she has an obligation to observe the obligations of the profession, at some point they may well have an obligation to violate some professional precept because of other obligations by which they are bound. Thus, a soldier may refuse to deploy with his/her unit because as a citizen he or she has come to the conclusion that the war itself is not just."[15] While agreeing with Gabriel's conclusion, this chapter maintains that he is wrong to frame the issue as a clash of different ethical obligations. Both liberal values and military efficiency require freedom of conscience, and both general and role morality demand that a soldier told to fight in a war he or she believes to be unjust refuse to do so.

II. The Definition and Importance of Conscience

To understand why, it is first necessary to define conscience. This is not easy. Theologians and philosophers have, for centuries, debated what conscience is, and what it ought to be. For some, it is an internal voice; for others, it derives from an external authority. For some, it is contrary to reason; for others, it requires reason. For some, it restrains action; for others, it is the source of heroism.[16]

Martin Luther is often seen as the founder of the modern liberal view of conscience. In Western Europe before Luther, the Catholic Church asserted for itself the right to interpret the Bible and so determine right and wrong. Conscience therefore implied obedience to the teachings of the Church. Luther turned this on its head. With Protestantism, everybody could have a direct relationship with God, read the Bible themselves, and so decide for themselves what was right. People no longer had to obey legal authority if it conflicted with their own internal conscience. Thus, Luther said, "obey the government, but to the extent that it commands you to do good things; for it happens that some men administer the government unjustly. A Christian distinguishes between a good and a bad command of a prince . . . the law exists for the sake of the conscience, not the conscience for the sake of the law."[17]

The Protestant viewpoint made everybody the master of his or her own conscience. Later Western Enlightenment thinkers considered this a mistake. Thomas Hobbes and John Locke, for instance, considered purely internal conscience to be mere opinion, and thus not authoritative. For both men, untrammeled individual conscience led to the bloody religious wars of the sixteenth and seventeenth centuries, including the English Civil War. If everybody followed their own conscience, Locke wrote, "each individual would become his own law-giver, and his own God."[18] A proper conscience, in his view, needed to take account of what other people thought and to involve reason.

A fair compromise would be to say that conscience has both an internal and an external aspect. It is knowledge that one has about what is right and wrong, but knowledge that is not entirely self-generated; in most definitions, it is connected to some external source, be it legal or religious authority, public opinion, or reason. It would be an odd person whose internal conscience was subject to no external influences at all. That said, one is not a slave to those influences. Thus, Edward Andrew notes that John Stuart Mill defined conscience as "a complex phenomenon, arising from a complexity of circumstances and collateral associations such that self-esteem and the esteem of others, self-censure and social disapprobation, are impossible to disentangle."[19]

This complexity inevitably leads some commentators to regard claims of conscience with suspicion; it is not easy to determine whether an action is truly motivated by conscience rather than mere opinion. Also, if the external source is one with which the onlooker disagrees (for

instance, because it is based on faith in a religious text rather than on logic), it is easy to dismiss it. In convicting Flight Lieutenant Malcolm Kendall-Smith of disobeying orders for refusing to deploy to Iraq to serve in a war he considered unjust, a Royal Air Force court martial declared him to be "supremely arrogant."[20] This language reflected a typical response to claims of conscience. In the eyes of cynics, conscience is little more than arrogantly asserted, often ill-informed, opinion. Thomas Hobbes, for instance, complained that "men, vehemently in love with their own new opinions, though never so absurd, and obstinately bent to maintain them, gave those their opinions also that reverenced name of conscience, as if they would have it seem unlawful, to change or speak against them; and so pretend to know they are true, when they know at most, but that they think so."[21]

This misrepresents conscience, which, properly understood, is different from opinion. Not every belief is a matter of conscience. Rather, conscience is better seen as referring to those beliefs, whether based on faith, reason, or anything else, which in religious terms affect the salvation of the soul, or in secular terms impinge upon one's identity, one's sense of self. Seventeenth-century cleric Roger Williams, who founded the Puritan colony at Providence, Rhode Island, wrote that "by proportion that is a spiritual or soul-rape, which is the forcing of the conscience on any person."[22] Williams's colourful language expresses clearly the sense in which being forced to act against one's conscience violates personhood. "The entrenched liberal maxim that our fundamental freedom is freedom of conscience would not make sense unless conscience were definitive of who we are," writes Edward Andrew, "If we violated our consciences, we would cease to be who we are. Freedom of conscience is fundamental because we *are* our moral choices."[23]

However it is defined, conscience is seen as uncomfortable. As Paul Strohm writes, "Its characteristic habit is to goad, prick, wheedle, denounce, and harass."[24] To ignore it is to sentence oneself to an unquiet life, which is incompatible with the self-respect that John Rawls says is "perhaps the most important primary good."[25] It is for this reason that conscience is considered so important. Abiding by it is essential for leading a good life.

III. Selective Conscientious Objection and Liberal Values

Starting from the argument above about the liberal foundations of professional military ethics, it is necessary now to consider the relationship between conscience and liberalism. On the surface, liberty of conscience might be seen as lying at the heart of liberalism, but the situation is complicated by the fact that liberalism has many schools of thought, not all of which view conscience in the same way.

A good starting point is one of the canons of liberal thought, John Stuart Mill's *On Liberty*. For Mill, "Human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing."[26] "In proportion to the development of his individuality, each person becomes more valuable to himself," he wrote, "one whose desires and impulses are not his own, has no character, no more than a steam-engine has a character."[27]

This is an essential part of liberal thought. "We should understand liberalism as the political philosophy that is committed to the promotion of individual autonomy," writes Ben Colburn, "What is distinctive and valuable about human life is our capacity to decide for ourselves what is valuable in life, and to shape our lives in accordance with that decision."[28] This in turn is dependent upon freedom of conscience, including both freedom of belief and freedom to act upon that belief. As Mill wrote, individual liberty:

> comprises, first, the inward domain of consciousness, demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but being of as much important as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it.[29]

One can see the influence of this mode of thought in some recent writing on selective conscientious objection. For instance, in a 2013 article on "Sincerity, Accuracy, and Selective Conscientious Objection," Mark Navin writes that:

> Ideally, individuals should be allowed to live in accordance with their own conceptions of the good and the right. Existential and moral individuality promotes emotional and psychological well-being and makes moral autonomy possible. A person's thoughts about killing are often intimately connected to his/her deepest convictions about how he/she ought to live. Therefore, a person likely faces immense existential and moral problems when he/she is coerced into (participating in) forms of killing that violate the dictates of his/her conscience. A soldier who sincerely objects to participating in a war thereby provides good evidence that they would violate their deeply held beliefs if they were to participate in the war to which they object. For that reason, the sincerity of an objection is a moral reason to exempt conscientious objectors. The fact that compelling a soldier to violate the dictates of their conscience would cause them significant psychological, emotional, and existential harm is a moral reason for exempting them from participation in the military activities to which they object.[30]

This is, one might say, the "classical liberal" point of view. It does not enjoy universal support. Whereas for classical liberals, liberty consists primarily of freedom from interference by the state, for others it requires more than negative freedoms. One cannot live an autonomous life without, for instance, some amount of money. This requires in turn employment or some form of social welfare, which in turn may require state intervention. For those of a more communitarian outlook, the pursuit of the good life necessitates that some liberties be sacrificed in order to promote liberty more generally.

This applies to conscience as much as anything else. For instance, whereas some liberals would say that women should be free to choose whether to wear face veils, others would say that such clothing is incompatible with liberal values, in particular equality of the sexes. Similarly, some argue that medical professionals should not be allowed to refuse to perform medical procedures or to dispense drugs on grounds of conscience, given that such refusal may harm others.[31] "If a matter of conscience affects only the agent, then the state has no business interfering with that person's choices or actions," argue Eva and Hugh LaFollette, but "Once her actions significantly affect others, then . . . we should determine the degree to which her exercise of conscience harms others, especially if she is a member of a justified profession in a democratic and basically just society."[32]

All this would suggest that while liberal democracies give great value to freedom of conscience, this is not unlimited. However, even the restrictions on conscience are justified by liberal values, their purpose being to defend the liberty of other people, and to enable them to live their lives as they wish. Rawls notes that although "justice is the first virtue of social institutions,"[33] justice is impossible without liberty, and the latter must therefore take precedence. "The precedence of liberty means that liberty can be restricted only for liberty."[34]

Applied to the military, this would mean that in a liberal democracy, the default position should be that soldiers should follow their consciences, unless it can be shown that doing so would significantly harm others' liberties, the protection of which constitutes the military's moral purpose. Since by its very nature an unjust war cannot promote people's liberties, it is hard to see how refusal to participate in such a war could be contrary to liberty. Given that selective conscientious objection does not aim to opt out of just wars, only unjust ones, and that it does not therefore undermine other people's liberty, professional military ethics should not in this case put any restraints on conscience.

In this respect, selective conscientious objection is not like many of the other examples of conscientious refusal noted at the start of this chapter, as it relates directly to the moral purpose of the military profession. The LaFollettes' suggestion that professional obligations override personal conscience does not apply, because in this case the two coincide.

John Rawls notes that if the objection to war is founded on the principles of just war theory, "it is based upon the same theory of justice that underlies the constitution and guides its interpretation. Moreover, the legal order itself presumably recognizes in the form of treaties the validity of at least some of these principles of the law of nations. Therefore . . . a soldier . . . can maintain that, all things considered, his natural duty not to be made the agent of grave injustice and evil to another outweighs his duty to obey."[35] "A person may conscientiously refuse to comply with this duty to enter the armed forces during a particular war on the ground that the aims of the conflict are unjust," writes Rawls, adding that:

> It may be that the objective sought by war is economic advantage or national power. The basic liberty of citizens cannot be interfered with to achieve these ends. And, of course, it is unjust and contrary to the law of nations to attack the liberty of other societies for these reasons. Therefore a just cause for war does not exist, and this may be sufficiently evident that a citizen is justified in refusing to discharge his legal duty . . . What is needed, then, is not a general pacifism but a discriminating refusal to engage in war in certain circumstances.[36]

IV. Selective Conscience Objection and Military Efficiency

One may conclude from the discussion above that selective conscientious objection is compatible with the liberal values that this chapter claims are the basis of professional military ethics. The question now arises of whether it is compatible with military effectiveness and with the virtues that the pursuit of such effectiveness requires of military professionals.

To meet the demands of war, most military organizations seek to instill certain dispositions, or virtues, into their members. For instance, a soldier must be physically courageous in a manner that, say, a university professor does not have to be. Unit cohesion is believed to be an essential means of persuading soldiers to fight; consequently, a sense of loyalty or comradeship is considered an important characteristic of a good soldier. In battle, there is no time to sit down and have a committee meeting to decide what to do; somebody has to take charge, and issue orders, and others have to obey. Military organizations are therefore hierarchical and demand obedience from their members.

Lists of military virtues differ from country to country and from institution to institution, albeit with a great deal of overlap.[37] Space does not permit an examination of all of the military virtues, and so the rest of this chapter will concentrate on whether the exercise of conscience is in keeping with just three of them—obedience, honour, and integrity—both because these are among the most commonly cited military virtues and because they are the closest in nature to conscience.

There is a tendency to see obedience as an absolute. Thus, the judge at Flight Lieutenant Kendall-Smith's court-martial told him that he could not "pick and choose" which orders to obey.[38] Virtues, though, are never absolutes. They are perhaps better seen as Aristotelian means, which require the application of practical wisdom (*phronesis*) to determine when they are relevant and when not. One can be too obedient as well as too disobedient. One also has to use practical wisdom to determine what one should obey: in some cases, it should be legal authority, but in others, as Luther suggested, it should be conscience. Indeed, conscience is a form of obedience, just to a different authority. Emmanuel Goffi of the French Army notes that blind obedience "is a strong incentive for freeing [soldiers] from their responsibilities . . . soldiers have to feel responsible, and in order to understand and assume their responsibilities they must think about the consequences of their actions . . . It is therefore obvious that, in this framework, selective conscientious objection can be seen as a duty for soldiers who are expected to think about the consequences of their acts and decisions."[39] Goffi notes that in 1940, General de Gaulle disobeyed orders from the legitimately appointed French government to lay down his arms, a disobedience few would now condemn. De Gaulle's example shows that "beyond obedience and the worship of discipline . . . the soldier in charge of national independence is first and foremost a free man."[40]

"Army officers are not, and indeed cannot be, automatons," writes Colonel John Mark Mattox of the US Army, "They are moral agents who must recognize their responsibility (1) never to issue an immoral order, and (2) to refuse an order—or even a suggestion—to undertake military operations inconsistent with the ideals they are sworn to defend."[41] Richard Gabriel similarly writes that "It is a well-established principle of ethics that human beings cannot abandon their ethical autonomy and judgment to other human beings and thereby escape responsibility for their actions. So, too, soldiers as ethical beings and as members of an ethical profession cannot escape responsibility by acquiescing to unethical orders."[42] "A soldier's ethical integrity is at the centre of his or her effectiveness as a soldier and leader," Gabriel continues, "To violate one's sense of honour and integrity is never justified. The soldier must always be true to his or her own ethical self."[43]

Gabriel's last statement links conscience to honour. Like conscience (and, as we shall see, integrity), honour has both internal and external aspects; the former implies doing what is right because doing otherwise would undermine one's sense of self-worth; the latter implies acting in such a way as to win the praise of others who matter to you. The two are often treated as if they are distinct, and perhaps even competing, concepts. In reality, they are inescapably intertwined with one another. Honor "never quite corresponds to either external honour alone or internal honour alone. The two necessarily co-exist, and are in constant dialogue with one another."[44]

Honor, strictly speaking, is not a virtue, although it is often considered to be one. Rather, it is, as Aristotle put it, a "reward for virtue."[45] It is more correct to refer to the "sense of honor" or the "love of honor" as virtues, but these are only virtuous if properly directed.[46] Aristotle commented that courage consisted of facing the right things for the right motives. The same applies to honor. Wanting the rewards given by others (external honor) is only worthy if the things that the others want are worthy also. Similarly, it is only virtuous to pursue self-esteem (internal honor) if the things that make you feel good about yourself are things that are compatible with general morality. It is not honorable to pursue an immoral objective. Because of this, it is difficult to see how somebody who believes that a war is unjust could be considered to be acting honorably if he or she nevertheless participated in it.

When speaking of honor, it would appear that military officers most often have in mind the internal aspect. For instance, the foreword to the 2002 Cadet Honor Committee Procedures

of the United States Military Academy at West Point, quoting an article first published in 1929 by Robert Wood, describes its moral expectations of officer cadets in the following manner: "A man must judge for himself what is right, what is wrong . . . The man of honor . . . is true to himself . . . he clings to what he knows is right with all his strength."[47] In other words, the honorable soldier is one who follows his conscience. Given the emphasis that military institutions place on honor, it is inconsistent of them to claim that soldiers should subordinate their consciences to others.

A similar conclusion arises out of an analysis of integrity. While the meaning of the concept of integrity is disputed, in general it is viewed as implying that people must be true to themselves. The principle here is what Lynne McFall calls "coherence." "Integrity," she writes, "is the state of being 'undivided;' an integral whole . . . One kind of coherence is simple consistency: consistency with one's set of principles of commitments . . . Another kind of coherence is coherence between principle and action. Integrity requires 'sticking to one's principles' moral or otherwise, in the face of temptation."[48]

Integrity is thus much the same as internal honor and conscience. There are good reasons for military institutions to stress it. Societies need soldiers who will resist pressure from peers and superiors to misbehave. However, just as with a purely internal view of conscience, this does not suffice. As Cox, Lacaze, and Levine note, "people of integrity can do horrific things and maintain their integrity so long as they are acting in accordance with their core commitments."[49] One does not want the "Nazi with integrity."

Because of this, philosophers consider that to be virtuous, integrity requires more than just coherence. Thus McFall writes that "When we grant integrity to a person, we need not *approve* of his or her principles or commitments, but we must at least recognize them as ones a reasonable person might take to be of great importance . . . Integrity is a personal virtue with social strings attached."[50] Cox et al. also claim that true integrity depends not solely on the decision made, but also on the manner in which it is made. "The steadfastness and sincerity of a person's moral beliefs are not enough," they claim, "they must also be arrived at in the right kind of way . . . people who have merely taken on the moral beliefs of someone else without properly convincing themselves of their truth should not be said to have moral integrity, or perhaps should be said to have only limited moral integrity, no matter how steadfastly and sincerely they hold to and live by their beliefs"[51] Integrity thus contains the same mix of the internal and external, and of belief and reason, as both conscience and honor.

Taking McFall's statement above, we might disapprove of the person of integrity whose principles are illiberal and harm others; otherwise, we must recognize that person's virtue even if we disagree with him or her. In the case of the selective conscientious objector, he or she fits McFall's definition of somebody with integrity. Unjust wars are not a trivial matter. One might disagree with the claim that one should not fight in them, but it would be hard to argue that this is not an issue that "a reasonable person might take to be of great importance." The only proviso that one might add to this is that, in line with Cox et al., the objection should be based on proper reflection and not on a whim. But as long as this is the case, selective conscientious objection is entirely in keeping with the virtue of integrity demanded by the military. It makes little sense for military institutions to demand integrity but reject conscience.

V. Conclusion

Professional military ethics require freedom of conscience in matters concerning the justice of wars. This is true for both principled and functional reasons: Western military forces exist to serve liberal democracies, and liberalism is based upon the principle of individual autonomy,

and military efficiency requires soldiers who can think for themselves and reach autonomous decisions on moral issues, not merely follow orders.

This is not to say that conscience has no limits. But those limits are defined by the liberal values of our societies. One could argue that a soldier who exercises his conscience in such a way as to harm the higher moral purpose of the military, as defined by those liberal values, would not be acting in accordance with professional ethics. This is not the case with the selective conscientious objector, who by his or her objection in fact illustrates an understanding that injustice is incompatible with liberal values and the moral purpose of the armed forces.

Anybody who doubts whether it is desirable for soldiers to have consciences and to act upon them should ask themselves whether it would be better for soldiers not to have consciences. At present, the legal situation in most states is such that we expect soldiers to have consciences and to follow their dictates when it comes to *jus in bello*, but simply to throw those consciences aside when it comes to *jus ad bellum*. This suggests that professional military ethics are solely about how soldiers operate and not about the objectives they serve while doing so, as if the one could be entirely divorced from the other. This is absurd. One does not measure the worth of a surgeon solely by how well he makes incisions, as if the surgeon who removes tumors is on the same level as the one who removes organs to sell on the black market. Functional expertise is not enough; the purpose of the operation is all-important. Any proper professional ethic must contain an understanding of the correct use of the profession's skills. In the case of the armed forces of liberal societies, this means waging just wars, and just wars only. As Alexander Moseley notes:

> Properly speaking for the purposes of civilization, as the classical liberal upholds, the military exists as an instrument to defend the values of life, property, and peaceful social interaction of the people who sponsor it. The moral cord extends provisionally to the military to uphold a set of core values which reflect the sponsoring people's requirement to have their lives and property protected from external threat . . . A military designed and used to invade, pillage or interfere in the political, cultural, or religious processes of another nation differs not from a gang of robbers or extortionists, who use their weaponry to exact property or changes; such a military organization is not civil.[52]

Noting that the military profession must serve a higher purpose to be morally valid, Martin Cook comments that "Unwillingness to render obedient service to policies an officer considers deeply flawed and utterly at variance with sound professional judgment is not, I submit, evidence of a *lack* of professionalism but rather a high manifestation of it."[53] For soldiers, "sound professional judgment" includes judgment about the justice or injustice of the wars they are ordered to fight. Refusing to fight in an unjust war is therefore entirely in keeping with professional military ethics.

Notes

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3. See, for instance, P. Robinson, "Integrity and selective conscientious objection," *Journal of Military Ethics* 8, no. 1 (2009): 34–47; G. Clifford, "Legalizing selective conscientious objection," *Public Reason*

3, no. 1 (2011): 22–38; J. C. Ficarotta, *Kantian Thinking About Military Ethics* (London: Ashgate, 2010): 73–86.
4. For two collections of essays for and against selective conscientious objection, see: Ellner et al., *When Soldiers Say No*; and *Israel Law Review* 36, no. 3 (2002).
5. P. McGregor, "The role of *Innere Führung* in German civil–military relations," *Strategic Insights* 5, no. 4 (2006).
6. R. A. Gabriel, *The Warrior's Way: A Treatise on Military Ethics* (Kingston, Ontario: Canadian Defence Academy Press, 2007): 99.
7. Cited in M. L. Cook, "Army professionalism: Service to what ends?" in L. Matthews (Ed.), *The Future of the Army Profession* (Boston, MA: McGraw-Hill, 2002): 341.
8. Ibid.: 344.
9. See, for instance, M. Bergeron, "Selective conscientious objection: A violation of the social contract," in Ellner, Robinson, and Whetham (Eds.), *When Soldiers Say No*, pp. 49–62.
10. Cook, "Army professionalism," p. 351.
11. Marybeth Peterson Ulrich, "Infusing civil–military relations norms in the officer corps," in Matthews (Ed.), *The Future of the Army Profession*, p. 249.
12. Ibid.: 263.
13. Ibid.: 264.
14. *Duty with Honour: The Profession of Arms in Canada* (Kingston, Ontario: Canadian Defence Academy, 2003): 29.
15. Ibid.: 22.
16. For discussions of these varying points of view, see: P. Strohm, *Conscience: A Very Short Introduction* (Oxford: Oxford University Press, 2011); and E. G. Andrew, *Conscience and its Critics: Protestant Conscience, Enlightenment Reason, and Modern Subjectivity* (Toronto, Ontario: University of Toronto Press, 2001).
17. Cited in Andrew, *Conscience and its Critics*, p. 21.
18. Cited in Andrew, ibid.: 86.
19. Ibid.: 161.
20. R. W. Cox III, *Ethics and Integrity in Public Administration: Concepts and Cases* (Armonk, NY: M. E. Sharpe, 2009): 26.
21. Cited in Andrew, *Conscience and its Critics*, p. 68.
22. T. L. Hall, *Separating Church and State: Roger Williams and Religious Liberty* (Champaign, IL: University of Illinois Press, 1998): 86–87.
23. Andrew, *Conscience and its Critics*, p. 186.
24. Strohm, *Conscience: A Very Short Introduction*, p. 2.
25. J. Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Belknap Press, 2003): 386.
26. J. S. Mill, *On Liberty* (Kitchener, Ontario: Batoche Books, 2001): 55.
27. Ibid.: 56.
28. B. Colburn, *Autonomy and Liberalism* (New York & London: Routledge, 2010): 1–2.
29. Mill, *On Liberty*, pp. 15–16.
30. M. Navin, "Sincerity, accuracy, and selective conscientious objection," *Journal of Military Ethics* 12, no. 2 (2013): 112–113.
31. For instance, M. S. Swartz, "'Conscience clauses' or 'unconscionable clauses': Personal beliefs versus professional responsibilities," *Yale Journal of Health Policy, Law, and Ethics* 6, no. 2 (2006): 277.
32. E. LaFollette and H. LaFollette, "Private conscience, public acts," *Journal of Medical Ethics* 33, no. 5 (2007): 253.
33. Rawls, *A Theory of Justice*, p. 3.
34. Ibid.: 214.
35. Ibid.: 333.
36. Ibid.: 334–335.
37. For a comparison of the different lists of virtues produced by different military institutions, see: P. Robinson, "Introduction: Ethics education in the military," in P. Robinson, N. de Lee, and D. Carrick, Eds., *Ethics Education in the Military* (London: Ashgate, 2008): 7.
38. Cox, *Ethics and Integrity*, p. 26.
39. E. Goffi, "There is no real moral obligation to obey orders," in Ellner, Robinson, and Whetham (Eds.), *When Soldiers Say No*, p. 45.
40. Ibid.: 46.

41. J. M. Mattox, "The ties that bind: The army officer's moral obligations," in Matthews (Ed.), *The Future of the Army Profession*, p. 303.
42. Gabriel, *The Warrior's Way*, p. 109.
43. Ibid.: 176.
44. P. Robinson, *Military Honour and the Conduct of War* (London & New York: Routledge, 2006): 2.
45. Aristotle, *Ethics*, translated by J. A. K. Thompson, revised Hugh Tredennick (London: Penguin, 1976): 260.
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47. United States Corps of Cadets, *Cadet Honor Committee Procedures* (West Point, NY: United States Corps of Cadets, 2002): i.
48. L. McFall, "Integrity," *Ethics* 98, no. 1 (1987): 7.
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50. McFall, "Integrity," p. 11.
51. D. Cox, M. Lacaze, and M. Levine, "Should we strive for integrity?" *Journal of Value Inquiry* 33, no. 4 (1999): 520.
52. Alexander Moseley, "The ethical warrior: A classical liberal approach," in Robinson, de Lee, and Carrick, Eds., *Ethics Education in the Military*, p. 181.
53. Cook, "Army professionalism," p. 343.

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7

MILITARY CULTURE AND WAR CRIMES[1]

Jessica Wolfendale

The problem of understanding why war crimes continue to occur and how they might be prevented has long seemed intractable.[2] With the development of the field of social psychology over the last 60 years and the resulting debates about the relationship between character, situational influences, and human behavior, a number of theories about why war crimes occur have emerged, along with proposals as to how such crimes might be prevented in the future. In this chapter, I discuss a number of recent approaches to war crimes in the field of military ethics, and argue that these approaches are based on fundamental misunderstandings about the causes of war crimes and how they might be prevented.

Many of the most common views on war crimes fail to recognize the role that military culture and training play in cultivating the moral framework within which war crimes can come to be seen as not just permissible, but in fact required by military virtues such as duty and honor. Thus, approaches to war crimes that emphasize additional character development training, ethics classes, or training in moral deliberation miss the mark because they fail to address the fact that war crimes occur in a context in which such crimes are given meaning by both individual perpetrators and by the social and cultural frameworks within which perpetrators act. In this chapter, I will propose an account of war crimes that draws on work in social psychology, anthropology, and moral psychology to elucidate the links between the commission of war crimes, the social-cultural framework of military culture and service, and the dispositions of military personnel. This analysis of war crimes raises important questions regarding how military training and culture could be modified to prevent or minimize the occurrence of war crimes.

I. Recent Theories of War Crimes

In response to a large body of research in social psychology that seems to show that human behavior is explained to a surprising extent by the external situational factors (such as stress, peer pressure, or orders from authority figures) to which an agent is exposed, rather than by the agent's preexisting stable character traits,[3] a number of authors have argued that situationism can explain the continued occurrence of war crimes.[4] One consequence of adopting this situationist account of war crimes is that character development classes in military training (which are both common and very popular in military training academies) will be viewed as inefficacious

in preventing war crimes since, according to the situationist account, the behavior of military personnel is a product of numerous situational forces (such as combat stress, exposure to dehumanizing ideologies, and obedience to authority) and not the result of failures of characters or of the presence of preexisting vicious character traits in military personnel.[5]

In response to this research and in light of a number of prominent war crimes committed by U.S. forces over the last 10 years, including the abuses at Abu Ghraib prison and the massacre at Haditha, there have been a number of articles and books calling for enhanced or revised ethics training in the military. George Mastroianni, for example, notes that traditional military ethics training (with its emphasis on lists of virtues and character development programs) is finally taking account of the evidence from situationist research in social psychology, with the result that training programs now "put greater emphasis on situational factors, such as combat stress, while still relying on the development of a commitment to shared values and the professionalism of the military as crucial elements in sustaining ethical conduct."[6]

Notable among recent works on this issue is Nancy Sherman's book *Stoic Warriors: The Ancient Philosophy Behind the Military Mind*. Sherman argues that Stoic philosophy (or a somewhat modified version) is particularly well suited to the needs of the modern military due to its emphasis on virtues such as self-control, emotional control, and on developing empathy for others. For these reasons, Sherman believes that incorporating Stoic ethics into military culture and training would help military personnel develop the necessary internal emotional resources, such as empathy for others, resilience, and self-restraint, that would enable them to avoid committing war crimes out of fear, stress, anger, and hatred. In addition, she argues that Stoicism would assist military personnel in managing other emotionally and psychologically taxing aspects of military service such as grief, the effects of killing, and fear.[7]

While Sherman acknowledges the role that institutional and bureaucratic factors played in the crimes at Abu Ghraib (for instance, she notes that the methods used on prisoners were imported from Guantanamo Bay and were encouraged and condoned within the prison),[8] she primarily characterizes the abuses at Abu Ghraib as arising from a failure of empathy on the part of the guards, and from the effects of "anger and abusive rage."[9] It is for this and other reasons that she proposes incorporating Stoic ethics into military training and culture across all ranks and during all stages of training in order to develop the empathy, fellow feeling, and self-mastery of military personnel in the face of extreme situational provocations such as those that were present in Abu Ghraib. In addition, she emphasizes how important it is that the military leadership enforce respect for the laws of armed conflict. As she argues: "All soldiers, by swearing to uphold the Geneva Conventions, have indirect moral duties to cultivate the imaginative skills that underlie a capacity necessary for dignitary respect."[10]

In a similar vein, Nancy Snow argues that Abu Ghraib exemplifies many of the factors that social psychologists such as Albert Bandura and Philip Zimbardo have identified as connected to abusive behavior, including extreme insecurity (the prison was under frequent mortar attack), rationalization, dehumanization of the victims, diffusion of responsibility, and self-deception.[11] Like Sherman, Snow argues that incorporating Stoic ethics into military training can help military personnel develop the inner resources and moral courage to resist such situational pressures.[12]

Some authors have approached the issue from a non-virtue ethics perspective. Susan Martinelli-Fernandez, for example, advocates a Kantian approach, arguing that Kantian moral philosophy and Kant's theories of moral education could be used to strengthen the moral judgment and practical reasoning skills of military personnel, thereby increasing the likelihood that they will be able to exercise moral deliberation and moral courage in the field.[13] Martinelli-Fernandez, like Snow and Sherman, recognizes that merely having rules forbidding certain actions will not be sufficient to ensure ethical behavior on the part of military personnel. For

Martinelli-Fernandez, training in Kantian practical reasoning (by, for example, applying Kantian methodology to case studies in military ethics) would develop the autonomy of military personnel and thereby enhance their understanding both of the nature of motivation and the nature of rules. This would, "in turn, help determine which motivations are more likely to lead us to ethical conduct."[14] Thus, military personnel would come to understand "the practical and moral relevancy of various rules and imperatives" yet also learn "that individuals must still make their own decisions in disparate and concrete cases."[15]

These accounts differ in important ways, but they share a number of implicit assumptions. First, both Snow and Sherman and, to a lesser extent, Martinelli-Fernandez, construe war crimes and lesser forms of unethical behavior to be the result, at least in part, of *individual* failures of self-control, emotional discipline, and/or moral judgment and deliberation. Such failures are (depending on the account) a result of factors such as exposure to stress, poor leadership, and inadequate training in moral deliberation and practical reasoning. This conception of war crimes is an example of what Mark Osiel calls the theory of "atrocity by primordial passion"—the view that many war crimes result from the basic primal emotions unleashed by combat in military personnel, such as rage and desire for vengeance.[16] It is because of this view of war crimes that Snow and Sherman see Stoic ethics as providing a resource for developing virtues such as discipline and restraint and why Martinelli-Fernandez proposes training in Kantian ethics as a method for cultivating the moral autonomy of military personnel. In light of the implicit theory of war crimes that underlies their views, it makes sense that all three propose changes to military training that focus on developing the character of military personnel (although arguably they each construe character somewhat differently).

It is not my intention here to critique the accounts of Stoic and Kantian ethics that these authors discuss. Instead, I want to focus on three assumptions that I see as implicit in these and similar accounts of war crimes. These assumptions are: (a) that war crimes at least partly result from a failure of virtue, character, and or/moral judgment on the part of military personnel; (b) that the meaning and applicability of terms such as virtue, practical wisdom, and respect for others is relatively objective, thus allowing the ready identification of situations that call for relevant virtues and for the exercise of moral judgment on the part of military personnel; and (c) that instituting new or modified training in moral deliberation and character development for military personnel will lead to fewer war crimes by strengthening the inner moral and emotional resources of military personnel. I will argue that these assumptions are based both on a misunderstanding of war crimes, and on an account of personality that is challenged by new theories of character that have emerged in social psychology over the last three decades.

II. The Moral Framework of War Crimes

The belief that war crimes are (at least partly) a result of individual failures of virtue, character, and/or moral judgment is a common one. It just seems obvious that war criminals are neither virtuous nor possessors of Kantian practical wisdom. However, while this belief about war criminals is intuitively appealing, it ignores the crucial fact that, in the case of many war crimes, perpetrators believe themselves to be acting *in accordance* with moral virtue, duty, and practical wisdom. Of course, this is not true of all war crimes. There are examples of war crimes that have been perpetrated by military personnel who were suffering from breakdowns in mental heath or who "cracked" under the stresses of combat and acted out of unbridled rage and revenge. The killing of 16 Afghanis in March 2012 by Staff Sergeant Robert Bale is an example of this kind of war crime,[17] and the massacre of 24 civilians by U.S. Marines in Haditha has been construed as resulting partly from the Marines' desire to avenge the killing of one of their

comrades.[18] Even if one does not agree with this construction of the events at Haditha, neither in that case nor in the case of Staff Sergeant Bale did the perpetrators believe themselves to be acting in accordance with orders (implied or otherwise), nor did they defend their actions by appealing to military virtues or other moral principles.

However, such "heat of battle" war crimes are few and far between compared to the most egregious war crimes, such as systematic torture, systematic rape, the intentional killing of civilians, and genocide. Institutionalized and large-scale war crimes of this kind are different from heat of battle crimes not just in the numbers of victims and perpetrators involved, but in virtue of the fact that those involved in devising and implementing such crimes are typically operating within a moral framework within which these acts are viewed as not just compatible with military virtues such as duty and honor, but as even morally *required* by such virtues. To interpret such crimes as resulting largely from individual failures of character, as the accounts discussed earlier do, is therefore to miss this crucial fact about the moral psychology of these kinds of war crimes.

I am not just pointing out that war crimes have often resulted from deliberate military and political policies (cases of what Osiel refers to as "atrocity by bureaucracy")[19] and have often been carried out with the acquiescence of and tacit encouragement from superior officers ("atrocity by connivance").[20] That point is recognized by the authors discussed earlier, and in fact incorporated into the strategies that they propose for the prevention of war crimes.[21]

Instead, my point is that it will not be possible to gain a fuller understanding of the causes of war crimes until it is recognized that war crimes can come to be viewed as morally compatible with important military virtues and even abstract moral principles, such as justice and respect for persons. It is this process of moral legitimization that is neglected in the theories discussed earlier, and indeed is neglected in most work in military ethics on character and ethical conduct.

This claim involves more than noting that it is possible for a person to commit acts of great evil out of deeply held moral beliefs (to be a "Nazi with integrity," for example),[22] although that possibility certainly follows from the account I will propose. Instead, my central claim is that in order to understand how war crimes can come to be seen by perpetrators as compatible with moral principles and virtues, we must recognize that moral concepts (including the concepts of virtues such as duty, loyalty, and integrity, as well as moral principles such as justice, respect, and equality) are and need to be *socially articulated* in order for individuals to internalize, understand, and apply them.[23] Failing to see how moral principles are socially articulated in the context of military culture and in the production of war crimes means that we will fail to understand how perpetrators of war crimes can see their behavior as consistent with or required by those very same abstract principles that were supposed to prevent such behavior. In what follows, I explain how war crimes are construed as morally legitimate at the level of implementation or ideology, and how individual perpetrators then incorporate such understandings into their actions, self-conceptions, and goals.

III. Morality as Socially Articulated

Herlinde Pauer-Studer and David Velleman explain the idea of morality as socially articulated in their analysis of the moral psychology of Holocaust perpetrators. Social articulation of morality refers to the fact that "Abstract principles must be given a socially relevant interpretation, and they must be applied by agents with socially inculcated habits of moral perception."[24] The situations that we see as calling for moral evaluation, and then the elements of those situations that we see as morally relevant to our evaluation reflect what we have been *taught* to see as normatively salient—this is what "habits of moral perception" refers to.[25] Likewise, our

understanding of abstract moral concepts such as "respect for persons" or "justice" is shaped by social interpretations of those concepts that might include or be based on empirical claims about, for example, the relevant moral worth of different racial or political groups.[26]

This understanding of morality allows us to explain the fact that both the architects of institutionalized war crimes and the "on the ground" perpetrators of war crimes often refer to and justify their actions with reference to moral principles and concepts that seem, on the face of it, diametrically opposed to the actions they are used to justify. It also allows us to see where Sherman, Snow, and Martinelli-Fernandez have gone wrong.

IV. Genocide as a Kantian Duty

Hannah Arendt noted that Eichmann, during his trial, stated that he always guided his behavior with reference to the Kantian categorical imperative, and he was able to explain the categorical imperative with fair accuracy.[27] Eichmann claimed that it was his adherence to Kantian morality that led him to refuse to make exceptions for Jews when he was asked to do so by prominent German citizens. As Arendt explains: "No exceptions—this was the proof that he had always acted against his 'inclinations,' whether they were sentimental or inspired by interest, that he had always done his 'duty.'"[28]

Notice that the problem here is not that Eichmann misunderstood Kant—his interpretation is flawed, but arguably his knowledge and grasp of Kantian ethics would exceed that of many undergraduate philosophy students, and certainly that of many cadets at military academies. The problem is that Eichmann's understanding of basic Kantian ideas, such as respect for persons, was mediated through a set of socially embedded ideologically driven beliefs regarding the nature of persons (and thus who counted as a recipient of respect) and the nature of duty. As a result of these highly culturally "fixed" interpretations of these concepts, Eichmann could consistently claim that he understood and attempted to act on Kantian ethics, and that killing Jews was consistent with Kantian duty since (for example) the Kantian principle of respect for persons did not apply to Jews. It is clear that simply including more lessons on Kantian ethics (as proposed by Martinelli-Fernandez) would have been very unlikely to minimize the likelihood of war crimes in a context in which the available articulations of Kantian moral concepts allowed actions such as genocide to be construed as required by Kantian duty.

As will become apparent, the same problem arises with virtue-based approaches to preventing war crimes such as those advocated by Sherman and Show. Intuitively, it might seem plausible to suppose that cultivating virtues such as self-restraint and empathy would minimize war crimes but, as the following examples illustrate, the concept of virtues such as restraint and duty can be socially articulated in ways that can in fact enable war crimes rather than prevent them.

V. Virtuous Torturers

Snow and Sherman both emphasize the value of self-control and restraint in preventing war crimes. When discussing Abu Ghraib, both focus on the loss of self-control and restraint exhibited by the guards as factors contributing to the abuse. Yet Sherman and Snow fail to notice that (unlike the abuses at Abu Ghraib) the torture that was occurring in Guantanamo Bay and elsewhere during the same time period was claimed to be part of a legitimate interrogation process and held up as the "right" way of conducting interrogations, as evidenced by the fact that Army Major General Geoffrey Miller was transferred to Abu Ghraib from Guantanamo Bay in order to "clean up" the prison. Interestingly, Sherman notes this fact,[29] but does not consider how her analysis of torture would apply to that occurring at Guantanamo Bay.

Yet it is the "professional" torture at Guantanamo Bay that is far more representative of the systematic torture that was authorized by the Bush administration than the abuses that occurred at Abu Ghraib prison. The attitude toward torture exhibited by the Bush administration is consistent with the ways in which the use of torture has been rationalized and justified by other countries. For example, during the military dictatorships in Latin America during the 1970s and 1980s, torture was rationalized as necessary to fight terrorism (as it was during the Bush administration), terrorists were portrayed as such an extreme threat that the ordinary rules of war had to be drastically loosened,[30] and torturers saw their roles as justified by reference to military goals such as protecting the state, and as requiring moral courage, fortitude, and restraint.[31]

Indeed, ironically, both self-control and restraint have been frequently described as virtues in the context of torture. For example, one torturer claimed: "Some people die on their torturer, without a decision having been made to kill them; this is regarded as a professional failure."[32] Another explained: "We didn't operate on anger or sadism or anything like that . . . It became a function. It became part of the job. It became normal operating procedure."[33] Another stated proudly: "I don't use . . . violence outside the standard of my conscience of a human being. I'm a conscientious professional. I know what to do and when to do it."[34] These quotes illustrate that the concepts of conscientiousness, restraint, and duty can become mediated through particular social and cultural narratives regarding, for example, the nature of the terrorist threat and the means necessary to protect the state, in such a way that the use of torture comes to be seen as consistent with these virtues.

Thus, to suggest, as Sherman and Snow do, that encouraging greater restraint and emotional control would help prevent abuses like those at Abu Ghraib ignores the fact that the meaning of traits such as conscientiousness and self-control is not self-evident, but is filtered through available frameworks of interpretation. Thus, it is possible that these traits can be simultaneously viewed both as virtues and as necessary for the execution of a policy of institutionalized torture. Without critically examining the processes by which virtues such as restraint and duty are conceptualized and internalized, simply increasing training in character development will have little to no impact on the likelihood that military personnel will become involved in institutionalized war crimes such as torture.[35]

The above discussion illustrates the failure of accounts of war crimes that conceptualize war crimes as resulting primarily from individual failures of character. Such accounts fail to recognize that understanding war crimes requires first understanding the moral framework within which such crimes occur, and how this framework can lead to such crimes being construed as morally required by or consistent with important moral principles. In what follows, I use the examples of the Cambodian genocide and the Holocaust to develop a more detailed theory of this process of the legitimization of war crimes at the level of ideology and the level of individual perpetrators.

VI. Making War Crimes Moral: The Macro Level

In his study of the Cambodian genocide, Alexander Hinton demonstrates how the Khmer Rouge incorporated culturally unique concepts and beliefs to produce a social articulation of morality in which torture, killing, and the destruction of intellectual and urban life were conceived as both necessary and compatible with central Cambodian values and religious and cultural belief systems. For example, the Khmer Rouge adapted familiar Cambodian cultural models, including the Buddhist concepts of mindfulness and letting go of attachment, to the process of justifying and implementing the genocide. Thus, in the Khmer Rouge ideology, mindfulness was construed as a process by which one "cultivates a proper understanding, which enables one to mindfully scrutinize one's thoughts and appropriately focus one's revolutionary consciousness."[36]

The Buddhist principle of letting go of attachment and desire was reinterpreted to mean letting go of attachment to one's family and loved ones (being attached to individuals was seen as taking a "private stand" rather than being attached to the party and the revolution), thus enabling family members to rationalize and justify reporting on each other to Khmer Rouge leaders. Buddhist teachings about letting go of anger were adapted to encourage individuals to develop self-control and discipline when carrying out acts such as torture and execution. Thus, the manual for torturers that was used to train interrogators emphasized that "[torture] is not something we do out of individual anger or self-satisfaction . . . beat them to make them afraid but absolutely not to kill them."[37]

This use of long-standing and resonant cultural models enabled Cambodians to see the Khmer Rouge as part of their cultural history, and enabled perpetrators of the genocide to find meaning in their actions by reference to familiar cultural and social ideas. As Hinton puts it, "the very effectiveness of genocidal ideologies is dependent on their ability to play upon a variety of emotionally-laden local understandings."[38]

Yet understanding the moral and cultural frameworks that are used to support specific ideologies that "fit" with a population's preexisting cultural beliefs is insufficient to explain perpetrators' behavior. A problem with macro-level explanations of war crimes in general is that they fail to explain the great variety in perpetrator behavior. Some perpetrators show great reluctance in carrying out their tasks, while others seem to actively seek out new and inventive ways of performing atrocities that go well beyond any orders they might have been given.[39] As Hinton points out, perpetrators of war crimes are, like all of us, "active meaning-makers who, when put in a position to kill, make their own 'individual-level response' based on the situation, their prior experiences and personal mental models, the meaningful interpretive frames available to them, and their immediate feelings and goals."[40] Thus, perpetrator behavior needs to be understood as a product of an ongoing and dynamic interplay between cultural and social models of meaning and individual perpetrators' interpretations and internalized experiences of those models.[41]

When trying to understand the problem of war crimes, therefore, we must ask two questions: How do perpetrators' actions make sense within the available cultural and socially articulated moral frameworks? And how do a perpetrator's actions make sense to *her*, given her unique set of values, background, and goals? Even within a society with a highly regulated and constrained social articulation of morality such as that which developed during the Khmer Rouge regime and during the Holocaust, individuals still bring a unique and highly personal "take" to their lived experience of morality, which informs both their actions and their attitudes toward what they do.

VII. CAPS Theory: Understanding Individual Perpetrators

The conception of individual behavior as resulting from the interaction between situations and available interpretive models, on the one hand, and individuals' unique goals, values, and self-conceptions, on the other, is supported by the social cognitivist theory of personality first developed by Walter Mischel in the 1960s and then refined by Mischel and his colleagues over the next 30 years,[42] a theory that has since gained considerable support from both social psychologists and philosophers.[43]

According to this view, personality should be understood as a cognitive-affective personality system (CAPS): "a dynamic system or organized network of interconnected and inter-acting cognitions and affects"[44] that is activated in social settings. According to CAPS theory, the basic units of this personality system can be thought of as, in Nancy Snow's words, "social-cognitive"

or "cognitive-affective units" involving interconnected sets of beliefs, emotions, behaviors, and judgments that are "activated in response to situational variables . . . or internal stimuli."[45] As Daniel Russell explains, these traits are "cognitive and affective processes, such as pursuing goals, attaching salience to certain features of situations, interpreting intentions of others, valuing certain outcomes, and so on, and adjusting one's behaviors to situations accordingly."[46]

In essence, these cognitive-affective units both reflect and reinforce agents' interpretations of the meanings of the situations in which they find themselves, and thus shape how agents then act within those situations: "Agents 'construe' their situations and attach meaning to them, and adjust their behaviors to situations *so construed*."[47] An agent's construal of a situation is shaped by and reinforces sets of goals, beliefs, and attitudes, a process that can produce relatively stable "patterns" of thought, affect, and behavior that come to resemble what we traditionally think of as personality traits. Repeated activation of these cognitive-affective units can, over time, lead to the possession of relatively stable CAPS traits that are displayed consistently across situations deemed relevantly similar by the agent.[48]

This means that before we can understand what a situation is (for example, whether it is a situation that requires honesty or courage), we must know how agents within that situation construe the meaning of the situation and how that construal relates to their preexisting beliefs, goals, self-conceptions, and values. In addition, I suggest that it is also necessary to understand the social articulation of morality that is available to the individual, as that also will shape an individual's moral perception and interpretation of the available and relevant moral concepts. Thus, the understanding of individual personality provided by CAPS theory fits naturally with the idea of morality as socially articulated. Marrying these ideas allows us to see both how narratives or ideologies can evolve that provide apparent moral legitimacy for war crimes by drawing on familiar moral, social, and cultural constructs, and how individual perpetrators then adapt and internalize these narratives in light of their own unique self-conceptions, histories, and beliefs.

The explanatory value of this approach is illustrated by the case studies of two Holocaust perpetrators (discussed by Pauer-Studer and Velleman) who documented their experiences at the time in private journals and letters.[49] Felix Landau, an Austrian who had been a member of the SS since 1934, served in an *Einsatzcommando* unit that carried out mass killings in occupied Poland. Yet although he was a longtime member of the SS, he did not see his role as motivated by racial hatred or ideology. Instead, he describes his experience as involving tasks that needed to be done because they were ordered but that he found both unsoldierly and unpleasant: he had "little inclination to shoot defenceless people—even if they are only Jews. I would far rather it were good honest open combat."[50] He showed pride in his reputation for being a hard worker, writing, "Everyone admired my work."[51] These and other diary entries reveal that Landau's self-image was tied closely to his perception of himself as a good worker and a good soldier, where being a good soldier for him meant carrying out one's orders dutifully, without behaving excessively or sadistically. In fact, he was critical of overly "enthusiastic" shooters.[52]

In contrast, Karl Kretschmer, a German pharmacist who served in a *Sonderkommando* unit that carried out mass executions, suffered serious psychological distress at his participation in the killings. However, unlike Landau, Kretschmer interpreted the killings as necessary to protect the German race from the existential threat posed by the Jews ("My comrades are literally fighting for the existence of our people")[53] and construed his distress as evidence of personal weakness rather than as evidence of any immorality in what he was required to do.

These examples illustrate how two individuals involved in essentially the same war crimes, exposed to the same ideological narratives used to justify the Nazis' genocidal policies, and who experienced similar situational forces during training and in combat interpreted the meaning of their actions in very different ways. Interestingly, neither Landau nor Kretschmer dehumanized

the Jews in their writings or revealed particularly anti-Semitic sentiments. Yet both accepted the Nazis' portrayal of the genocide against the Jews as a war. Thus, both accepted the inclusion of the Jews into "the enemy" and the characterization of the killings as a military duty, but each interpreted the meaning of their own actions in very different ways.

For example, Landau's distaste for killing unarmed civilians and his focus on being a good worker meant that he did not pursue such tasks if he could avoid it, and when killing was required of him rejected any display of sadism or enjoyment in killing as simply unprofessional. Yet it is clear from his diary that his objections to his duties were not based on any strong moral objection to killing innocent people or any belief in the wrongness of the Nazis' genocidal program. Rather, his objections were based on the fact that his duties were not the duties he had expected and wanted when he signed up: "the main problem for him was that it was not the job for which he thought he was enlisting."[54]

On the other hand, Kretschmer's strong belief in an existential threat posed by the Jews to the German people[55] allowed him to justify the Nazis' genocidal project as a form of national self-defense. As a result, he saw his personal challenge as overcoming his revulsion and so he actively sought to become better at his work: "it is a weakness not to be able to stand the sight of dead people; the best way to overcome it is to do it more often."[56] He aimed for what he saw as moderation between the extreme of sadism and brutality, on the one hand, and personal cowardice, on the other. Thus, he wrote to his daughter: "you can trust your Daddy. He thinks about you all the time and is not shooting immoderately."[57]

What the above examples reveal is the interplay between the available interpretative frameworks provided by Nazi ideology (for instance, the portrayal of the genocide as a war necessary to prevent an existential threat to the German people), and the ways in which individual perpetrators adapted and interpreted those frameworks. Thus, differences in the behavior and attitudes of individual perpetrators such as Landau and Kretschmer arose from their construal of their situations in light of their own values, beliefs, goals, and self-perceptions—internal states that had been in turn been shaped both by their personal histories and the interpretive frameworks available to them.

VIII. Implications for Military Culture and Training

If, as I have argued, institutionalized war crimes arise from a complex combination of the available social articulations of morality, ideologies, and individual differences, what does this suggest in terms of preventing war crimes?

The first point to note is that, contrary to my own earlier views,[58] it is not obvious that the occurrence of war crimes is linked to the effects of military training on the autonomy of military personnel. Indeed, I am no longer convinced that military training and culture significantly undermine moral autonomy or that most war crimes result from impaired autonomy.[59] Instead, the account of war crimes that I have developed in this chapter demonstrates how relatively easy it can be for dangerous articulations of morality to become dominant narratives within the military and political sphere, leading to the apparent legitimization of war crimes. For example, it was remarkable how quickly the military acceded to the Bush administration's depiction of the fight against terrorism as a war and largely accepted and implemented the new policies regarding the status of prisoners in the war on terror and the use of tactics such as torture. One way of explaining the rapid acceptance of these policies is by reference to the narrative of terrorism as an existential threat that dominated political speech at the time.[60] Similar narratives of the existence of existential threats played crucial roles in the legitimatization of genocide and torture in Cambodia, Nazi Germany, and Rwanda.[61]

The account that I have developed also reveals instructive similarities between military culture and authoritarian regimes. These similarities have nothing to do with political legitimacy, but instead reflect the ways in which the military is an authoritarian institution. The military is authoritarian, ritualistic, and isolated from the civilian world to an extent unknown in almost any other profession. Military personnel are trained, housed, and deployed with little contact and interaction with the civilian world. In many countries, the military is, in effect, a "total institution": "one that seeks to control its members by breaking down the spheres of work, sleep, and play that structure much of human existence. Members are physically separated from society and subjected to a tightly controlled and regimented daily routine related explicitly to the institution's mission."[62] The closed nature of the military institution means that military personnel (like citizens in a totalitarian state) are unlikely to have easy access to alternative points of view and can be actively discouraged from engaging in discussion and disagreement about the meaning of events relevant to military endeavors.

As a result, just as social articulations of morality can become highly fixed and ideological in totalitarian regimes due to the level of control over the media, education, and security exercised by those regimes, so they can become similarly highly fixed within military institutions, resulting in the kinds of cases described earlier in which dedicated military officers can come to see killing civilians as a necessary military duty requiring fortitude. This problem is particularly serious in military forces within totalitarian states, but even in liberal democracies military forces (due to the features described above) can also be susceptible to pernicious social articulations of morality.

This means that military personnel are likely to develop a largely homogenous set of goals, values, beliefs, and judgments relative to their role within the military and the service in which they work, and they are likely to internalize and accept the available interpretative frameworks offered by the military in relation to the wars in which they fight, particularly when (as is often the case) the dominant narrative is reinforced by the political authorities and the media. Thus, it is not surprising that during the Bush administration so many military personnel accepted the dominant narratives about the war on terror and were involved in the organization, implementation, and utilization of torture during that time.

However, this does not mean that dissent and whistle-blowing are impossible or nonexistent in the face of a homogenous dominant interpretative framework. After all, some dissent exists even in extreme totalitarian states. The possibility of dissent within the military (more so for military forces in liberal democracies, perhaps) exists because no interpretative framework can be wholly monolithic, given differences in individuals' personal histories and their different levels of access to alternative views.[63] For example, there were military personnel who publicly objected to the policies of the Bush administration.[64] However, the fact that so few dissenters and whistle-blowers emerged during that time is, if anything, evidence of how pervasive and persistent the available narrative was.

So how can war crimes be prevented? I do not have space to explore this question in detail, but I believe my account suggests several possibilities that would benefit from further research.

First, my account indicates the importance in educating military personnel about the causes of war crimes, so that they understand how such crimes can come to be seen as required by military virtues and moral principles. It is important that military personnel are educated using case studies of war crimes involving military personnel from the same service and country as themselves. This would help military personnel realize that people just like them can become torturers, can kill civilians, and so forth. In addition, the use of such case studies could provide a starting point from which to examine the political, moral, and military narratives that led to such crimes being viewed as justified. This could then provide opportunities for military personnel to explore similarities between such narratives and contemporary narratives regarding the use

of military force and tactics such as torture. This would require instructors at military academies to be willing both to acknowledge that war crimes can be committed by the "good guys" and to allow open discussion and criticism of previous and current narratives regarding military force and military tactics in different operations.

Second, it is crucial to consider ways in which dissenting narratives can be allowed to develop within the military, which can provide military personnel with alternatives ways of construing and understanding the events in which they are involved. Permitting dissenting narratives (both formally, as in classroom settings, and informally) could guard against the development of a monolithic and deeply flawed articulation of morality within military forces, and could perhaps motivate disobedience and dissent if war crimes occur. The strategies offered by Snow, Sherman, and others might well assist in this aim if combined with education in the processes by which ethical theories such as Stoic ethics and Kantian ethics can be manipulated in order to provide a perceived legitimacy to war crimes. Indeed, these authors may well agree that educating military personnel in these theories should involve educating them in how these theories can be misapplied.[65]

Lastly, any changes to education and training will be largely moot if there is not prompt and severe punishment for participation in war crimes. It is far too often the case that perpetrators of war crimes are not held accountable for their actions, and such lack of accountability does much to undermine our faith in the commitment of governments and military forces worldwide to the prevention of war crimes. A true commitment to preventing war crimes requires understanding both how war crimes occur, even in military forces supposedly dedicated to the laws of armed conflict and important moral principles, and recognizing that such an understanding does not and should not mitigate accountability for war crimes.

Notes

1. I wish to thank my colleague Matthew Talbert for his helpful comments on this chapter. Some of the research for this chapter was made possible with the support of a grant from the Character Project at Wake Forest University and the John Templeton Foundation.
2. For the purposes of this chapter, I will use the term "war crimes" to refer to actions that violate the international laws of armed conflict as codified in the Geneva Conventions and others relevant international instruments.
3. Two of the most frequently discussed works on this topic are Stanley Milgram's experiments on obedience to authority in which (in one variation) over two-thirds of subjects gave what they believed to be increasing levels of electric shocks to another person, when ordered to do so by an experimenter (see his *Obedience to Authority: An Experimental View* (London: Tavistock Publications, 1974)), and Philip Zimbardo's famous "Stanford Prison Experiment," in which ordinary college-aged men, when assigned to be guards in the mock prison, began abusing those assigned to be prisoners within two days (see his *The Lucifer Effect: Understanding How Good People Turn Evil* (New York: Random House, 2008)).
4. There are actually several different views that could be described by this term. In this chapter, I use "situationism" to refer to the cluster of philosophical theories that interpret the social science experiments referred to in Section I as demonstrating that external situational forces explain and determine human behavior to a far greater extent than any preexisting character traits (if such traits exist at all). See Christian Miller, *Character and Moral Psychology* (Oxford: Oxford University Press), Chapter 4, for a helpful review of the different situationist claims in psychology and philosophy. Two such situationist accounts of war crimes are John Doris and Dominic Murphy, "From My Lai to Abu Ghraib: The moral psychology of atrocity," *Midwest Studies in Philosophy* 31, no. 1 (2007): 25–55; and Paul A. Roth, "Hearts of darkness: 'Perpetrator history' and why there is no why," *History of Human Sciences* 17, nos. 2/3 (2004): 211–251.
5. Some philosophers have argued that the situationist literature raises doubts about the very existence of character traits, or at least of the robust temporally and cross-situationally character traits posited by traditional views of personality: see John Doris, *Lack of Character: Personality and Moral Behavior* (Cambridge: Cambridge University Press, 2002).

6. George R. Mastroianni, "The person-situation debate: Implications for military leadership and civilian-military relations," *Journal of Military Ethics* 10, no. 1 (2011): 10.
7. Nancy Sherman, *Stoic Warriors: The Ancient Philosophy Behind the Military Mind* (New York: Oxford University Press, 2005): 15–16.
8. Ibid.: 175.
9. Ibid.: 176.
10. Ibid.: 177.
11. Nancy Snow, "How ethical theory can improve practice: Lessons from Abu Ghraib," *Ethical Theory and Moral Practice* 12, no. 5 (2009): 558–559.
12. Ibid.: 562.
13. Susan Martinelli-Fernandez, "Educating honorable warriors," *Journal of Military Ethics* 5, no. 1 (2006): 55–66.
14. Ibid.: 55.
15. Ibid.: 62–63.
16. Mark Osiel, *Obeying Orders: Atrocity, War Crimes, and the Law of War* (New Brunswick, NJ: Transaction Publishers, 2002): 176.
17. Peter Finn, "Staff Sgt. Robert Bales admits to killing 16 Afghans," *Washington Post* (June 5, 2013): www.washingtonpost.com/world/national-security/staff-sgt-robert-bales-admits-to-killing-16-afghans/2013/06/05/31ea3406-ce29-11e2-8845-d970ccb04497_story.html.
18. U.S. Marines killed 24 Iraqi civilians, including children, after one of their group was killed in an IED explosion. Ellen Knickmeyer, "In Haditha, memories of a massacre," *Washington Post* (May 26, 2006): www.washingtonpost.com/wp-dyn/content/article/2006/05/26/AR2006052602069.html.
19. Osiel, p. 180.
20. Ibid.
21. According to Osiel, the prevention strategies that correspond to the theories of atrocity by bureaucracy and atrocity by connivance are, respectively, increasing civilian control over the military and codifying exceptions to the duty of obedience to superior orders to control war crimes committed under orders (ibid.: 182) and holding commanders liable for war crimes committed by their troops in cases of ambiguous orders or war crimes by connivance (for example, through the doctrine of command responsibility) (ibid.: 193).
22. See Damian Cox, Marguerite La Caze, and Michael Levine, "Integrity," *Stanford Encyclopedia of Philosophy* (January 25, 2013): http://plato.stanford.edu/entries/integrity.
23. Herlinde Pauer-Studer and J. David Velleman, "Distortions of normativity," *Ethical Theory and Moral Practice* 14, no. 3 (2011): 329–356, esp. p. 335.
24. Ibid.: 334.
25. Ibid.: 335.
26. This is not a relativistic view of morality. It would be a mistake to see this claim about moral psychology as implying that there are no ways of judging between different social articulations of morality. For example, Pauer-Studer and Velleman point out that a social articulation can "go wrong" if it is based on false empirical beliefs. Thus, the concept of "respect for persons" was present in Nazi Germany, but was not taken to apply to Jews because of the Nazis' belief in a racial hierarchy. Since Jews were biologically inferior, they need not be considered as equals (ibid.: 352).
27. Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin, 1994): 136.
28. Ibid.: 333.
29. Sherman, p. 175.
30. For example, during the military dictatorship in Brazil (1964–1985), torture and extrajudicial executions occurred frequently. The Brazilian Colonel Brilhante Ustra defended the use of torture as follows: "Our accusers complain about our interrogations . . . Thus, it is necessary to explain that one does not combat terrorism by using ordinary laws for an ordinary citizen. The terrorists were not ordinary citizens" (quoted in Wolfgang Heinz, "The military, torture, and human rights: Experiences from Argentina, Brazil, Chile, and Uruguay," in *The Politics of Pain: Torturers and Their Masters*, Eds., R. D. Crelinsten and A. P. Schmidt (Boulder, CO: Westview Press, 1993: 65–92, at p. 65).)
31. See Jessica Wolfendale, *Torture and the Military Profession* (Basingstoke: Palgrave Macmillan, 2007): 172–182, for a discussion of how torturers view their role.
32. Ibid.: 173.
33. Ibid.: 173.

34. Ibid.: 179.
35. I grant that it is possible that cultivating these traits might help reduce the likelihood of what I have called "heat of battle" war crimes, however.
36. Alexander Hinton, *Why Did They Kill: Cambodia in the Shadow of Genocide* (Berkeley, CA: University of California Press, 2005): 202.
37. Quoted in Hinton, p. 235.
38. Ibid.: 23.
39. This is a problem, for instance, with situationist accounts of war crimes. Situationist accounts of war crimes that aim to explain war crimes by reference to the external situational forces to which military personnel are exposed (for example, fatigue, stress, and dehumanization of the enemy) fail to account for these differences among perpetrators, since perpetrators exposed to what appear to be the same situational forces vary greatly in their enthusiasm for engaging in war crimes, and in their attitudes toward their actions.
40. Hinton, p. 30.
41. Ibid.: 25.
42. See Walter Mischel, "Toward a cognitive social learning reconceptualization of personality," *Psychological Review* 80, no. 4 (1973): 252–283; and Walter Mischel and Yuichi Shoda, "Reconciling processing dynamics and personality dispositions," *Annual Review of Psychology* 49 (1998): 229–258.
43. See Lee Ross and Richard E. Nisbett, *The Person and the Situation: Perspectives of Social Psychology*, 2nd edition (London: Pinter & Martin, 2011); Daniel Russell, *Practical Intelligence and the Virtues* (Oxford: Clarendon Press, 2009); and Nancy Snow, *Virtue as Social Intelligence: An Empirically Grounded Theory* (New York: Routledge, 2010).
44. Yuichi Shoda and Walter Mischel, "Toward a unified, intra-individual dynamic conception of personality," *Journal of Research in Personality* 30 (1996): 414–448, esp. p. 417.
45. Snow 2010, pp. 31–33.
46. Russell 2009, p. 268.
47. Ibid.: 245, original emphasis.
48. Snow 2010, p. 9. Snow illustrates this process through a discussion of how a person may come to develop the trait of irritability. Like other CAPS traits, the structure of the trait of irritability consists of "thoughts, affects, and representations of plans, strategies, and values [that] stands online and 'on call' ready to be activated through external stimuli or even through internal stimuli, such as thoughts or imaginings" (ibid.: 32). When the irritable person is exposed to certain stimuli (for example, when a person bumps into her while she is walking on the street), this activates certain beliefs ("People are so thoughtless!"), emotions, such as annoyance, and goals ("I'm going to avoid busy streets") that then reinforce the trait as a single unit. As a result, the trait can become generalized across objectively different situations, such as busy streets, as well as also crowded movie theaters, standing in lines, public transport, and so forth.
49. Pauer-Studer and Velleman use these examples to illustrate how moral values can become inverted through social and other processes, leading to the acceptance of wrongful behavior as consistent with deeply held moral principles.
50. Pauer-Studer and Velleman, p. 345.
51. Ibid.: 347.
52. Ibid.: 348.
53. Ibid.: 349.
54. Ibid.: 348.
55. According to Arendt, it was this conception of the Jews as posing an existential threat that was the "lie most effective" with the German people in terms of getting them to accept the necessity for the removal of the Jews (*Eichmann in Jerusalem*, p. 52).
56. Pauer-Studer and Velleman, p. 349.
57. Ibid.: 349.
58. See Wolfendale, Chapter 6.
59. That said, aspects of combat (such as extreme fear, stress, and fatigue) arguably do undermine autonomy, and could be linked to heat of battle war crimes.
60. See Richard Jackson, *Writing the War on Terrorism: Language, Politics, and Counter-Terrorism* (Manchester: Manchester University Press, 2005), Chapter 4.
61. See Hinton for a discussion of the Cambodian genocide. Arendt discusses the narrative of existential threat in Nazi Germany on p. 52 of *Eichmann in Jerusalem*. In the case of Rwanda, one of the events

that initiated the genocide of the Tutsi population was the announcement on the state-sponsored radio station Radio Rwanda of the "discovery" of a Tutsi plot to massacre Hutus, thus justifying Hutu attacks on Tutsis as a form of "preemptive self-defense." See Philip Gourevitch, *We Wish to Inform You That Tomorrow We Will be Killed With Our Families* (New York: Picador, 1998): 93–94. Of course, no such plot existed.

62. Peter H. Wilson, "Defining military culture," *The Journal of Military History* 72, no. 1 (2008): 11–41, at 29. The concept of a total institution was first developed by Erving Goffman, in relation to understanding the nature of institutions such as prisons and mental asylums (Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (Harmondsworth: Penguin, 1968)). However, as Wilson argues, the concept also applies to many military forces around the world.
63. For example, some military personnel might have been raised in a household that valued dissent and debate, or that was highly critical of the military. Levels of education might also make a difference to whether or not military personnel have access to and an interest in exploring alternative points of view.
64. For example, Major General (retired) Paul D. Eaton (who has authored a chapter in this volume) wrote an op-ed in *The New York Times* that was highly critical of the war in Iraq. See Paul D. Eaton, "A top-down review for the Pentagon," *New York Times* (March 19, 2006): www.nytimes.com/2006/03/19/opinion/19eaton.html?pagewanted=all.
65. In that sense, my view is not so much a criticism of the suggestions offered by Snow, Sherman, and Martinelli-Fernandez as it is a proposal for expanding the scope of their strategies to include a better understanding of the nature of war crimes.

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8

MILITARY ETHICS AND CHARACTER DEVELOPMENT

Martin L. Cook

Ethics and the importance of personal character and honor are pervasive themes in the rhetoric and discourse of the U.S. military profession. If one listens carefully to military discourse, the common words and expressions used to discuss ethics are "integrity," "professionalism," and "character." On the other hand, recent years have witnessed significant and embarrassing ethical failures at all levels, including among senior officers of all services. This chapter will describe the ways military organizations typically approach education and training aimed at developing individual character in their personnel and at teaching and training for ethical conduct in the force collectively. It will examine some of the philosophical and psychological assumptions that underlie those efforts. It will critically assess the limits and challenges to those assumptions. Finally, it will draw on some contemporary research in moral psychology to suggest ways the military might augment its traditional approaches if the goal is indeed to better assure ethical conduct.

Since the author of this chapter is American, the specific examples of approaches to ethics will of necessity be American. Further, the author is a civilian who has worked for professional military educational institutions for more than 15 years. However, the author's direct experience is almost entirely in the education of officers at all levels of rank. He is familiar in only the most general ways with the training and education provided to enlisted personnel in all services. That, too, is an inherent limitation of what the author is fully competent to address in this chapter. Nonetheless, most well-led and well-trained military organizations in any nation or culture will have functional equivalents to the ones cited in this chapter.

I. Ethics and Character Education in the U.S. Military Services

In the case of the United States specifically, each of the U.S. military services promulgates a set of core values. For the U.S. Navy and Marine Corps, for example, they are "Honor, Courage, Commitment."[1] For the U.S. Army, they are "Loyalty, Duty, Respect, Selfless Service, Honor, Integrity and Personal Courage"—which conveniently can form an acronym: LDRSHIP.[2] For the Air Force, they are "Integrity First, Service before Self, and Excellence in All We Do." Although all the services display posters and lists of these values prominently in public spaces, in actual practice they rarely receive explicit attention or discussion. It is hard to say, therefore, how deeply, if at all, they penetrate and serve to shape the cultures of the services.[3]

Many service members tend to identify "ethics" with legal compliance with rules and regulations. This is probably inevitable because all members in the U.S. military receive an annual "ethics brief," delivered by military lawyers, which focuses precisely on issues of legal compliance. The kinds of issues addressed concern legitimate claims for expenses for travel, use of rental cars and government credit cards, and so forth. A consequence of this confusion is that misconduct commonly spoken of as "ethical failure" often turns out to be a straightforward case of a legal infraction, or violation of standard governing regulations.

Compliance with legal and regulatory expectations is, of course, the bare minimum of the normative expectations of military organizations. On the other hand, the assumption that regularly informing individuals of those legal and regulatory norms and reminding them of the punishments for failure will insure proper behavior is only true to a very limited degree. For example, the U.S. Navy's inspector general did a study of relatively senior officers who were "detached for cause" (that is, "fired") for personal misconduct. Without exception, officers report that they were aware that their conduct was illegal and would, were it detected, lead to their detachment. In other words, individuals must have an internalized desire to comply with and, ideally, to understand why compliance with legal and ethical requirements is important for the health and morale of their service. As these examples of misconduct illustrate, merely informing them of those requirements and even pointing out punishments for noncompliance are unlikely to deter bad behavior.

Efforts to inculcate values and character beyond legal compliance receive a great deal of attention and resources at all the U.S. military academies, and other commissioning sources, such as the Reserve Officer Training Corps and Officer Candidate School. The latter commissioning sources rely heavily on the academies' curricula for their own efforts at ethics education. These efforts take several forms, each premised on somewhat different assumptions about how ethics is most effectively instilled in individuals.

The first is military training itself. All academies (and to a lesser degree other officer accession programs such as Reserve Officer Training Corps and Officer Candidate School) begin with a fairly rigorous regimen of physical training, rigid and uniform behavioral expectations, and indoctrination to military customs and courtesies. If by "character" one means a set of behaviors one may reliably expect from an individual, this kind of highly disciplined training aims to produce precisely that by rapidly forcing the individual's behavior to conform to the group norm. Since the behaviors being inculcated are those favored by the organization, they are by definition "good character" (at least from the perspective of the organization doing the shaping). Generally, these training regimens are effective at producing relatively predictable behavior in new members of the profession. Since the emphasis is almost entirely on external, observable behavior (rather than deeper questions of motivation, attitudes, and values), on the one hand, one is merely insuring external compliance. On the other hand, if there is anything to Aristotle's notion that formation of habits through repetition in the end forms virtues, perhaps this external conformity is itself a necessary component to shaping military values and expectations at a deeper, more intentional level.

All pre-commissioning[4] professional military education institutions (military service academies, ROTC, and OCS for officers) also engage in academic education effort in military ethics. U.S. military service academies all have courses in the required core curriculum devoted to examining and discussing ethical and character issues. Generally, these courses include a philosophically oriented portion that examines major ethical theories as well as ethical questions unique to warfare and the military profession. These include the traditional conceptions of "just war" or justified warfare in morality and international law, the relations between the military and civilian society and its leaders, and the meaning of the oath of commissioning (which, in the U.S. case, pledges

loyalty to the U.S. Constitution, rather than to any person or branch of government). Frequently, the required curriculum also includes one or more behavioral science courses devoted to military leadership, which examine leadership and moral psychology, and aim to provide some empirical insight into human behavior and how best to motivate the kinds of behaviors one is seeking.

When properly taught and assessed, these efforts can be successful in providing academic knowledge of these fields of study. How much such academic courses influence the development of individuals' character and their ethical conduct is very difficult to assess. There is an assessment tool known as the Defining Issues Test (DIT), which is premised on the Kohlberg scale of moral development, and which measures moral reasoning. Using that instrument, it is indeed possible to show that a well-taught academic ethics course, especially one focused on careful discussion of moral dilemmas, will advance many students' DIT scores. However, the DIT only purports to measure moral *reasoning* (as distinguished from moral conduct), and the correlation between reasoning ability and behavior is weak at best.[5]

In addition, all of the U.S. military service academies have created institutions outside the normal academic and military missions devoted to what is termed "character development." These institutions or centers are charged with engaging cadets or midshipmen in a wide range of activities intended to inculcate "character." At the Air Force Academy, for example, one of these activities consists of daylong seminars for small groups of cadets, convened "off-site" at locations away from the academy itself. During these seminars, Air Force cadets hear exhortations to "integrity" and "moral goodness" from senior officers, view movie clips intended to inspire aspirations to moral goodness, and engage in discussions of ethical challenges.[6] Each cadet participates in one of these off-sites for one day of each of the four years they spend at an academy. The effectiveness of these efforts is difficult to assess. But at a minimum, one must assume the "message" that the military cares about their personal character and ethical development is communicated, if only by the time and resources devoted to the effort.

The U.S. Air Force Academy hosts an annual "National Character and Leadership Symposium"—a multi-day event in which speakers mostly of the "motivational speaker" sort exhort attendees to moral goodness and share personal stories intended to motivate and inspire.[7] The U.S. Army Military Academy (West Point) hosts a quite similar event, called the "National Conference on Ethics in America."[8] Generally, the invited speakers at these events are sports figures, military veterans, and public celebrities of various types. The presentations at these events lean heavily in the direction of "motivational speaker" presentations, rather than academic lectures. How effective such events are in significantly instilling character, and what the staying power of even the most moving motivational speaker address is, is unknown.[9] But like the daylong events mentioned above, at very least it would be impossible to miss the institutional message that ethics and character is something the organization cares a great deal about and is willing to commit time and resources in the effort to develop.

In the last decade or so, the services have created institutions to enhance attention to ethics, leader development, and deepening the understanding of the military profession. The U.S. Army took the lead by convening a series of scholarly meetings to assess the state of the Army profession. These culminated in the publication of a scholarly volume of essays entitled *The Future of the Army Profession*.[10] The impetus of that scholarly work lead to the creation of the Center for the Army Profession and Ethic (CAPE)—an organization created to provide training materials and "train the trainer" courses for fostering widespread and regular attention to maintaining the health and professionalism of the Army.[11] CAPE was created when General Martin Dempsey was Chief of Staff of the U.S. Army, and it was an initiative that he deeply endorsed and embraced. Consequently, when he became Chairman of the Joint Chiefs of Staff for the entire U.S. military, he engaged the other service chiefs in discussion about how their respective services were

addressing issues of the "health" of the military profession and the role of ethics in each of their respective services. Each service has subsequently made efforts to respond to those inquiries. Recently, the U.S. Navy has followed suit in announcing the creation of the Naval Leadership and Ethics Center at Newport, RI, to provide similar focused attention on Navy issues of ethics and professionalism.[12]

The frame for these efforts at reinvigorating and deepening the ethics of the U.S. military forces is provided by the sociological concept of a "social trust profession." Dr. Don Snider led the Army's early efforts. Snider is a retired Army Colonel with a Ph.D. in sociology, on the West Point staff at the time. Snider framed the work of all of the authors contributing to *The Future of the Army Profession* in terms of a specific sociological theory of professions: that of professor Andrew Abbott. This provided a common conceptual frame for the project and to varying degrees has been adopted and adapted by the other services as they grapple with ethical issues in their specific service cultures.

The central insight from the sociological literature is the concept of a true profession. It is important to draw on their fairly robust sociological definition of "profession" because, in colloquial English, "professional" is ascribed to any work a person does for pay. However, in this more conceptually precise sociological sense, "profession" describes a way of organizing work distinct from the bureaucracies within which military forces everywhere are necessarily embedded. True professions stand in contrast to bureaucratically organized work, which emphasizes standardized and repetitive behaviors, aims at maximal efficiency, and is performed by relatively easily trained workers. Professionals, by contrast, are granted a great deal of discretion and autonomy in how they perform their work. Their latitude to behave in that way is grounded in the social trust relationship they maintain with their "clients" (in the case of the military, the societies they serve). When the trust relationship is strong, professions are granted a great deal of latitude over admission to the profession, professional development of their members, and professional promotion and advancement. Unlike bureaucratic focus on efficiency, professions are focused on effectiveness and making certain that they are meeting their clients' needs (in the military case, effectively defending and advance national interests).[13]

On the other hand, the trust relationship is fragile. Society, through instruments of government, can and does reduce or even eliminate professional autonomy and, in extreme cases, can remove professional status from a group entirely (as happened, for example, to the profession of certified public accountant in the U.S., in the aftermath of the scandal surrounding the bankruptcy of Enron Corporation).[14] The crucial point is that approaching the military through the framework of its status as a profession provides a rich grounding for understanding the importance and nature of its ethical requirements. Ethical failures in the profession are among the most potent sources for reducing the social trust relationship between the profession and the society it serves. Thinking of themselves as members of a true profession allows an approach to inculcating both the importance and nature of the professional ethic, which goes far beyond mere exhortation and stress on legal compliance. It provides an overarching context of moral meaning in which the professional is grounded and is integral to the self-understanding of the individual professional.

Increasingly, the U.S. military services are recognizing that more explicit and frequent attention to the deeper roots of the military ethics is required. Reliance on compliance with regulations, threats of punishment, and the power of traditional, unarticulated cultural norms are collectively insufficient to ground a sufficiently robust sense of ethical identity in military service members. Explicit attention and discussion of the integration of the profession into the personal identity of each of that service's members is the additional piece required. Hence, in the U.S., all of the services are beginning to organize in ways appropriate to their service cultures to better address these deeper questions of professional identity.

II. The Limitations of Character and Integrity

The assumptions underlying much of the military ethics education we have reviewed to this point rest largely on broadly Aristotelian assumptions about the nature of ethics and the relationship between formed habits, "virtues," and behavior. Certainly, this is how military personnel generally speak of ethical matters. They frequently invoke the notion of "integrity" as being self-consistent in one's actions and in the correlation between their espoused values and their actual behavior. They speak of "character" in a very similar manner and, indeed, rarely feel the need even to qualify the notion of character with the adjective "good"—so fundamental is the assumption of its inherent goodness. The concept of honor, largely eclipsed in modern cultures generally, continues to have valence and force in military cultures.[15] It is evoked to stress the importance of the maintenance of espoused values and actions consistent with them.

These tacit assumptions superficially reflect Aristotle's own ideas that repetitive activity forms habits, and that properly guided repetitive activity can make initially painful or difficult virtuous activity consistent, stable, and reliable and ideally even pleasurable. The rigors of initial military training, the reinforcement of patterns of expected behavior and even of speech, the swift and often even painful enforcement of standards, all are intended to serve the purpose of building a reliable foundation of moral virtue in military personnel.

I term this "superficial," because, in one important respect, the military appropriation of Aristotle is less than complete. There tends to be little if any attention to the intellectual component of Aristotelian ethics in development of practical wisdom and a deep intellectual understanding of the reasons underlying the expected behaviors. The practical syllogism begins with *an intellectual grasp of the reason the goal being sought is good*. Military education that attempted to round out the picture of Aristotelian assumptions would insure that, over and above habituation through routine action, military personnel would, in addition, be afforded opportunities for deeper intellectual understanding of the moral significance of the military life.[16] It would understand *why* the ethical limits on legitimate military action derive from that moral significance, and from their membership in a profession whose very existence and professional status depends upon the ongoing trust of their nation. Indeed, it is the return to the sociologically robust concept of military service as professional activity within a social-trust profession that is beginning to help address this lacuna in existing ethics education and training programs within the U.S. military generally.

The existing Aristotelian understanding of character and virtue underlies a very strong assumption among military personnel that desired behaviors resting on them will be dependable in the most stressful of environments and amid the uncertainty and danger of combat. Militaries around the world have depended on variants of this formula for educating and training their personnel for millennia. One must assume that, to some degree at least, it "works."

Recent empirical work in moral psychology, however, points to some inherent limits to the "character" approach.[17] It is critical to incorporate this additional perspective if the goal is in fact to insure the highest levels of ethical standards in the military. Furthermore, when instances of serious ethical failure occur, especially when those failing have many years and even decades of honorable service behind them, one must suspect there must be more to the explanation of such failure than simple "bad character." Incorporating the insights of moral psychology into a more nuanced picture of military ethics is critical if the goal is to do everything possible to insure high standards of behavior.

If one examines how military organizations deal with instances of moral and legal failure, one can see the limitations of the character approach clearly. When failures occur, military organizations almost universally resort to one or more of three approaches. They fire the leaders of the organization (assuming that the problem is with the individual leader), mandate new

training regarding whatever the issue of failure was (assuming that individuals were not fully aware of the expected behavior), and issue new policies intended to prevent future failure (assuming that the problem is further clarification of the organization's expectations). Occasionally, these responses are completely appropriate and even effective, but they invariably have unfortunate unintended consequences and sometimes fail to address the root causes of the misbehavior. One negative consequence of applying these three solutions repetitively is that organizations become more and more buried in regulation. They also become more and more bureaucratic and find it increasingly difficult to respond nimbly to new challenges. They also tend to cumulatively reduce the scope of professional discretion and increase the bureaucratic structures with which members attempt to engage in practice of their profession.

Still worse, they can neglect other systemic or structural features of military organizations that incentivize or even virtually force the undesirable behaviors. For example, when General Erik K. Shinseki became Chief of Staff of the U.S. Army, he requested a group of colonels at the U.S. Army War College (Carlisle, PA) to study the Army system for reporting unit readiness, because he knew the culture of the Army had made it almost impossible for leaders at every level to report low levels of readiness. One may ask whether, for example, a company commander (captain/O3) in the Army is lying when he or she falsely reports a unit as more ready than it actually is? In the ordinary sense of the language, surely they are in fact lying: they are stating something to be true that they know is not in fact true.

But clearly that would be a foolish way of thinking about what is genuinely transpiring in such a situation. The captain is responding to a culture and system that he or she lacks any power to change. Until someone with the authority to change it intervenes, it is completely unreasonable to expect the behavior to change or to place moral blame on the captain. Furthermore, if these situational and cultural factors routinely force individuals to engage in activities that they know to be dishonest or morally questionable, the cumulative effect is to diminish individuals' sense of being able to behave ethically and be effective and accepted in the culture, eventually fostering an overall culture of cynicism and distrust throughout the organization.

Research in moral psychology clearly demonstrates that changes in the context, situation, and environment in which individuals and groups act can have enormous effects on behavioral outcomes. Further, the changes that cause these effects can be amazingly small. This goes to show that our intuitions and beliefs about ourselves and others are seriously misleading, and that our beliefs about "character" and "integrity" presume they provide reliable and consistent guidance for action that the evidence from studies in social psychology clearly shows to be more limited than we think.

In other words, if we seek to explain and prevent unethical behavior, we need to broaden our approaches to thinking about military ethics and leading military organizations. As social scientists put it, we need to think both about "bad apples" (that is, individuals' ethical failures, caused by personal ethical lapses) and consider "bad barrels" as well (that is, the organizational and situational context in which individuals are placed and which incentivize or even virtually require misconduct).

A practical example of this is graphically provided in the Abu Ghraib prison scandal. While there were certainly individual bad actors in that case, putting poorly trained and poorly supervised National Guard Military Police in the prison at night was a recipe for disaster. Anyone even vaguely familiar, for example, with the famous Zimbardo Stanford Prison experience, in which Stanford undergraduates playing the role of prison guards were seriously abusing other undergraduates playing the role of prisoners after only a few days, would realize the morally hazardous environment being created there.[18]

Perhaps the most comprehensive review of the moral psychology literature from the perspective of philosophical ethics is the work of John Doris, *Lack of Character: Personality and Moral Behavior*.[19] Doris states the "character assumption" on the first page of the book as follows:

> It's commonly presumed that good character inoculates against shifting fortune . . . the person of good character will do well, even under substantial pressure to moral failure, while the person of bad character is someone on whom it would be foolish to rely. In this view, it's character, more than circumstance that decided the moral texture of a life; as the old saw has it, character is destiny.

Doris then spends the remainder of the book reviewing the moral psychology literature to demonstrate the unreliability of this assumption. He provides a useful short summary of some of that research as follows:

> According to Isen and Levin (1972), 87.5% of those participants who had just found a dime in the coin return slot of a public telephone helped a confederate (of the experimenter) who "accidentally" dropped a folder full of papers, while only 4 percent of those participants who had found no coin helped. According to Darley and Batson (1973), 63 percent of unhurried participants helped a coughing and groaning confederate who was sitting slumped in a doorway, while only 10 percent of hurried participants helped. According to Milgram (1974), 65 percent of those participants who were prompted by an experimenter administered the maximum available (in fact fictitious) electric shock to a confederate, while only 2.5 percent of those participants who were allowed to choose the shock levels administered the maximum available shock.[20]

Jonathan Haidt's research further demonstrates how limited intellectual and cognitive processes are in determining our moral beliefs and attitudes, and how often rationally articulated or defended moral views follow, rather than lead, deeper emotional and unarticulated factors in our psyches.[21] Dan Ariely's research into cheating and lying, in addition, demonstrates conclusively how much very small changes in the environment in which individuals act can modify behavior.[22]

Ariely, for example, did an experiment at Carnegie Mellon University on cheating. In the default experimental condition, students were asked to solve as many math problems as they could in a given time. At the end of the experiment, they were to pay themselves for the number of problems solved, tear up their answer sheet, and leave. So it was completely obvious that they could cheat and overpay themselves without consequence.

In this default condition, most people cheat a little bit by overpaying for a couple of problems solved. In one variant of the experiment, he placed an actor in the room who, immediately upon the departure of the experimenter, announced loudly "I've solved them all," took the full amount of money at his seat, and left. The experimental question was whether the presence of the actor would increase or decrease cheating in the experimental group. It turned out the answer was: it depends on what sweatshirt the actor wears. The experiment was conducted at Carnegie Mellon in Pittsburgh. If the actor wore a Carnegie Mellon sweatshirt, cheating in the whole group went up significantly. On the other hand, if the actor wore a University of Pittsburgh sweatshirt, cheating went way down. The conclusions appear to be that: (a) the character of the individuals is not a consistent predictor of their behavior; and (b) whether the bad behavior is being engaged in by a member of your "tribe," or by someone from another group. If it is being done by "one of your own," others are more likely to follow their lead.[23]

This experiment, it seems to me, is highly relevant to reflection on military ethics. Military organizations are tight-knit organizations. Like Ariely's actor and subjects, they metaphorically "wear a common sweatshirt." Members of military units will pick up the unit culture and accepted ways of doing things and will be motivated to conform to them far more powerfully than they will adhere to espoused values and expectations that are not the de facto values of their organization. Indeed, while military personnel usually speak in terms of character and integrity when they are explicitly talking about ethics, there is also a strong recognition of the power of these factors in talk about the importance of the tone set by unit leadership, the importance of good order and discipline in units, and the power of command climate in setting the standards of acceptable behavior.

What the moral psychology literature shows is that if what we really care about in the end is actual moral conduct, then continued reliance on ideas of character and integrity alone will likely prove inadequate. These approaches need to be augmented with an equal attention to the effects of situation and environment. Further, the moral psychology literature shows that situational factors that most persons would intuitively dismiss as inconsequential or irrelevant can indeed turn to have significant impact on actual behavior. Therefore, a comprehensive approach to ethics in military organizations may need empirical study to determine what factors actually turn out to affect behavior and to what degree.

III. Conclusions

Ethics is foundational to the military profession. It sets the environment of trust between a nation's military and the government and people it serves that allows military members to serve as true professionals. When trust fails, the military is reduced to bureaucratic status or worse: an institution to be feared and a threat to civilian government.

Historically, the U.S. military has relied on training, exhortation, and threats of punishment for noncompliance with regulation and law as the means of inculcating its ethic. Each of those elements individually, and the suite of them collectively, will never cease to have their place in military ethics. Recent experiences show, however, they are only partial if the goal is to do everything possible to insure the highest standards of ethical conduct. They require supplementation in at least two major areas.

First, true professionals are defined not only by the rules they follow, but by a deeply rooted sense of professional identity. While many military members do in fact embrace important elements of that identity, by and large they "get it" (if indeed they do) by osmosis and immersion in the culture, rather than by systematic efforts to address that identity. What is needed, by contrast, is to engage individuals in the kinds of reflective engagement necessary to insure they understand and incorporate the professional ethic and its grounding in a full understanding of the profession and its connection to the society it serves. This means that a comprehensive approach to ethics education and training must "make the space" in a busy career to engage members of the profession in reflection, reading, and discussion to embed that sense of professional identity in its members.

Second, military ethics education and training needs to augment its traditional approach (what we have somewhat loosely been calling an "Aristotelian approach") with its emphasis on formation of habit and reliance of notions of fixed character. The social science evidence is overwhelming that close study of cultural, environment, and situational factors must be taken into account if we are to insure good behavior and prevent ethical failure. What that evidence clearly shows is that *our ordinary intuitions about what factors in the situation might affect behavior and to what degree are entirely unreliable*. That means that empirical study is necessary to determine what factors do in fact enhance and decrease ethical behavior.

Military commanders, in particular, need to understand such matters more deeply in order to appreciate the environment into which they are placing subordinates and to protect them from the possible corrosive effects of situational factors. Such understanding is essential to effective military leadership. Further, individuals, too, need a deeper appreciation of the power of situational factors to prevent them from placing themselves in situations that create ethical danger to themselves–a possibility that excessive talk about "character" and "integrity" might lead them to dismiss out of hand.

There is, in fact, nothing in the proposal for supplementation that, at another level, military organizations and individuals do not already know. While when asked to speak explicitly about *ethics*, the vocabulary that comes naturally is almost always that of "character" and "integrity." However, if the conversation is about *leadership*, there is an immediate recognition of the effect of command climate, unit morale, and even of toxic leadership on how individuals and units will actually behave.

The more robust appreciation of the impact and limitations of both character and situation will enable a more comprehensive understanding of how ethical behavior is actually motivated, sustained, and enhanced in individuals, units, and entire military services. That understanding is necessary if military ethics education and training are indeed to be as effective as possible. Furthermore, a deeper appreciation of the moral psychology literature will suggest fruitful lines of empirical research into the kinds of interventions and controls most likely to maintain and enhance ethical behavior in military forces and augment the usual bureaucratic "fixes" for failure (fire the leadership, mandate new training, and issue new policies) with options for more systematic explanations and solutions to ethical challenges.

Notes

1. See here for the Navy's official explanation of the meaning of the values: www.navy.mil/navydata/nav_legacy.asp?id=193.
2. See www.army.mil/values/ for an explication of the meaning of each of the values.
3. See John Mark Mattox, "Values statements and the profession of arms: A reevaluation," *Joint Forces Quarterly* 68 (2013): 59–63, for a very thoughtful assessment of the value and relevance of these "core values" in providing ethical guidance to the services.
4. "Pre-commissioning" means the students are not yet fully members of the military profession. In the U.S. system, this means they have not yet taken the formal oath of loyalty to the Constitution of the United States and become commissioned officers.
5. For accounts of Harvard educational psychologist Lawrence Kohlberg, and the "Kohlberg Scale," see: http://psychology.about.com/od/developmentalpsychology/a/kohlberg.htm. For a description of the "Defining Issues Test," designed to determine an individual's own level of moral development with respect to the Kohlberg scale, see the original article by Kohlberg's former student, Dr. James Rest: http://psycnet.apa.org/journals/dev/11/6/738/. See also: http://en.wikipedia.org/wiki/Defining_Issues_Test. An example of using the DIT to assess the impact and effectiveness of an ethics course can be found at: www.depts.ttu.edu/provost/qep/2005-2010/docs/DIT_Spring2009.pdf.
6. The home page for the Air Force Academy's Center for Character and Leadership is here: www.usafa.edu/Commandant/cwc/index.cfm?catname=cwc. West Point's is here: www.usma.edu/SCPME/SitePages/Home.aspx. The Naval Academy's is here: www.usna.edu/Ethics/.
7. The home page for that event includes past speakers, videos, and so forth: www.cvent.com/events/national-character-leadership-symposium/event-summary-486001c4c87e4fe6932a136a9fbe929d.aspx.
8. See: www.usma.edu/scpme/NCEA/SitePages/Home.aspx.
9. See "Ethics education, ethics training, and character development: Who 'owns' ethics at the US Air Force Academy?" in *Ethics Education in the Military*, Eds. Paul Robinson, Nigel de Lee, and Don Carrick (London: Ashgate, 2008), for a fuller discussion of the range of these activities, using the U.S. Air Force Academy as the example.
10. Don Snider and Lloyd Matthews, Eds., *The Future of the Army Profession*, 2nd edition (New York: McGraw-Hill Learning Solutions, 2005).

11. For a description of the origin, purpose, and activities of this center, see: www.cape.army.mil.
12. For an account of the establishment, activities, and goals of the U.S. Navy's new ethics center, see: www.navy.mil/viewVideo.asp?id=19435.
13. See Don Snider's chapter in this handbook for a more extensive discussion of the nature of "social trust" professions and the implications of that status for military ethics.
14. See the account of this event involving a leading U.S. accountancy firm, at: http://news.bbc.co.uk/2/hi/business/2047122.stm. These revelations led to the passage of legislation severely constraining and regulating the former autonomy of the accounting profession, known as the "Sarbanes-Oxley Act" in 2002. See: www.investopedia.com/terms/s/sarbanesoxleyact.asp.
15. For an account of various cultural and historical meanings of "honor" and "cultures of honor," including within military services and the armed clash of cultures, see James Bowman, *Honor: A History* (New York: Encounter Books, 2006).
16. As an example of such reflection, see Shane Riza's profound reflection on the effect of drone warfare on the moral self-understanding of military pilots, in *Killing Without Heart* (Washington, DC: Potomac Books, 2013).
17. See the pioneering and controversial work of Gilbert Harman at Princeton University, for example: "Moral philosophy meets social psychology: Virtue ethics and the fundamental attribution error," *Proceedings of the Aristotelian Society* 99 (1999): 315–331. Harmon cites recent psychological studies pertaining to "the fundamental attribution *error*." This is the *error* of ignoring situational factors and overconfidently assuming that distinctive behavior or patterns of behavior are due to an agent's distinctive character traits. In fact, Harman argues, there is no evidence that people have character traits (virtues, vices, and so forth) in the relevant sense, let alone that individuals act consistently and reliably on the basis of possessing such traits.
18. See www.prisonexp.org/ for details on this famous and controversial study.
19. Cambridge: Cambridge University Press, 2005.
20. Peter B. M. Vranas's summary of Doris in *The Philosophical Review*, 113, no. 2 (April 2004): 284–288.
21. See: http://people.stern.nyu.edu/jhaidt/.
22. See: http://danariely.com/.
23. See Dan Ariely, *The Honest Truth About Dishonesty: How We Lie to Everyone—Especially Ourselves* (New York: Harper, 2013): 197–207, for the full description of this experiment.

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9

ETHICS IN THE U.S. NAVY

Vice Admiral Walter E. Carter, Jr.

> [Enlisted] Sailors surmise that Navy leadership expects them to adopt prescribed morals, standards, and rules of behavior without investing in the process required to instill, teach, develop, and mentor these standards on the deck plates.
>
> *PACFLT Sailor Roundtables Report, December 17, 2013*

The U.S. military is among the most trusted of American institutions.[2] The trust accorded to the U.S. Navy by the American people derives from our status as members of the military profession. Only to the degree that the Navy is, and is perceived to be, trustworthy can we maintain our status as the naval profession in American society.

The American public we serve and some members of Congress recently have questioned the Department of Defense concerning a number of ethical lapses. This is the nexus where the central importance of ethics emerges for the Navy. It is the trust of the American people that grounds the ethical and behavioral expectations for all sailors[3] at every level. While only a small percentage of our people are caught engaging in *illegal* actions, what can we conclude about *ethical* behavior in our ranks? Does our culture discourage ethical actions in the name of mission accomplishment or career advancement? Does acceptance of low-level ethical failure lead to the sort of high-profile lawbreaking that undermines the trust of the American people in their Navy?[4]

Our war-fighting capability is diminished by the reality—and the perception—of illegal, unethical, and immoral behavior. Navy core values and moral and ethical conduct serve as the enablers to build trust, morale, unit cohesion, and, ultimately, our combat readiness. Yet, it is possible, for instance, for sailors to matriculate from accession source to retirement without having had more than basic ethics training over the course of an entire career.

Our predominant approach to ethics is legalistic in content and often negative in tone. Ethics training is equated with the code of conduct, law, policy, and JAG guidance. We exhort our sailors to follow the rules or suffer the consequences, without the corresponding effort to train and educate, to develop and mentor, and to create the systemic conditions for dealing positively with the ethical challenges and problems inherent to the profession of arms. At best, we employ a checklist of what *not* to do, and at worst, ethical development of our people is a chore or a burden that takes away from getting the job done. Too often in our current approach, the *intrinsic good* assigned to ethical conduct, either to service, to unit, or to self, is lost. We have a moral obligation to do better. We can and we must.

I. The Naval Profession and the Public Trust

In modern English, "professional" often means anything a person is paid to do. However, there is another sociological sense of the term "profession" based on the notion of "social trust." That is, the bond of trust between the profession and society. True "social trust" professions—such as medicine, clergy, and law—have a special bargain with the societies they serve. In exchange for the high regard and trust placed in them by their societies, they are: (1) granted a high degree of collective autonomy; (2) allowed to control their own education, certification, promotion, and dismissal; and (3) given considerable discretion and latitude in how they apply the unique professional knowledge they possess. This status as a profession is allowed and maintained only insofar as the trust relationship with the client—in our case, the American people—is firm and intact. Whenever that trust is compromised, the society reduces or even eliminates professional autonomy through its legislative and executive branches.[5]

The foundation of our naval profession is the oath of office/enlistment. Individuals come into the Navy from a diverse range of backgrounds on many dimensions—cultural, religious, ethical, socioeconomic, and so forth. All Sailors share central ethical obligations resulting from their oath to the Constitution, providing the foundation for common values. By taking the oath, Navy personnel explicitly adopt a shared commitment to service and sacrifice, and implicitly assume a shared identity as a member of the naval profession.

Furthermore, the unique professional knowledge that is developed and maintained by members of the naval profession leads to ethical expectations and requirements that establish the *professional military ethic*. The personal ethics that diverse individuals bring into the Navy are not necessarily identical to, or in perfect correlation with, the professional military ethic, on the one hand, nor mutually exclusive, on the other.

For our diverse Navy, the critically important implication is that the foundation for common values comes from shared membership in—and identity with—the *naval profession*. Shared identity as members of the naval profession helps to inculcate Navy core values and Navy ethos throughout the force, engendering a more meaningful application of ethics for individual sailors. The strength of our shared identity must be built over time and continually reinforced.

II. Ethical Foundations: More Than Compliance

A fuller understanding of ethics beyond compliance models rests on the foundations of moral philosophy. Indeed, by his own accounting, Vice Admiral James B. Stockdale noted that his character, courage, and discipline were shaped by his study of philosophy and the humanities. Stockdale believed that an ethics course for military officers need not be organized directly around military ideas or military writings. Rather, he advocated the study of classical philosophers as a matter of personal and professional development, with the attendant consequence of molding better (and moral) human beings.[6]

Philosophical traditions on ethics provide a number of touchstones to guide Navy ethics education and training and foster a culture for Navy ethics. Both classical and modern philosophical traditions direct our attention to multiple aspects of moral philosophy to include: (1) self-discipline (Plato); (2) individual character (Aristotle); (3) sense of duty (Immanuel Kant); and (4) the collective good (John Stuart Mill). Together, these philosophies point to the importance of both the individual and the institution in maintaining ethical standards.

When we compare Plato's moral philosophy with that of Aristotle, for instance, we learn the importance of—and some limitation to—ethics education and training centered on character

and integrity. Plato espouses the virtue of self-discipline and personal restraint, particularly applied to the "soldier" for a well-ordered society and developed through rigorous and repetitive military training. He argues that people's capacity for understanding both their own and the common good enables the inculcation of persuasive ethos and cultural norms to guide good behavior. Aristotle espouses moral virtue—"excellence of character"—developed through formed habits. He contends that a stable character leads a person to always do the right thing, in the right way, at the right time.

An underlying assumption of Plato's philosophy is that "no one knowingly does wrong." In other words, if people know and understand what is morally right, they can be relied upon to act accordingly. This assumption, of course, is easily challenged, and points to the limitation of relying primarily on directives for ethical outcomes. At the same time, Aristotle's ideas of character have been shown to be only partially correct. While integrity and good character are indeed important, research indicates that situational factors also have a great influence on actual behavior.[7]

Once again, what recognition of these points mean for our Navy's ethics efforts is that self-discipline, character, and integrity are indeed important for a well-ordered organization. However, we must be also mindful that we cannot presume a prescribed common meaning of moral integrity among all Navy personnel, and we must consider the potential effects of the situation and the environment (for example, command climate, system-driven expectations) on ethical behavior. As many social scientists would put it, we need to look at both "good apples" as well as "good barrels"—that is, the environment, the tools, and the conditions *we create*—if we are to do everything possible to facilitate ethical behavior and build ethical climates.

A comparison of Immanuel Kant and John Stuart Mill speaks to *why* individuals might act morally. Kant espouses the concept of moral obligation, distinguishing between *actions that are merely in accordance with duty* (that is, the individual performed the right action, but for many possible reasons—including fear of punishment or hope for reward) and *action from duty* (in which the individual did the right action because of a dutiful allegiance to do the right thing). The former reasoning speaks to compliance to the rules. In the latter reasoning, moral actions are derived from an intrinsic sense of duty—for example, an internally driven moral imperative to uphold the standards of the naval profession—resulting in more resolute ethical behavior.

John Stuart Mill adopts a utilitarian perspective for moral actions, stressing the importance of acting in such a way that the outcome provides "the greatest good for the greatest number." This "greatest good" motivation requires subordination of individuals' interests in favor of those that best benefit the collective organization. In this way, members of the naval profession, for example, desire to act in a way that forgoes self-interested behavior in favor of moral actions that support Navy core values and the Navy ethos.

What we learn from Kant and Mill is that Navy ethics education and training must address internal motivations for ethical behavior, beyond the application of rules and policy. Comprehending the underlying impetus for ethical behavior and moral choice informs both the approaches to instilling, training, and mentoring on ethical standards, as well as the policies and procedures intended to facilitate ethical behavior.

Taken together, these various perspectives of moral philosophy indicate that more than "a one-size-fits-all approach" is required for sustainable ethical behavior and a culture for Navy ethics. As we re-examine our approach to ethics, the efforts must be comprehensive, considering not only the individual sailor—his or her commitment, ethical understanding, and moral motivations—but, perhaps even more importantly, the systems and processes within our Navy that can facilitate ethical behavior.

III. Moral Choice: Domains for Ethical Decision-Making

Fundamentally, ethics is about choice. The decisions to adhere to core values, adopt prescribed morals, and act in accordance with ethical standards all revolve around personal choice. Our frame for understanding moral choice pivots on two distant but complementary perspectives: (1) a speech given by Lord Moulton, minister of munitions for Great Britain during WWI, which was published in 1924; and (2) a more recently published popular book by Dan Ariely, *The (Honest) Truth About Dishonesty*.

Lord Moulton describes the domains of ethical choice, which he divides into three spheres of human action.[8] The first is the sphere of *Positive Law*—actions in which individuals adhere to rigidly prescribed and dutifully enforced rules. The third he called the sphere of *Absolute Freedom*, where individuals enjoy complete free will regarding their behavior. In between, he identified the domain of *Obedience to the Unenforceable*, which he called "doing what you should do although you are not obliged to do it." In other words, this is the sphere where individuals must exercise discretion and judgment, making decisions when the only enforcer is themselves. *Obedience to the Unenforceable* relies upon an internalized sense of responsibility and an intrinsically developed ethical core.

Again, for our Navy, this suggests that compliance is the moral minimum. Complying with rules and policies is but one—and, to some degree, limiting—factor that contributes to ethical decision-making. Due attention, therefore, is needed to address the unenforceable domain of human action as well—specifically, discretion and moral judgment. Tending to the moral development of sailors such that ethical choices become routine helps establish a culture for Navy ethics, and in essence transforms the unenforceable into "enforceable."

The (Honest) Truth About Dishonesty notes that all individuals possess the human capacity for both honesty and dishonesty, whether in enforceable or unenforceable domains.[9] In other words, every person is susceptible to this most human foible and less-than-optimal behavior. There are a host of forces that can lead individuals down the slippery slope of dishonesty, such as: (1) ability to rationalize; (2) conflicts of interest; (3) creative reasoning; (4) one immoral act; (5) being depleted—tired and overtaxed; (6) others benefiting from dishonesty; and (7) watching others behave dishonestly.[10] Ultimately, these forces have been shown to shape moral choice.

One key lesson from Ariely's research is that a first act of dishonesty—even a seemingly innocuous one—might be particularly important in shaping an individual's subsequent ethical decision-making. Therefore, it is important to address poor moral choices early on, so as to be preventative (proactive) in addressing ethics behavior over time. Another key lesson from this examination of dishonesty is that highlighting acts of *honesty* is incredibly important for establishing the sense of social morality. By publicly promoting salient examples of commendable behavior, we improve what is viewed as acceptable behavior, and ultimately improve ethical decisions and actions.[11]

When our Navy attributes unethical behavior to just a few "bad apples," the extent of potential ethical challenges throughout the naval force can be obscured. When pitted against a compliance-based approach aimed at maintaining high standards, the result is policies and rules that serve only to punish those "bad apples" that cross the "red line." At the same time, when our Navy promotes commendable ethical decisions and behavior, it fosters a culture for Navy ethics.

IV. Culture for Military Ethics: Proactive vs. Reactive

As we seek to develop and maintain a solid ethical foundation in all Navy personnel, it is important to consider how change comes about in large organizations, particularly with respect to

organizational culture. It is within an organization's culture that expectations for ethical behavior are sourced and reinforced.

Organizational culture, defined by Edgar Schein as the "set of structures, routines, rules, and norms that guide and constrain behavior," constitutes the overarching organizational environment.[12] Culture encompasses the identity of the organization and its members—that is, how they define "who we are" as an entity—and is a primary driver of the organization's outlook. Culture is enduring. While leaders, policies, and circumstances revolve, culture transcends organizational transformations (for example, the Navy's culture of command). Schein proposed that culture can be understood and analyzed at three levels: (1) on the surface; (2) among espoused beliefs and values; and (3) within underlying assumptions.

At the surface level, the most obvious indicators of an organization's culture are visible structures, processes, and rituals (for example, platforms, operational regulations, and change of command ceremonies). The organization's espoused beliefs and values form a deeper stratum of the culture and guide and justify behaviors and choices (for example, "we believe in war-fighting first"). At the deepest level are the underlying assumptions that are the true foundations of the organization's sense of itself (for example, "this is how we do things here"). A challenge for many organizations is ensuring that espoused values align with the sometimes more forceful underlying assumptions (for example, a "say-do" mismatch). In the case of ethics, the organization's culture defines and dictates what its members understand to be most important to their leaders and their actions as a result.

Organizational culture informs our understanding of the utility of the Navy's current ethics approach for shaping ethical behavior. Considering both the visible aspects of culture and the underlying assumptions, the Navy seems to have developed a "prohibitive" and "reactionary" culture for ethics. The tendencies to spotlight individual ethical failures ("bad apples") and generally respond by firing the offenders, issuing new policy, and mandating more training—each occurring *after* ethical misconduct has occurred—signals a pervasive sense of "just don't be that person!" The "don't do this" sentiment then becomes deeply entrenched in the culture. Even the language of "ethics failure" or "lapse" emphasizes a negative culture for Navy ethics in lieu of a positive approach. Thus, the current culture for Navy ethics is one based on obeying the rules in order to avoid punishment, rather than a proactive culture for Navy ethics that fosters and inspires individuals to embody Navy core values and the Navy ethos, and to use their discretionary judgment professionally, making the right ethical decisions and actions—even in the domain of the unenforceable.

V. A Way Forward

As our Navy re-examines its approach to comprehensive ethics development, education, and training at all levels while fostering a proactive culture for Navy ethics, Stockdale's wisdom is worthy of serious consideration. When and where in the development of Navy personnel does the kind of deep reading, thinking, and reflection Stockdale advocated occur? When do we engage our people in serious conversation about their identity as members of the naval profession and the kinds of ethical responsibilities that flow from that identity? For most of a Navy career at present, "ethics" means a focus on legal compliance and general exhortations to be persons of good character. If we take Stockdale at his word, however, we should be thinking in terms of more substantive engagement that would make not just better naval personnel and better citizens, but a better war-fighting organization.

Grounding the Navy's ethics development, education, and training efforts in a shared understanding of the naval profession will instill in our sailors a cultural ethos to act for the good of

the service, for the unit, and for themselves. In addition to focusing on observable behavior, a common understanding of the naval profession helps to shape self-awareness, shared identity, and a more internalized application of ethics. From this vantage point, the broader scope of ethical development is inherently valuable. This is not, however, education for its own sake. This is about improving our warfighting readiness today, and maintaining the trust of our fellow citizens for the future. Our official Navy ethos charges that:

> We are patriots, forged by the Navy's core values of Honor, Courage and Commitment. In times of war and peace, our actions reflect our proud heritage and tradition.

Our goal, therefore, should be to establish a culture for Navy ethics such that we have confidence that every sailor—in every community—will henceforth fully embody, uphold, and operate from the naval service ethos and core values.

Notes

1. This official "white paper" was drafted by a committee of subject matter experts and consultants, under the direction of Vice Admiral Carter, while serving as President of the U.S. Navy War College (Newport, RI). These contributors include: RADM Robert Girrier, RADM Peter Gumataotao, RADM Michael White, CAPT Mark Johnson, RADM (Ret.) Jamie Kelly, CAPT (Ret.) Tom Bayley, CAPT (Ret.) John Meyer, Dr. Martin L. Cook, Dr. Tim Demy, Dr. Carnes Lord, Dr. Olenda Johnson, and Professor Gene Andersen.
2. The Gallup Poll(r): www.gallup.com/poll/163052/americans-confidence-congress-falls-lowest-record.aspx.
3. Throughout this chapter, the term sailor refers to both officers and enlisted personnel.
4. See, for example, Malcolm Gladwell's treatment of the "broken windows" theory of crime in *The Tipping Point* (New York: Little, Brown & Co, 2000): 140–151.
5. See Don M. Snider and Lloyd Matthews, Eds. *The Future of the Army Profession*, 2nd edition (New York: McGraw-Hill Higher Education, 2005) for a collection of articles applying this concept of "profession" to military organizations.
6. Admiral James B. Stockdale, *Thoughts of a Philosophical Fighter Pilot* (Stanford, CA: Hoover Institution Press, 1995).
7. For an overview of this research, see Dan Ariely, *The Honest Truth About Dishonesty: How We Lie to Everyone—Especially Ourselves* (New York: HarperCollins, 2012).
8. Lord Moulton, "Law and manners," *The Atlantic Monthly* (July 1924). http://www2.econ.iastate.edu/classes/econ362/hallam/NewspaperArticles/LawandManners.pdf.
9. Ariely, *The Honest Truth About Dishonesty*.
10. Ibid.: 245.
11. Ibid.: 216.
12. Edgar Schein, *Organizational Culture and Leadership*, 4th edition (New York: John Wiley & Sons, 2010): 1.

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10

EFFECTIVE DEMOCRATIZATION AND THE DEVELOPMENT OF MORAL COMPETENCIES IN THE ARMED FORCES OF AFRICAN STATES[1]

Alain Fogue Tedom

In Africa, as elsewhere, education plays an important role in the formation of the soldier and the officer. It aims to provide military personnel both with a way of living, and with practical knowledge, or what the English sometimes call "know-how." Seeking an appropriate way of living or being in the world focuses upon the character and behavior of the individual soldier, while "know-how" refers to the development of each soldier's operational capabilities. It is the combination of these two types of knowledge that builds military professionalism.

With respect to the exceptional power attached to the profession of arms (including the power to take the lives of others), the development of these two types of knowledge, in turn, promote the development, respectively, of what we might term *moral professionalism* and *operational professionalism* among military personnel themselves. This is critical, since we might plausibly argue that success or failure in the conduct of any military operation depends on the *concomitant* development and mobilization these two pillars of military professionalism.

In handling the numerous dilemmas and crises that arise in the otherwise routine discharge of duties, for example, soldiers must regularly rely on their moral professionalism to operate effectively in the midst of an emergency.[2] Moral professionalism or satisfactory moral competence encompasses practices, attitudes, and even speech that reflects proper professional values and standards in peacetime, as well as in the midst of war. These practices, attitudes, and even manner of speech, embodying the wider society's most cherished values and ideals, are intended to make each combatant a model of rectitude.

The moral competence of the soldier is the guarantee of exemplary conduct, not only during field operations, but beyond. Such competence arises from the individual's own internal ethical standards, which are themselves shaped both by social codes and by the individual's compliance with public standards of accountability. There is an interdependence between public accountability and the individual moral standards of the soldier that reveals, in turn, the inextricable underlying link between the development of democratic societies and the quest for development of an effective ethics of military service.

It is this underlying connection between the emergence of democratic institutions and practices in society at large, and the development of ethics in that society's military forces, that I wish to describe and analyze in this chapter. How, especially, does this dialectic between democracy and professional military ethics affect the future development of military forces in African states?

I. The Historical Origin of the Crisis of Ethics in African Armies

The history of the evolution of African armies is littered with multiple abuses and violations of human rights.

Modern military institutions in Africa are relatively new, with most having come into existence only during the age of independence over the past 60 or so years. In many African countries, these military forces are plagued by many evils and abuses that regularly bring to light their ethical and moral shortcomings.

In many instances in Africa, often as a result of the violent context in which the independence of individual states was secured, the military itself has inherited an operational design that does not readily promote or accommodate ethical values. Although notions such as honor and loyalty are formally present in military instruction, they are, in truth, hollow concepts. When tested in practice, their operations betray the moral inconsistency of African forces.

The indigenous African political elites who held authority during the earlier periods of colonial administration invariably came to power with a major political handicap.[3] In many of the colonial states of Africa, these elites were chosen on the basis of their loyalty to the colonial power and their willingness to commit to defend the interests of the latter. Even when such individuals subsequently fought for independence from the colonial administration, they came to power only through the will of the former colonial authorities. They then had to confront the distrust of a significant portion of the population, or worse, face the political hostility of armed nationalist factions who, before independence, were militarily opposed to the colonial army. That earlier colonial army had invariably been an army of occupation, formed to repress and control the native population. Those forces had been steeped in racial considerations, and blinded when it came to respect for the dignity of the African. The military forces of the young, postcolonial states inherited some of these morally undesirable habits, inasmuch as new military institutions were invariably installed upon the foundations of the old, which had accommodated themselves to corruption and repression.

The early postcolonial political context in many of these countries was very unsettled, especially when it came to the conditions of appointments to power of the political by the colonial administration shortly before their withdrawal. The appearance of political favoritism invariably condemned the first African leaders to insufficient legitimacy in the eyes of their citizens. Suspected by the nationalist movements, in particular, of being at the service of the defense of the interests of the former colonial regimes, their authority and legitimacy were, in most cases, at the very least challenged politically, even when they were not opposed militarily.

Given this inherent threat to their foundations, even though barely established, the new leaders formulated plans to rely upon their embryonic national armies to establish their power and prevail over their political rivals. Thus, from its inception, the national army in many of these countries would find itself engaged in civil war without a sufficient period of political stability to strip that army of the philosophy, methods, and practices it had inherited from the colonial period. The Cold War context, and the resultant rivalry of authoritarian regimes in countries under the political influence of Western democracies with those who had come within the sphere of influence of communist countries, in addition, led African regimes to divert the army from the role otherwise usually assigned to it in modern states.

Due to the unstable security situation, the military was first designed by the new African authorities as a shield against internal political dissent, even before it was put to the service of the defense at the borders. And even when ordered to defend the new state's borders, very often this also conferred the power to oppose armed nationalist opposition movements whose operational base might be in a neighboring country. From this perspective, the military became simply an instrument of terror at the disposal of those in power—a tool to provide for safety and security of those at the pinnacle of power, while fostering insecurity at the base (that is to say, among the population). Thus understood, the army was initially formed to serve the political goal assigned to it: namely, to ensure the political survival of the president and his regime in a decidedly non-democratic context of political and legal irresponsibility.

To be certain, the decade of the 1990s was marked on the continent by the advent or return of multiparty politics, together with accompanying commitments to the official opening of many nations to greater democracy. However, in view of the difficulty with which the transformation to democracy and democratic institutions infuses the customs in many countries where constant arguments and political struggles traditionally accompany elections, one could reasonably conclude that any hopes for a genuine democratic transformation within most African societies remained a challenge. This is true, notwithstanding the strong exhortation toward greater democracy by the African Union (A.U.) from its inception.[4] In this context, the democratic reshaping of African armies remained a challenge.

II. A Procedural Conception of the Ethical Challenges for African Armies

Whether attributed to armed liberation struggles or to weak institutions and practices inherited from the former colonial armies, African militaries emerged in a political context that did not prepare them to comply with modern conventional legal and ethical requirements. Paralyzed by geopolitical, geostrategic, and economic challenges dictated by the Cold War, Western powers, for their part, though engaged in cooperation in the political and economic support for young African states, have not yet been able to exert the necessary pressure on them to establish authentically democratic institutions and procedures within their military forces. African armies themselves also suffer from congenital malformations associated with the story of their birth, and the national and international context of their development. In many cases, this malformation manifests itself in both their internal and external operations.

1. Recruitment

In all armies, recruitment is an important and particularly delicate issue. It is crucial for all other stages in the career of the soldier, but especially for operational quality and a positive public image. For African nations and their militaries, this remains one of the issues that reveals the

amount of work remaining to do for proper implementation of ethical standards. Because of the highly politicized nature of the military, a nation's army is frequently designed instead to serve as a pillar of political power, usually organized around a faction that can be ethnic, tribal, or religious in nature. Because of such considerations, recruitment instead is subject to significant political and factional influences.

Alongside political, ethnic, and sectarian considerations that contribute to unethical influence peddling, economic corruption is another parameter that taints the recruitment process and opens the new recruits to multiple forms of deviant behavior.

Massive unemployment faced by the young pushes them to consider enlisting in the army as the last chance for a decent and rewarding job. In the imagination of the young African, the soldier, and generally any member of a trade in which a uniform and a weapon are required, inspires both fear and respect. This seductive aspect of the profession of arms for young Africans poses a prima facie threat to establishing justice in African societies. This threat can only be ascertained in the light of the exorbitant powers granted to the military in these societies.

For these reasons, young Africans have often been willing to pay substantial financial bribes for the opportunity to be recruited into their nation's armed forces. The recruitment process is, in fact, often characterized by an extensive system of corruption.

Candidates for recruitment in the military who do not understand or adhere to ethical guidelines may barter their banknotes to obtain fake diplomas, or to fabricate the results of required medical examinations or tests of physical abilities. Sometimes even habitual criminals are able to purchase their enlistment. The costs of recruitment lead some candidates to borrow money in order to purchase their recruitment, and, once integrated into the army or the police, they engage in the same forms of corruption themselves, in order to recover their initial investment (and perhaps enrich themselves further).

This situation also contributes to the commission of armed robbery involving soldiers, along with extortion (of which the local police are regularly accused, particularly within the French-speaking countries). Generally, while deployed among the general population in times of peace, as well as in times of serious public disorders, soldiers who have thus "manufactured" their own enlistment are quick to engage in theft and looting, or to extort money from hapless victims. With the money thus obtained through looting and extortion, the soldiers then pay their debts, maintain their lifestyle, and buy both the silence of their command hierarchy and impunity from criminal prosecution.

2. Lack of Transparency in Career Development and Training Opportunities

The career of the African soldier also suffers from a lack of transparency, and is subject to contingencies that often have nothing to do with his professional skills. The lack of transparency in career management requires ambitious soldiers to learn how to be inventive.

Admission to the most rewarding training courses, for example, is obtained through paying bribes in a manner consistent with the recruitment policies described above. In this context, there is no real plan or career profile. At the same time, there are frequently reserved positions for training and advancement. Those in the elite presidential guard, for example, may be given priority admission for training that otherwise eludes even members of the political or tribal faction that governs. Those privileged few receive the best training courses even when they often do not meet the professional and intellectual prerequisites for admission. For diplomatic and strategic reasons, the country's military leaders may present themselves to the military forces

of Western democracies as committed to essential military training, while otherwise appearing complacent about the admissions to the courses recommended by their allied advisors.

For those soldiers who are not eligible for certain prestigious positions, managing the budget may prove to be important, in terms of ready access to finances. Purchasing jobs in these situations psychologically prepares the soldier to engage subsequently in mismanagement or embezzlement of military budgets, as well as in the arbitrary payment of bonuses to subordinates, stealing fuel vouchers, or participating in illicit arms trafficking.

3. How Corruption Degrades Professional Training

Bribery, corruption, and influence peddling have a negative impact on the training of the soldier. These unethical acts, which in some cases transpire in full view of everyone, including military leaders, evoke the theories of the French sociologist Pierre Bourdieu regarding "habitus": the manner in which social norms manifest themselves in the behavior of individuals as lasting dispositions, or trained capacities and structured propensities to think, feel, and act in determinant ways, which then guide them.[5] Soldiers recruited into such an environment are simply not morally ready even to participate in, let alone serve as the basis for an authentic and morally circumspect profession of arms. Endurance, insight, and fair competition that characterize the profession of the soldier disappear in such a context, overwhelmed by the corrupting influence of money and favoritism.

In this context, training and education centers become places for cultivating very different kinds of skills, such as using banned substances, learning to relax while less privileged comrades carry out the required exercises, and so forth. Rankings at the end of training in these centers often do not reflect the real achievements of the candidates. The opportunity is thus afforded to skew the results, and therefore the ranking, through corruption. These practices obviously render the "training" meaningless, and have a serious impact on the operational capability of the armed forces.

4. Political Crises, Rebellions, and the Deficit of Military Professionalism

Africa is a continent regularly confronted with political crises whose foundations are struggles for access to power in an undemocratic context. These crises have tended to move directly into armed confrontation between the particular African nation's army and rebel movements. The regular army, itself already weighed down with the various ailments mentioned above, faces civil wars carried on by the armed members of these rebellious movements whose only training, when it exists, is likely limited to the most rudimentary knowledge about the use of arms. These rebellions often encompass a membership composed of children, and of very young adults already on the margins of society, together with escaped prisoners, ex-convicts, or people with very little education. They are frequently led by colorful characters, often former military personnel dismissed from active duty for various reasons. One may be assured that the members of such armed forces do not always receive "ethics training."

When the outcome of the civil war is favorable to the rebel movements (as is often the case in many countries on the African continent), the best political arrangements require the integration of rebel movements into the national armed forces. At worst, the untrained rebel forces themselves *become* the new national armed force. In the first case, the integration of former rebels into the national army, itself already struggling with the moral deformation of its constituent elements, does nothing to increase its interest in ethical values. In the second case—

that is, when the rebel movements have won the military battles and come to power in their own right—they often exhibit a lack of professionalism, both moral and operational, that tends to reflect their commanders' unfamiliarity with, and lack of control of, the various components of the new national army. Those new armies come to exhibit the deficiencies inherent in the moral training of their new teachers, compounded by divisive and corrupting aspects of the political and legal environment that remain in place well after the cessation of conflict.

Clearly, then, this regular rise to power of rebel movements in many countries in which, on account of their varied histories, moral education has never really been a major concern for the design and implementation of military training, does not contribute further to increased exhibition of moral professionalism or proficiency in African military institutions.

III. Regrettable Features of the Ethical Deficit of African Armies

1. The Prospects for coups d'état

The physical excesses of African armies regularly make the headlines. In many countries, in fact, the relationships between the people and their armed forces are generally characterized by fear or terror. In times of peace and in times of conflict, many African armies engage in repressive actions and multiform violations of human rights. Their management of popular uprisings and political protests regularly reveals their lack of moral competence.

The ethics crisis within armies is also evident in their tendencies to interfere in politics. Many African countries have already faced the coup. From 1994 to 2014, despite the increase in political pluralism, official speeches by African governments on democracy, and condemnation of military repression in the Constitutive Act of the African Union adopted in 2000, the reality of a military coup remains a persistent concern.[6]

As an illustration, we can cite instances of *coups d'état* or military interventions on one or more occasions within the past decade in each of the following countries: Gambia, Sao Tome and Principe, Comoros, Sierra Leone, Niger, Guinea-Conakry, Guinea-Bissau, Mali, Democratic Republic of Congo, Burundi, Congo—Brazzaville, the Ivory Coast, the Central African Republic, Mauritania, and, most recently, Egypt. Besides these, one can also point out the many instances of popular uprisings that sometimes see the military meddling in politics. A coup is a delicate moment, during which outside observation demonstrates that respect for moral values and ethics are usually violated.

2. Rape as a Weapon of War

Besides the proliferation of coups, rape as a weapon of war is yet another facet of the crisis of ethics in Africa. The scale of this phenomenon is such that the international community found it necessary to organize, from June 10 to 13, 2014 in London, an international conference on the subject.[7]

Particularly as multiple rebellions abound in the eastern portion of the Democratic Republic of Congo (DRC), the Congolese armed forces are regularly accused of collective and public rapes.[8] The military goal is to terrorize the local populace. Particularly in this region of the DRC, women, girls, and even babies are victims of these practices that dehumanize their victims and demonstrate the level of moral deficit of the Congolese military. In multiple civil wars in the CAR, Uganda, and in areas where the rebels of the Lord's Resistance Army (LRA) operate, rape cases are recurring.[9]

Less serious than rape, sexual harassment, and more general offenses against morality, are the normal reality in some African armies. According to the Canadian advocacy organization Human Rights and Democracy, in the army of the Democratic Republic of Congo, "girl soldiers are not restricted to the performance of traditional female tasks. They are fighting, raiding, serving as couriers, messengers, spies and informants when they are not simply forced by warlords to serve as wives or sex slaves. Pregnant, they are still expected to take part in combat."[10]

3. Physical Damage, Looting, Illegal Exploitation of Natural Resources, Misappropriation, and Patrimonialism

The use of the army in operations of law enforcement is common in Africa. This practice often results in numerous violations of human rights that go as far as murder and disappearances.[11] When it is not murder or disappearances, it is looting with which the military is often charged when carrying out these interventions.[12]

The illegal exploitation of natural resources is also among the many acts that tarnish the image of African forces. On occasion, even the pan-African multinational interposition forces have been suspected of engaging in the theft of precious natural resources (such as engaging in illegal logging). The Great Lakes region, due to its rich soil and its under-protected security situation in a particularly volatile part of the continent, suffers disproportionately from such excesses.[13]

Logistical diversions of military aircraft, misappropriation of fuel or of budgetary resources, renting (or providing military personnel themselves as) labor forces for private purposes of the commanding officers, and other numerous forms of patrimonialism, which generally exploits the confusion between the control of private and public resources, are common in African armies.

In sum, bodily harm, extortion, physical damage, looting, and illegal exploitation of both natural and publicly owned resources are traditional forms of corruption and excess in which personnel in African armies have been regularly found guilty, and which are contrary to the honor of the soldier.[14] The high moral deficit in some African armies is such that in the quest to secure vital resources for defense purposes, certain nations and political powers have been compelled to employ foreign mercenaries. These problems highlight the corruption of national military leaders and systematic misappropriation by them of public funds.

IV. Conclusion

What emerges from this analysis is the political conception or function of military forces that young African powers are given upon accession of their countries to independence. These conceptions are shown to be tied roughly to the recent political history of the continent, and issues related to the Cold War, and are the main factors underlying the crisis of ethics in African armies.

The blueprint for military force arose largely because of the insufficient legitimacy of raw political elites designated by the imperial powers to assume authority in the wake of their departure. Forced to impose their rule upon their people, young African illegitimate powers forged national armed forces largely from the former soldiers of the colonial army. The combination of using holdovers from the old colonial African national armies, together with a lack of funds and resources to operate those military forces properly, helped perpetuate the repressive philosophy and methods of the former colonial army. The stakes of the Cold War, combined with the original intention of the imperial powers to decolonize Africa without losing

any of their interests, interfered with Western democracies' abilities, in particular, to support the institutionalization of modern armies organized around authentically democratic ethical and moral values. Meanwhile, African countries under the sway of the former U.S.S.R. during this period of the Cold War were hardly expected to base the training of their armies on such values. And finally, in still other nations, the national armed forces were organized out of the remnants of often brutal and poorly trained African liberation movements.

Whichever of these factors proved prominent in their formation in any case, the resulting military forces have generally been subjected to a hostile national and international political environment that proved inimical to the institutionalization of moral military professionalism. At least until the collapse of communism in the late 1980s, there was officially little room for political pluralism, democracy, and, by extension, the inclusion of ethics in the training and evaluation within African military institutions. This reflected the absence of any genuinely moral dimensions within the undemocratic authoritarian political systems that prevailed during this period. Morality in professional armies does not thrive in an environment of impunity and lack of accountability, which nevertheless constituted the twin foundations of the repressive and undemocratic political systems that prevailed in Africa during the Cold War, nurtured, sadly, both by Western democracies and their communist rivals.

The development of moral values generally requires transparency, and, above all, justice and accountability. In a context where military commanders and soldiers are permitted to act with impunity, not held legally responsible for their actions, and where political leaders themselves are not responsible for their actions, it is unrealistic to speak about the moral training of armies. And so, despite seemingly endless attempts to commit to "ethical reform" of the military, or to the meaningful "reform of the security sector" (RSS) in the CAR, the DRC, Burundi, or in Guinea-Conakry, we always reached the same, inconclusive result.[15]

At the end of the Cold War, Africa committed itself to a process of democratization that was to begin with the return, or the institutionalization, of genuine political pluralism. But overall, and despite the affirmation of its commitment to democracy by the African Union, this process has thus far been a failure in terms of the overall political situation on the continent. This failure, or (to be optimistic) this partial failure, is in large part due to the unwillingness of much of the political elite, the "housekeepers of the old Africa," who will not, or only barely, separate themselves from the old monolithic system that produced them. It is also and in equal part due to the geostrategic stakes of the world's great powers, which—despite their proactive official rhetoric on the need to "help the continent to secure Western standards of democracy"—in fact require those powers instead to accommodate a highly variable and inconsistent geometry of democracy.

This is because "democratic graft" is still struggling, in many cases, to frustrate and postpone genuine democratic reforms, in the wake of which legal skills would be developed through the teaching of ethics in society in general, and in military institutions in particular. Because of these shortcomings, however, there are few African countries where deep reflection that is more than merely an attempt to curb an immediate crisis or to demonstrate compliance with an international agenda emerging from conflict, has so far been launched on the ills afflicting the army, or the democratic challenges of the military generally.

It is precisely through encouraging such greater reflection and debate, however, that there can be any reasonable hope for the emergence of openness and self-criticism within African armies as preparation for much-needed reforms. The clientelist relationship historically between the army and political power in many countries on the continent make the democratic control of military institutions almost impossible. But it is only through the democratic control of armed forces that factors relating to the moral training of the soldier can be instituted at the parliamentary

and judicial levels. Under full democratic control of armed forces, indeed, justice and military justice can play their full role as a deterrent to the unethical behavior of soldiers engaged in operations, as well as to their commanders, and to politicians themselves, each of whom is properly accountable before the law. In democratic societies, even the state of war does not absolve the perpetrator of an action, an order, or a clearly illegal decision from his responsibility to the courts. This notion of responsibility, including that of transparency, full accountability, and legal liability consubstantial with democratic societies more generally, is in reality the main motivator in the development of the moral capacities of modern armies.

Notes

1. Translated from French by George R. Lucas, Jr.
2. For several examples of moral professionalism at work, see the cases described in Benoit Royal, *The Ethical Challenges of the Soldier: The French Experience* (Paris: Economica, 2012).
3. Alain Fogue Tedom, *Enjeux géostratégiques et conflits politiques en Afrique noire*, "Collection défense, stratégie & relations internationales" (Paris: L'Harmattan, 2012).
4. Ibid.: 346–347.
5. Pierre Bourdieu, *The Logic of Practice* (Stanford, CA: Stanford University Press, 1980).
6. Hubert Onana Mfegue, "Crise éthique dans les armées africaines: une réalité têtue": http://etudesgeo strategiques.com/2014/04/22/crise-ethique-dans-les-armees-africaines-une-realite-tetue/.
7. See "Viol comme arme de guerre: Un sommet en Juin à Londres avec Angelina Jolie afin d'éradiquer le fléau" [Rape as a weapon of war: A summit in London (June 2011) with Angelina Jolie to eradicate the scourge]: www.info-afrique.com/viol-comme-arme-de-guerre-angelina-jolie/.
8. Annick Cojean, "Dans l'est du Congo, les viols comme arme de guerre," *Le Monde*, July 16, 2013: www.lemonde.fr/afrique/article/2013/07/16/dans-l-est-du-congo-les-viols-comme-armes-de-guerre_3448206_3212.html.
9. See "Le viol d'hommes: une arme de guerre en Ouganda": www.rnw.nl/afrique/article/le-viol-d%E2%80%99hommes-une-arme-de-guerre-en-ouganda. See also Will Storr, "The rape of men: The darkest secret of war," *The Guardian* (July 17, 2011): www.theguardian.com/society/2011/jul/17/the-rape-of-men.
10. Quote of Hubert Ako Mfegue, in "Le viol d'hommes," loc. cit.
11. See "Executive Summary: 2012 report on human rights—Mali": www.state.gov/documents/organ ization/204352.pdf.
12. See "2010 report on human rights: Guinea": http://french.guinea.usembassy.gov/2010rdh.html.
13. See "Great Lakes: Heads of state called upon to fight the illegal exploitation of natural resources": http://radiookapi.net/societe/2010/12/15/grandslacs-les-chefs-d'etats-appeles-combattre-l'exploitation-illégale-des-ressources-naturelles/more-83978.
14. See "The plundering of resources," *The French Documentation*: www.ladocumentationfrancaise.fr/ dossiers/conflit-grands-lacs/pillage-ressources-naturelles-rdc.shtml.
15. See "Toward an ethical code for the Ivoirian Army": http://fr.starafrica.com/actualites/vers-un-code-dethique-et-deontologique-pour-les-armees-ivoiriennes.html. See also "The Army of Burundi": www. rnw.nl/afrique/radioshow/pour-une-%C3%A9thique-militaire-dans-les-arm%C3%A9es-africaines.

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11

EXPEDITIONARY ETHICS EDUCATION

David Whetham

It will prove important to disclose that the author of this chapter is a philosopher, employed by the Defence Studies Department of King's College, London, and based at the U.K.'s Defence Academy in Shrivenham, on the Wiltshire/Oxfordshire border.[1]

Currently comprising of over 50 full-time academics, the Defence Studies Department was formed in 1997 to provide academic support and research-led teaching to the 2,000–3,000 military officers from the U.K. and over 60 other states who attend different courses at the Joint Services Command and Staff College and the Royal College of Defence Studies. The length of courses varies from as short as a week for relatively junior officers with only one or two appointments under their belt, up to the yearlong postgraduate-level Advanced Command and Staff Course for lieutenant colonels and equivalents from across the different military services and British civil service, while the seniority of those taught goes from flight lieutenants all the way up to brigadier.

The content of the different courses varies, depending upon the desired outcome from each cohort at their current level of rank and responsibility, but all are designed to enhance understanding of different aspects of defense and international issues. The other thing that they all have in common is that every course at least touches on military ethics and international law, while the longer ones have a substantial element dedicated to this core area of professional military education.[2]

This specific area is often referred to as Professional Military Ethics Education, or PMEE. While this chapter will focus on the author's own experiences, they can be taken to be broadly representative of the activities carried out by the small but dedicated group of academic military ethicists drawn primarily from Europe and North America.

I. Defining Terms

Likewise, it will prove important to set forth some important distinctions from the outset. In the military services, as in many other sectors of public life, ethics and law are (wrongly) often used synonymously. They are closely related areas but are also distinct.

Military ethics will always be closely aligned with, and heavily informed by, legal structures such as the law of armed conflict and international humanitarian law. However, what is legal

is not always the same as what is ethical—one may be legally permitted to take a course of action but that same course of action might still be considered ethically wrong when compared with other available options.

The term *expeditionary ethics* as I employ it in this chapter is deliberately evocative, and it is used to describe a very specific professional activity. I am not referring to participation in an overseas conference such as the International Society of Military Ethics in the United States, or its European Chapter,[3] and I am not referring to being invited to deliver a keynote lecture to an academic audience on one of the many fascinating areas of applied ethics that the military world presents us with.

Instead, through this unusual title, I mean to convey that this chapter is concerned with the delivery of ethics lectures, workshops, classes, and exercises that, over a short or longer period of time, are expected to wholly or in part *deliver PMEE for military personnel of a different country*, normally (but not exclusively) because of the lack of a capability to delivery such a course indigenously. During the 12 months prior to authoring this chapter, I have been involved in delivering PMEE on the Higher Level course for the Serbian military in Belgrade, taught staff officers and officer cadets in Brunei Darussalam, staff officers at the Baltic Defence College in Estonia, and officers from the full range of the Nigerian armed forces, from fifth-year officer cadets through to generals. Previously, I have also been involved in so-called "train-the-trainer" and PMEE development courses in places such as Chile, Colombia, the Czech Republic, the Black Sea states, and Kuwait, as well as advising on curriculum development for countries as diverse as Romania and Qatar.

II. By What Right?

My background, as with many of my colleagues in the international PMEE community, is in philosophy, with a particular interest in applied ethics. As a civilian with no actual military experience, what gives me the right to lecture military personnel on what they are supposed to do or not do?[4]

While I *have* been based at the U.K.'s Staff College for the last 11 years, as a King's College London academic, I am not even directly employed by the military or the Ministry of Defence (although my university is engaged in a long-term contract with them). Perhaps more controversially, how am I expected to have any credibility talking about "military ethics" when I come from a country that has a recent history of flouting international law by conducting illegal military operations overseas?

In Kosovo in 1999, the U.K. chose to intervene as part of a NATO force to prevent ethnic cleansing and gross human rights violations without a clear Security Council mandate. Subsequently, the U.K.'s own House of Commons Select Committee on Foreign Affairs concluded that the military operation was "illegal but necessary."[5] The legitimacy, if not the legality, of this mission was at least widely viewed as sound, but the actions only four years later proved even more controversial when the U.K. became involved in the 2003 invasion of Iraq.[6] Both the U.S. and U.K. argued that previous Security Council grants of authority relating to the first Gulf War coalition were automatically reinstated by Iraq's failure to comply with the weapons inspection regime put in place after the 1990 invasion of Iraq.[7] However, such reasoning has been condemned by many, if not most, international lawyers, with some alleging it amounted to the U.K. and U.S. turning their backs on the historic "transatlantic commitment to international law."[8]

Add to this legacy that the U.K. appears to have colluded in the "extraordinary rendition" of suspects into secret U.S. detention,[9] the high-profile death of Iraqi civilian Baha Mousa,

murdered in British custody in 2003,[10] and the fact that the International Criminal Court has begun investigating allegations of prisoner abuse by British forces in Iraq between 2003 and 2008,[11] and it is difficult to see how a British civilian academic speaking on military ethics can have any credibility at all. Such a context certainly poses a challenge, and, from a pedagogic perspective, each of those challenges need, somehow, to be turned into a strength.

III. Purpose and Perceptions

There are four closely connected questions that provide the background to each expeditionary ethics mission: (1) "What am I actually trying to do?" (2) "What does my employer want me to do?" (3) What does the host institution or state want me to do?" (4) "What does the host institution or government *think* I want to do?"

Occasionally, all of these questions will have the same answer, making the job as straightforward as PMEE can be. For example, the Baltic Defense College in Tartu provides senior officer education for Estonia, Latvia, Lithuania, and other neighboring states. The institution was set up to provide a center of excellence for the region by pooling resources and costs for states that would otherwise struggle to provide a quality institution simply due to the relatively small number of personnel involved. It also, of course, carries out an important defense diplomacy mission in the process.[12] Even with the economies of scale the pooled institution can provide, the college is too small to support a large academic faculty.

Just because there is no indigenous capacity to provide PMEE here does not mean the subject is not taken seriously, however. Its courses are quite deliberately designed on the basis that specialists will be flown in to cover many of the core phases, from strategic planning and defense procurement, through to the focus of this chapter—military ethics. The program has a logical structure, with ethics and international law integrated and developed in a sound way through a dedicated military directing staff working in conjunction with the international academics to ensure consistency and coherence.[13]

In this instance, my motivation is to provide a quality PMEE package within a known academic framework, and my employer, King's College London, is content to allow me to deliver this around my regular "day job," understanding that this contributes to outreach, reputational factors, and the all-important "impact" (referring to the transfer of academic knowledge into the "real" world). The host institution wants an expert in PMEE to deliver a core stage of their program and they are content that that is exactly what I intend to do.

Other international contexts can result in very different answers being provided to those key questions. For example, Nigeria poses a number of challenges for delivering expeditionary military ethics education for all sorts of reasons, not least the size and structure of the Nigerian armed forces. Having an understanding of the history of a state before trying to do PMEE is normally prudent, but here it is essential. In this case, the Nigerian military only relinquished political control to a civilian government in 1999 after 14 years in power.[14] Those years were noted for repressive practices and mutual suspicion between the civilian population and the military. However, even a decade after handing over power and many reforms imposed by the new administration, it was obvious that there were still profound problems. Amnesty International's 2009 report on Nigeria noted extrajudicial executions, torture, and excessive force.[15] Today, both the international community and domestic public are painfully aware of military and security shortcomings.[16]

I was asked by the British Military Advisory and Training Team (BMATT) in Nigeria to assist in the introduction of a PMEE program for the Nigerian armed forces. The U.K. hopes to be able to contribute to regional stability and address some of the human rights concerns

while supporting an important African ally. This engagement therefore forms part of a U.K. defense diplomacy outreach initiative. Key people in charge of the various military training and education institutions in Abuja and Kaduna proactively support the initiative. However, even with the support of the UK Defence Academy, who seconded one of the U.K. staff college directing staff to assist the initiative, it was painfully obvious that any such intervention would be a "sticking plaster" at best and would be completely inadequate in providing the wholesale restructuring of the through-life officer training and education programs in Nigeria.

Despite this, the generals and commandants of the academies and colleges were very enthusiastic, partly because of the strong cultural and historical ties between the U.K. and Nigeria, and partly due to the very good working relationship the BMATT personnel had fostered. There was certainly the danger that the initiative was going to be seen as a "magic wand," meaning expectation management was very important, right from the start of the engagement. At the same time, of course, while being aware of the limitations, this was an outstanding opportunity to change a situation for the better with implications for a huge number of people.

To emphasize the importance of healthy civil/military relations, the Lt. Col. who had been assigned to me by the UK Defence Academy was happy to be obviously in the role of "supporting act," and we worked very effectively together, with me providing the overall course content for the various institutions, and the Lt. Col. supporting this with specific examples from recent British operational experience or training programs. One of the challenges included the problem of being seen to "lecture," particularly problematic given the recent history outlined above. One would have very little credibility speaking about the importance of humane detainee-handling, for example, given the very public incidents of abuse committed by a small number of British soldiers in the Iraq campaign.

Turning a weakness into a strength is part of the art of effective communication when teaching, and rather than risking offense by examining Nigerian human rights practices, we were able to draw on the "rich" history of British failings, historically and contemporarily, talking in detail about how they came about, what was the immediate and longer-term consequences, the damage that they caused reputationally, strategically, and politically, and what has been done to prevent them happening again. Leading on these as a civilian academic affords a great deal of flexibility in this type of situation because, as is made clear at the start of every lecture or workshop, I do not and cannot speak for the U.K. government; I can only speak as an academic, effectively giving me enormous freedom to say what I think, and giving the U.K. government the option of reiterating that important distinction should offense be inadvertently given.

As to the future, the intense times spent visiting and teaching at the different institutions was combined with pedagogic research, culminating in a King's College London report into how to integrate military ethics into the wider training and education programs in the Nigerian military. While this can only ever be seen as a small part of a complex process, and in part depends upon the current goodwill and positive support of the Nigerian military and government, it is hoped that this continued engagement can lead to an eventual shaping of military organizational culture in a positive, sustainable way.

Other states are far less enthusiastic about the idea of expeditionary military ethics, especially when it is seen as something imposed from "outside." For example, I have been working in the Republic of Serbia for five years as part of a joint Norwegian/U.K.-funded project focused on capacity building in the area of professional military education. This project was loosely linked to the NATO accession process as military ethics is one of the core areas that must be considered. While the lack of resources for any institutional change also played a part, it would not be unfair to say that neither the Serb military nor the government were initially enthusiastic

about the idea of being lectured on military ethics by someone who had been bombing them not much over a decade before. They did not believe they needed Western-style PMEE and some were quite insulted by the idea of being lectured by NATO.

It took several years of careful diplomacy to get access, but, in this case, my civilian status was a very clear advantage, as was the fact I was not speaking "for" the U.K. government. Again, this allowed me to use British or allied case studies as part of any military ethics workshop and to be highly critical where warranted, thus preventing the more obvious charges of hypocrisy. This helped promote an honest and healthy dialogue. Once it was clear that this was about professional military development looking to the future rather than using the experiences of the 1990s as a "stick to beat the Serbs with," attitudes came around, to the extent that PMEE has now been embraced enthusiastically. Military ethics now forms part of the core training program for all officer cadets, taught by Serbian military officers with Ph.D.s in applied ethics, and my own engagement with the senior levels of defense continue with an annual military ethics workshop that, in 2014, included the Secretary of State for Defense as a participant.

At the other extreme, I have been asked by other states to come and fill the "military ethics slot" in their staff college program, only to discover that it was little short of a box-ticking exercise.[17] Despite international flights, time away from my "day job," and writing bespoke material to be delivered to that specific audience, it was immediately obvious that the officers and directing staff involved were not really interested, there was very little engagement from the students, the subject itself was not integrated in any way with other areas of the curriculum, and the visit simply reflected a political need to be seen to cover the subject, meaning I was basically providing an "ethical fig leaf." Needless to say, they needed to find another person to deliver their fig leaf the following year.

IV. Pedagogy

Expeditionary ethics education can be very challenging from a pedagogic point of view. It is important to understand the difference between training and education—training equips you with specific knowledge or skills pertinent to a given situation, while education is about understanding broader principles in order to be able to make sense of any situation rather than only a specific one. Training is normally associated with developing the ethos, values (or military virtues), and standards of a professional military force, which, while not synonymous with ethics, refer to the stated ideals that a community or institution cherish, helping to underpin and support ethical consideration and decision-making.[18] Therefore, training in this area is essential to provide a core from which to develop and establish the core values, and inculcate the type of behavior expected in different situations. However, it is education that is required for the flexibility to adapt to the uncertainties of the contemporary operating environment, particularly counter-insurgency or counterterrorism operations, where the unexpected situation becomes the norm. "In this type of situation, one needs to know not just the law, but where it comes from and why it is important"—not what to think, but how to think.[19] Being clear on what is required—training or education—and making sure that this is actually appropriate for the level of personnel, is essential if the delivery of expeditionary ethics is going to be considered successful.

As well as their level of responsibility, another factor that needs to be considered is time constraints as, invariably, there will not be enough time available to do everything you want to. Sometimes, that time is incredibly restricted due to factors out of anyone's control (such as seizing a rare moment to run judgmental scenarios just before a unit is deployed), meaning that both preparation and delivery time is suboptimal.

Given the fact that it is always possible to do more, that, of course, raises the question of how much PMEE is enough. While a definitive answer to this is as difficult to determine for military ethics as it is in nearly every other area of education, we do know that even short courses, delivered in the right way, by the right people, using the right material and methods of delivery, can have very real results on the behavior of personnel deployed on military operations.[20]

But what should one try to cover in the time that is available? It is often useful to consider dividing the broad topic of military ethics into separate (but overlapping) areas: the *Individual in the Profession*; the *Profession at Work*; and the *Profession and Society*.[21] The *Individual in the Profession* focuses on the military virtues and standards expected of professional military personnel, such as courage, integrity, and loyalty, and how they might be applied appropriately in specific situations. It can also cover such things as the difference between real moral dilemmas, where the right answer is difficult to determine due to apparently conflicting values, and situations that may appear to be dilemmas, but actually turn out to be tests of integrity, where the right thing to do is obvious, but it may come at a personal price.[22]

The *Profession at Work* is more focused on the rules and principles that guide and govern the work of military personnel at all levels of responsibility, from issues relating to the management of scarce resources and defense planning, to when and against whom it is appropriate to use force on an individual level (*jus in bello*), all the way up to the actual decision to use military force taken at the level of governments and states (*jus ad bellum*). The latter two areas are often associated with the just war tradition—a "fund of practical moral wisdom" that has evolved over millennia to reflect the changing character of war.[23]

The third area, the *Profession and Society*, is concerned with the relationship between the state and its servants, where the military fits into this relationship, the responsibilities and duties on both sides (sometimes referred to as the military covenant), how the values of the military relate to wider social values, and the limits on military obedience. This latter area receives the least attention in many Western military syllabi, but is often the most important when engaging with the militaries of states that have a history of taking political control or are used to an unquestioning rigid hierarchy—exploring the role (and limits) of individual moral autonomy becomes extremely important in such contexts.

Having some background knowledge of what has been taught before is important, as this can mean techniques such as "scaffolded learning" can be employed, where one proposes to build explicitly on the participants' previous knowledge. However, this is often very difficult, due to the diverse background of the cohort that will be taught and the difficulty in finding out what exactly they have already covered. Getting access to previous experience, training, and the curricula covered is unlikely to happen, and this, combined with restricted time, means that it is often necessary to try to touch on everything at the same time, focusing in on the areas likely to need the most attention. Often, the best that can be done in a short time is to provoke further thought, challenge long-held assumptions, and prompt further engagement at a later date.

It is essential to be very flexible, and also accept feedback, sometimes during the session themselves, being prepared to change tack or go in a different direction if it is obvious that it will be more fruitful. It is also important to *provide* honest feedback—there is little point in providing a glowing testimony of a cohort who actually has no idea about military ethics. Only through honest feedback can needs be identified and gaps in professional knowledge ultimately be addressed. Of course, at all times, one must still be sensitive to context, historical background, and culture.

V. Ethical and Cultural Relativism

Challenging ideas and provoking thought is a big part of PMEE, but how does one cope with the inevitable clash of values that can crop up? Just how sensitive, tolerant, and accommodating is it OK to be?

My teaching in Brunei has posed some challenges in this area, even before its recent adoption of sharia as its governing legal code. Being an absolute monarchy rather than a democracy, this raises some interesting issues relating to constitutional control and the limits of professional military service, particularly in a culture where deference to authority is the norm. Since 2014, homosexuality is considered a capital offense, potentially punishable by death by stoning (as opposed to the previous punishment of 10 years imprisonment).[24] Adultery is also a capital crime, while female circumcision, even if it is not universal, is considered normal.[25] Clearly, as a Western liberal, such laws and norms, and the attitudes they express, make me very uncomfortable.

Despite my government's official opposition to the death penalty, the U.K. maintains a defense relationship with the Sultanate.[26] However, given that I am not myself employed by the U.K. government, should I really be teaching there at all, and does doing so not somehow suggest that I condone such values?

Thankfully, again, as a civilian who is directly invited by the Director of the Royal Brunei Armed Forces Command and Staff College, I can speak entirely in a personal capacity, and my invite letter specifically asks that I challenge and engage the officers with different viewpoints, tackle assumptions, provoke thought, and prompt discussion on difficult topics. As long as this is done without obviously intending offense, this allows me to engage in discussion on a wide range of topics that simply would not otherwise be examined, due to inherent conservatism or cultural norms. These include everything from talking about bullying or sexual abuse in the military, to recognizing and responding appropriately to an illegal order.

At the same time, it is important to focus on what John Rawls might call the "overlapping consensus"—that common core of professional military values that do not change from place to place, demonstrating that even when some values conflict, many more will still be shared.[27] As such, I feel that there is a value to conducting PMEE in this environment, and that those whom I engage with also value my efforts.

The Black Sea states of the former Soviet Union pose a particular organizational culture challenge when it comes to hierarchy and superior orders. While the new generation of military officers have only ever known democratic control and oversight of the military, the middle and upper ranks of officers in these states can have inherent resistance to the idea that a military officer is under a professional duty *not* to automatically follow some kinds of orders. This requires that PMEE delivered here focus on civil military relations, with corresponding emphasis on international law, on the role of individual moral autonomy, and on the changed conception of professionalism in such a democratic environment. Obviously, some organizations are very uncomfortable with the idea of what can be seen as dissent being formally taught to their personnel, meaning that the PMEE process needs to engage institutions as well as individuals.

VI. Why Do It?

Sometimes the environment itself can pose challenges that go beyond the normal pedagogic considerations. For example, while the risk of kidnapping has receded significantly in Bogota with the security situation starting to normalize, as of 2013 it was still apparently necessary for civilians working with the military to travel in armored diplomatic vehicles with armed military police escorts. Currently, Nigeria also provides a rather different security context to that found

in rural Wiltshire and Oxfordshire. The name of the insurgents in the north of Nigeria—Boko Haram—literally translates as "Western education is sin," and they are currently carrying out daily attacks and atrocities across the country, especially against education symbols, institutions, students, and teachers. As a white, panama-hatted Westerner, obviously personal security is high on the list of considerations when conducting PMEE here.

Given the time limits and constraints, limited access problems, the frustrations of "parachute teaching" (where you know little or nothing of the people to be taught until you arrive), the risk of being used as a political fig leaf to cover deficiencies, and, of course, the constant time away from family, BBC Radio 4, and a decent cup of tea, why would one undertake "expeditionary ethics" education at all?

The main reason is simply because it is important. More and more states are starting to recognize the importance of military ethics, and there is a growing understanding that while good PMEE is unlikely to win you a conflict, poor or absent PMEE can hamper or contribute to ethical failings that undermine or lose war efforts. If I am asked to do expeditionary military ethics, it is normally because although the gap is recognized, there is nothing done in this area there at present. If I cannot go and fill that gap, the chances are it simply will not be filled for that cohort. It is an area of professional activity that has the potential to make a difference in the real world—in academic terms, it can have impact. It is not always easy, as a philosopher, to make a practical difference in the world. However, this is perhaps one way in which to do this. Even an introductory knowledge of professional military ethics may shape an action, influence a choice, or promote a better decision in an environment that is inherently concerned with matters of life and death. If an audience is suitably inspired, they will spread their thoughts and experiences to their peers and up and down the chain of command, helping to shape organizational culture for the better as a result. That is a chance that makes the effort more than worthwhile. If this is all the military ethics education that they are going to get, it is a professional challenge, and professionally rewarding, to make it as good as it can be.

Notes

1. See: www.kcl.ac.uk/sspp/departments/dsd/about/index.aspx.
2. David Whetham, "International law and the ethics of war at the UK Joint Services Command and Staff College," in D. Carrick, J. Connelly, & R. Robinson (Eds.), *Ethics Education for Irregular Warfare* (London: Ashgate, 2009): 134.
3. See: www.euroisme.eu.
4. Although very different, the closest thing I have to direct experience in this area is working for the Organisation for Security and Cooperation in Europe in Kosovo, helping with election infrastructure and observation following the conflict in 1999.
5. See Patrick Wintour, "MPs say Kosovo bombing was illegal but necessary," *The Guardian*, June 7, 2000. Available at: www.guardian.co.uk/politics/2000/jun/07/balkans.politicalnews.
6. Christopher P. M. Waters, "War law and its intersections," in David Whetham (Ed.), *Ethics, Law and Military Operations* (Basingstoke: Palgrave Macmillan, 2010): 90–107.
7. See "The advice of the United Kingdom Attorney-General, Lord Goldsmith, on 'the legal basis for the use of force against Iraq'," March 17, 2003. Available at: http://webarchive.nationalarchives.gov.uk/+/http:/www.number10.gov.uk/Page3287.
8. Philippe Sands, *Lawless World* (London: Allen Lane, 2005): 225. Cited in Waters, "War law" (96).
9. See: www.reprieve.org.uk/press/2010_01_27_un_report/.
10. See The Baha Mousa Public Inquiry. Available at: http://webarchive.nationalarchives.gov.uk/20120215203912/ http://www.bahamousainquiry.org/.
11. Ben Farmer, "Hague investigation into British 'war crimes' in Iraq," *The Telegraph*, May 13, 2014: www.telegraph.co.uk/news/uknews/defence/10828393/Hague-probe-into-British-war-crimes-in-Iraq.html.
12. See: www.baltdefcol.org.

13. This structure can lead to challenges when commitments elsewhere prohibit a visit to Estonia at specific times. However, this is a programming issue and is part of the challenge of being a member of the military directing staff in most training and education institutions.
14. A. Oyewole and J. Lucas, *Historical Dictionary of Nigeria* (Lanham, MD: Scarecrow Press, 2000).
15. Amnesty International. *Nigeria: Killings by Security Forces in Northern Nigeria*, Document No. AFR 44/028/2009 (2009). See also Human Rights Watch, *Arbitrary Killings by Security Forces: Submission to the Investigative Bodies on the November 28–29, 2008 Violence in Jos, Plateau State, Nigeria* (New York, 2009).
16. Anne Perkins, "200 girls are missing in Nigeria—so why doesn't anybody care?" *The Guardian*, April 23, 2014: www.theguardian.com/commentisfree/2014/apr/23/200-girls-missing-nigeria-care-sewol-tragedy.
17. In the hope that the situation may change in the future, the states involved will not be named in this chapter.
18. For example, see Paul Robinson, "Introduction: Ethics education in the military," in P. Robinson, N. de Lee and D. Carrick (Eds.), *Ethics Education in the Military* (London: Ashgate, 2008): 5–7.
19. David Whetham, "International law and the ethics of war at the UK Joint Services Command and Staff College," 136.
20. For example, see Warner, Appenzeller, Mobbs, Parker, Warner, Grieger, & Hoge, "Effectiveness of battlefield-ethics training during combat deployment: A programme assessment," *Lancet* 378 (2010): 915–924.
21. For example, this is the approach taken in NATO's *Partnership Action Plan on Defence Institution Building: Reference Curriculum* (Kingston, Ontario: Canadian Defence Academy, 2008).
22. Stephen Coleman, "The problems of duty and loyalty," *Journal of Military Ethics* 8 (2009): 105–115.
23. James T. Johnson, *Can Modern War be Just?* (New Haven, CT: Yale University Press, 1984): 15.
24. James Nichols, "Brunei law to allow death by stoning for gay sex," *Huffington Post*, April 15, 2014: www.huffingtonpost.com/2014/04/15/brunei-gay-sex-law_n_5154960.html.
25. "Female circumcision is cultural practice," *Brunei Times*, June 16, 2012: www.bt.com.bn/news-national/2012/06/16/female-circumcision-cultural-practice.
26. See: www.gov.uk/government/priority/preserving-security-and-defence-relations-with-brunei.
27. Some of these issues are discussed in David Whetham, "The challenge of ethical relativism in coalition operations," in *Journal of Military Ethics* 7, no. 4 (November 2008).

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PART III

Military Ethics and Professionalism Across Nations and Cultures

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12

MILITARY ETHICS IN VARIANT CULTURAL TRADITIONS

Warrior Codes Revisited

Shannon E. French

In 2013, a 39-year-old British Royal Marine, Sergeant Alexander Blackman, was sentenced to life imprisonment (meaning he will serve a minimum of 10 years before parole consideration) for the murder of a wounded Taliban prisoner. At his trial, it was revealed that when Sergeant Blackman shot the prisoner, he said, "There you are, shuffle off this mortal coil, you cunt. It's nothing you wouldn't do to us."[1] These comments suggest that Sergeant Blackman's combat experiences (which were extensive—he completed three tours in Iraq and two in Afghanistan) had led him psychologically to a place where he felt intense disdain for his opponents, or at least for Taliban fighters such as the man he shot. They also seem to indicate that the sergeant believed at the time of the shooting that treatment of one's enemies should depend on some level of reciprocity. In other words, enemies who do not observe the rules of war do not deserve the protection of those rules.

Both the historical record and the present ledger of nations active in international relations are full of examples of military organizations and warrior cultures whose members commit to strict codes of conduct, covering everything from whether and how to accept an enemy's surrender, to what weapons or tactics can be deployed under what circumstances. In the just war tradition, such matters fall under the category of *jus in bello*, or just conduct of war, and include the principles of discrimination and proportionality.

Any exploration of military ethics would be incomplete without a realistic examination of how actual warfighters experience the challenge of maintaining standards and observing rules in the face of direct threats to their lives, the lives of their comrades, and the success of their missions. This means attempting to identify and understand the mental, emotional, and biological (including neurological) factors and constraints that may contribute to violations of the warrior's code, the law of armed conflict (LOAC), or rules of engagement (ROE). It is essential to consider the different ways codes of conduct can be motivated and determine which motivations are least vulnerable to being overwhelmed by circumstances, causing them to lose their force when most needed.

By looking at a variety of traditions concerning the behavior of warriors, we can uncover some insights into the application of military ethics that are relevant across cultures. The core motivational challenge for warriors to overcome is that they must counter the (perfectly natural) fear of death (or desire to remain alive, to give it a more positive frame) when necessary in order to successfully complete their martial missions. This challenge is compounded when the risk of death or serious pain and injury is increased by the need to act within a set of rules.

To accept restraint in the conduct of war seems very counterintuitive. Expressions such as "All's fair in love and war" were born from the impression that there is something odd, if not profoundly illogical, about authorizing an activity that permits people to break the strongest taboo—that against killing fellow humans—and then setting limits on who can be killed, and how, and when, and where. Fighting together also forges intense bonds among combatants on the same side. Even if personal safety were not an issue, devotion to comrades and their safety could easily overwhelm any commitment to restraint.

Beyond these concerns, the actual stakes of the conflict could seemingly counterbalance any pressure to accept restraints. If the stakes are high enough, such as the survival of an entire people or the potential loss of a way of life, combatants are going to need incredibly strong reasons for fighting within the bounds of principles or laws.[2] Emotional or psychological reactions to conflict and combat can also create more potential obstacles to adhering to rules in war. The conditions of combat can produce confusion and other mental effects, such as time compression and tunnel vision, that impair reasoning and make it difficult to follow rules.[3] In addition, there is ample evidence that dehumanization of the enemy is a common occurrence in war, and that it leads to the abandonment of restraint.[4]

Other responses, such as rage, the desire for revenge, and the feeling that war is a separate moral sphere where morality does not apply, can also overcome restraint.[5] This is what we hear from Shakespeare's Henry V in his speech to warn the governor of Harfleur about how unrestrained troops are likely to behave:

> If I begin the battery once again,
> I will not leave the half-achieved Harfleur
> Till in her ashes she lie buried.
> The gates of mercy shall be all shut up,
> And the flesh'd soldier, rough and hard of heart,
> In liberty of bloody hand shall rage
> With conscience wide as hell, mowing like grass
> Your fresh-fair virgins and your flowering infants.
> What is it then to me, if impious war,
> Array'd in flames like to the price of fiends,
> Do, with his smirch'd complexion, all fell feats
> Enlink'd to waste and desolation?
> What is't to me, when you yourselves are cause,
> If your pure maidens fall into the hand
> Of hot and forcing violation?
> What rein can hold the licentious wickedness
> When down the hill he holds his fierce career?[6]

In other words, the motivation for combatants to accept restraint must have enough force to overcome some or all of the following substantial countervailing motivations:

- fear of death/desire to stay alive (self);
- fear of injury/pain (self);
- fear of death or other serious harm to comrades;
- concern for the success of martial missions;
- need to secure the outcome of the conflict;
- confusion/the "fog of war";
- dehumanization/hatred of the enemy;
- rage and the desire for revenge; and
- feeling that war is a separate moral sphere.

This is nothing new, of course. This problem has been around as long as war itself. Looking back through time, we find warrior cultures from different regions addressing this motivational burden in a variety of ways that share distinct common themes.

Most effective warrior codes center around persuading the men and women who must fight and kill for their communities that there are consequences more fearful even than death. Dishonor is usually what is held up as the primary "fate worse than death." If warriors can be made to believe—to hold as a conviction that grounds their very identities as warriors—that the worst thing that can happen to them is not they could die or be gravely injured, but that they could lose their honor, and if they are taught that the retention of their honor depends on maintaining certain standards, even in the "fog of war," then the motivational problem is solved. This is not an easy thing to accomplish, but it can be done, and has been, for millennia.

Warrior codes are often conveyed through myths and legends about idealized warriors within a particular culture. These stories tell real warriors what is expected of them and help to define core concepts such as honor for their culture. The best of these stories are surprisingly effective across cultures, too, because they contain timeless truths about the warrior's experience that translate across time and space. A perfect example of this is Homer's epic of the Trojan War, the *Iliad*.

The theme of death before dishonor is certainly present in the *Iliad*. For example, after his dearest friend, Patroclus, is killed by the Trojans, the greatest Greek warrior, Achilles, vows to exact revenge by seeking out and killing Prince Hector of Troy. Achilles' mother, a sea goddess named Thetis, warns Achilles that if he pursues this course of action, it will lead inevitably (and swiftly) to his own death. Achilles answers her:

> That moment let me die; since t'was my doom not to defend my comrade slain in fight! Unaided in his dying hour, he fell, far distant from his country; . . . my prowess needed to repel the blow. . . . Now to war I go to meet the murderer of my friend. And death I will embrace whenever decreed by [Zeus] and the other blessed immortal gods. . . . Not even the strength of Hercules could death escape, though most of all mankind he was beloved of [Zeus]. . . . So also I, If fate like his be mine, must low be laid by death, the grim destroyer! Glory now, the [reward] of heroes let me reap, . . . Stay me not, though fondly thou entreat me, even thou canst not persuade![7]

Notice that in addition to making the point that death would have been far preferable to him than the dishonor of having failed to be there to save his comrade, Achilles also stresses that death is unavoidable. Every mortal dies. It is the manner of death that matters, within the ethos of the warrior. Homer emphasizes this view again in several other points throughout the *Iliad*, such as in the following speech by the warrior (and mortal son of Zeus) Sarpedon, to his best friend and comrade, Glaucus:

> O Glaucus, . . . why are we honored most in Lycia, with high seats of dignity, with plenteous feasts and ever-flowing bowls? There all admiring gaze, as we were gods, and on the banks of Xanthus we enjoy a large domain, by public suffrage given, purple with vineyards, rich with waving wheat. Now, therefore, 'tis our duty in the front to stand of all the Lycians, breasting first the fiery brunt of battle; that of us our mail-clad warriors may with plaudits say, "Not without glory do our [leaders] maintain their royal state; not merely do they feast on dainties, and drink wine abundantly, as honey sweet, but are distinguished, too, by valor, and conspicuous in the van[guard] of Lycia's heroes!" . . . Could we, shunning this war, forever be exempt from feeble age and death, I would not then among the foremost in the field advance, nor to the glorious combat thee exhort. But since the fates press on us nevertheless, and death, from causes numberless, impends, which man by care or flight can never evade, now let us march, to give some foe renown, if fall we must, or glory win ourselves.[8]

This argument could be quite persuasive: since no one can avoid death altogether, it does not make sense to compromise values for the sake of avoiding death temporarily. The moral psychology of the warrior code thus moves the motivational emphasis to maintaining the proper norms of the warrior caste, rather than merely trying to survive.

The *Iliad* also famously depicts how even a warrior as skilled in combat as Achilles can lose status and respect—and the love of the gods—by violating the code of the warrior. After killing Prince Hector, Achilles ties the naked corpse of his fallen enemy behind his chariot and drags it around the walled city of Troy. His rage unabated, Achilles then proceeds to continue to desecrate the body of his fallen foe by dragging it around the tomb of Patroclus. This treatment of the enemy dead is unacceptable to all, including the Olympic gods.

Infuriated, the god Apollo vents his disgust at Achilles' violation of the rules of war:

> His twisted mind is set on what he wants,
> As savage as a lion bristling with pride,
> Attacking men's flocks to make himself a feast.
> Achilles has lost all pity and has no shame left.
> Shame sometimes hurts men, but it helps them, too.
> . . . But this man? After he kills Hector,
> He ties him behind his chariot
> And drags him around his dear friend's tomb.
> Does this make him a better or nobler man?
> He should fear our wrath, good as he may be,
> For he defiles the dumb earth in his rage.[9]

Achilles' moral failure ultimately dooms him to an ignominious death at the hands of the cowardly Prince Paris.

The Roman philosophy of Stoicism (which had Greek roots but found its most robust development in the work of Roman Stoics) similarly downplays the importance of other goods, including staying alive and uninjured, when set against possible moral harms. The Roman statesman and Stoic author Cicero made no bones about how he ranked concerns about physical safety as opposed to the demands of honor and morality in his essay "How to Make the Right Decisions":

> [A] man who wrongs another for his own benefit either imagines, presumably, that he is not doing anything unnatural, or he does not agree that death, destitution, pain,

> the loss of children, relations, friends, are less deplorable than doing wrong to another person. But if he sees nothing unnatural in wronging a fellow-being, how can you argue with him?—he is taking away from man all that makes him man. If, however, he concedes that this ought to be avoided, but regards death, destitution, and pain as even more undesirable, he is mistaken in believing that any damage, either to his person or his property, is worse than moral failure.[10]

Certainly, not every soldier in the Roman legions adopted Stoic ideals, any more than all Greek warriors were guided by the *Iliad*. Nevertheless, these arguments were present in the cultures and provided a way for leaders and trainers of warriors to build the case for ranking other values ahead of survival, even in war.

The Roman Emperor Marcus Aurelius, who was a dedicated Stoic and also a successful general, made appeals along the same lines throughout his famous work, the *Meditations*. As I note in *The Code of the Warrior*:[11]

> The wisdom of Marcus Aurelius and his stoic predecessors would have directed the legionaries not to allow the loss of their comrades to affect their performance in battle or the completion of any of their professional obligations. Seeing your best friend skewered by a Gaulish spear would be no excuse for falling out of step in an advance or failing to keep an adequate watch the following day. According to the stoics, it is your choice whether or not to let any experience distract you from your duties. Emotional disturbance is just an indication of weakness of will.

Marcus provides a useful image for aspiring Stoics to hold in their minds to keep them focused on maintaining their personal honor and behaving virtuously (performing their moral duty) no matter what occurs around or to them and with no regard for the reactions of others:

> 15. Whatever the world may say or do, my part is to keep myself good; just as . . . an emerald . . . insists perpetually, "Whatever the world may say or do, my part is to remain and emerald and keep my color true."[12]

Nor does the emperor hesitate to spell out the military applications of this Stoic instruction to remain true in all situations and at all costs. Always, he returns to the theme that to endure physical pain and/or death is vastly preferable to suffering the loss of honor that must necessarily attend any act of cowardice or dereliction of duty. For example, to emphasize the need for the Stoic warrior to set aside any concern for his own well-being when military objects are at stake, he draws on a quote from the Greek philosopher Plato, whom he holds in high regard for recognizing the moral importance of service to the state:

> 45. For thus it is, men of Athens, in truth: wherever a man has placed himself thinking it the best place for him, or has been placed by a commander, there in my opinion he ought to stay and to abide the hazard, taking nothing into the reckoning, either death or anything else, before the baseness of deserting his post.[13]

The ethos promoted by Marcus Aurelius acknowledges the potential competing motivations that might influence a warrior to stray outside his assigned role, but then sternly insists that such motivations can and must be overridden by the higher demands of duty. He even goes so far as to demand that his troops not waver from their obligations in the face of torture—a point he emphasizes in this unforgiving statement on pain:

> 33. Of Pain. If it is past bearing, it makes an end of us; if it lasts, it can be borne. The mind, holding itself aloof from the body, retains its calm, and the master-reason remains unaffected. As for the parts injured by the pain, let them, if they can, declare their own grief.[14]

This message is taken to a different extreme in the Norse (or "Viking") portrayal of ultimate warrior commitment found in the *Saga of the Volsungs*. In this work, the concept of honor is unfortunately linked to the responsibility to exact revenge for wrongs done to members of one's family or clan. Therefore, it represents a greater departure from the notions of military ethics found in the just war tradition or most modern militaries. Nevertheless, the *Saga*, like the other traditions cited, forcefully echoes the idea that no other potential or actual harms should be considered more important than maintaining honorable conduct.

One of the main characters in the *Saga* is Signy, proud daughter of the Volsung clan. Signy is literally willing to do anything in order to restore her family's honor by avenging the murder of her father. She goes to disturbing lengths to arrange the death of her father's killer, including sacrificing her children's lives, sleeping with her own brother (to produce a pure-blood Volsung to help with the revenge plot), and ultimately walking into a deadly fire:

> Now you shall know whether I remember the slaying of King Volsung by King Siggeir. I had our children killed when I thought them too slow in avenging our father, and I came to you in the forest in the shape of a sorceress, and Sinfjotli is our son. Because of this he has so much zeal; he is a child of both a son and a daughter of King Volsung. In everything I have worked toward the killing of King Siggeir . . .[15]

While we may not be attracted to the Viking perspective on what constitutes honorable conduct (indeed, it is deeply troubling), it still presents another noteworthy example of a warrior ideal that elevates the commitment to duty above any other consideration, even the powerful mother-child bond or the nearly universal incest taboo.

Looking beyond the West, the same lessons are conveyed through the legends of many Native American tribes. For example, the Crow tribe of North America has a creation story that again emphasizes the importance of not letting concern for physical well-being rise above the expression of warrior virtues, such as courage. Note how the Crow distinguish themselves from others in this traditional telling of their creation story:

> That Old Man Who Did Everything . . . made the people out of clay as he had made everything else. He made three groups of men and women. He set them on the ground in front of him, while he made some clay arrows. He put the arrows in a row on the ground a long way away from him.
>
> Then That Old Man Who Did Everything said to the clay people, "I do not know which group of you is the bravest. I want only brave people. I will test you to find out. Run. Run through the arrows, and the one that goes through them will be my people, and will learn many things!"
>
> The first group started to run, but when they came to the row of arrows they were frightened and stopped in their tracks. They could not go on, and they fell to the ground.
>
> "Get up," ordered That Old Man Who Did Everything. "Go away. You cannot be my people." Then he told the second group to run through the arrows, but they were frightened, too, and turned back.

> "Go like the others," That Old Man Who Did Everything said to them.
>
> Nobody knows anymore who these two groups of people were. They were Indians, but what Indians has been forgotten.
>
> Now That Old Man Who Did Everything told the third group to run through the arrows, and they did. If they were frightened they did not show it.
>
> "You are very brave people," said That Old Man Who Did Everything. "You will be my people, and I will give you helpers to teach you. Where you live shall be the center of the world."
>
> That is why the Crows lived . . . between the mountains and the plains, and . . . why all the other tribes respected and feared them.[16]

An autobiographical story on the same theme of courage overcoming the fear of death is told by Chief Joseph White Bull (Pte San Hunka) from the Miniconjou band of the Teton Sioux tribe, recounting his first experience "counting coup," which was a warrior rite of passage:

> They shot at me but didn't hit me. That was good. It was one of these Flatheads that I counted coup upon. My father was a chief and because of this I showed no fear. It was because of him that I wanted to be in the thick of the fight. It was a hard thing to do but I accomplished it. They were all shooting at me but they didn't hit me. I was right in the middle of things. Afterwards they [the enemy] pursued me a long way, clear back to my own lines. It was a great fight. I did this difficult deed and count it among my coups, my friend.[17]

There are many more examples like this of warrior's codes that require selfless (and, in some cases, seemingly senseless) risk-taking in the name of honor. To give one more vivid illustration, consider the lessons given to Japanese warriors being trained in the bushido tradition of the samurai. The very first rule of the *Budoshoshinshu*, a sort of samurai primer, is "Make Life Replete, Constantly Thinking of Death."[18] The samurai (or samurai in training) is not supposed to think of death with fear or concern, but rather to let the potential for death at any moment motivate him always to do his very best work and maintain strict standards of honor. Then, whenever death does occur, he will run little risk of being caught unawares and dying without his affairs in order or with some stain on his or his family's honor. This point is emphasized again in Lesson 33, "Complete One's Duties Within the Day: One Second Ahead Is Uncertain":

> [I]f one thinks that the world will go on without change and that he will have unlimited time in which to perform his duties, as time passes he will become bored with things, his mind will slacken, and his spirit will become negligent. He will put off until tomorrow not only his lord's more unpressing concerns, but also those that should be briskly talked over and brought to a conclusion, and thus matters will pile up and be neglected.[19]

Samurai culture placed great emphasis on the service aspect of the warrior's calling. Every warrior was a servant to his master(s). Samurai were required to protect and preserve not only the lives of those they served, but also their honor and public image. This guardian role, again common to many warrior cultures, creates the expectation that a samurai would not only overcome the fear of death, but would actually be happy to die in the service of fulfilling his duty:

> Say a person . . . did not establish a resolution to die. With such a cowardly disposition how could this man face the battlefield and meet with an enemy that bore him no grudge at all? Nor could he be struck down splendidly in battle with only thoughts of not being lacking in righteousness.[20]

To be "struck down splendidly" was seen as the fulfillment of the samurai's purpose or reason for existence—a fate to be sought, not avoided. Only if this guardian role were fulfilled, could society flourish:

> If there were only one such deeply resolved warrior at the side of every feudal lord, thoughtful only of putting his life on the line for his master and being his safeguard, . . . evil and treacherous men with the minds of devils and vicious spirits would hesitate to act, and perverse and unrighteous deeds would cease to be done.[21]

Note that none of these warrior codes endeavors to motivate warriors by appealing to external factors beyond the warrior's control, such as the nature or behavior of the enemy. Reliance on contingencies can only weaken a code's force, potentially to a disastrous degree. They are all grounded in an approach that tries to shape the identity of the warrior and his or her internal values so that the warrior will give priority to maintaining high standards and commitments, even under great pressure. Essentially, these codes depend on changing the balance of influence within the warrior so that the commitment to honor outweighs that to safety, or even survival. Warriors in these traditions are indoctrinated to accept that their lives will not be worth living if they fail to live up to the code's demands.

Nor is it only historical cultures that produce these attitudes in their warriors. Former U.S. Senator Bob Kerrey, who was a U.S. Navy SEAL during the Vietnam War, discussed his experiences with a reporter. He shared his agony at having violated the modern rules of warfare, showing preference for the time-tested "death before dishonor" warrior ethos:

> As an inexperienced, 25-year-old lieutenant, Kerrey led a commando team on a raid of an isolated peasant hamlet called Thanh Phong in Vietnam's eastern Mekong Delta. While witnesses and official records give varying accounts of exactly what happened, one thing is certain: around midnight on February 26, 1969, Kerrey and his men killed at least 13 unarmed women and children. The operation was brutal; for months afterwards, Kerrey says, he feared going to sleep because of the terrible nightmares that haunted him.
>
> The restless nights are mostly behind him now, his dreams about Vietnam more reflective. One of those, which he says recurs frequently, is about an uncle who disappeared in action during World War II. "In my dream I am about to leave for Vietnam," Kerrey wrote in an e-mail message last December. "He warns me that the greatest danger of war is not losing your life but the taking of others' and that human savagery is a very slippery slope."
>
> [Kerrey] says he has spent the last three decades wondering if he could have done something different that night in Thanh Phong. "It's far more than guilt," he said . . . "It's the shame. You can never, can never get away from it. It darkens your day. I thought dying for your country was the worst thing that could happen to you, and I don't think it is. I think killing for your country can be a lot worse. Because that's the memory that haunts."[22]

Kerrey's experience taught him that there are fates worse than death, and the dream of his uncle reveals the depth of his internalization of that belief. Centuries later, he has illustrated Lesson Five of the *Budushoshinshu*, "A Sense of Shame Will Uphold Justice."

What does all of this tell us about Sergeant Blackman's murder of a Taliban fighter? For one thing, modern militaries interested in maintaining ethical standards must vigorously disassociate adherence to the rules of war from nearly all consideration of how the enemy behaves. Reciprocity cannot be the foundation for warriors to exercise restraint. To make it so is to hand one's values over to the enemy—to let one's enemy set the bar. Instead, the code of restraint adopted by warfighters must draw from and depend on their own core values and ethical commitments. The warrior's code can then play its vital role in protecting the warfighter from sacrificing his or her humanity and risking the psychological and spiritual damage that is often far more traumatic than any physical injury.

In addition, troops should be trained to recognize the potentially dangerous emotional and psychological impulses that realistically arise during military operations, such as the temptation to dehumanize the enemy. Warfighters need the ability to establish enough psychological distance from their opponents to be able to kill them, when necessary. As Lt. Col. Dave Grossman explains in *On Killing*:

> [D]istance in war is not merely physical. There is also an emotional distance process that plays a vital part in overcoming the resistance to killing. Factors such as cultural distance, moral distance, social distance, and mechanical distance are just as effective as physical distance in permitting the killer to deny that he is killing a human being.[23]

David Livingstone Smith notes in *Less Than Human* that this required distancing can be achieved through intentional dehumanization of the enemy:

> We are innately biased against outsiders. This bias is seized upon and manipulated by indoctrination and propaganda to motivate men and women to slaughter one another. This is done by inducing men to regard their enemies as subhuman creatures, which overrides their natural, biological inhibitions against killing. So dehumanization has the specific function of unleashing aggression in war.[24]

However, the distancing goal can be met less perniciously through neutral objectification (for example, using language such as "neutralizing targets"), rather than through encouraging hatred and disdain for their enemies.[25] Dehumanizing one's enemies into vicious subhumans can breed incidents such as the one for which Sergeant Blackman must pay with his freedom, and much worse. Livingstone Smith points out the horrifying role animalistic dehumanization played in producing atrocities on all sides of World War II:

> When we think of dehumanization during World War II our minds turn to the Holocaust, but it wasn't only the Germans who dehumanized their enemies. While the architects of the Final Solution were busy implementing their lethal program of racial hygiene, the Russian-Jewish poet and novelist Ilya Ehrenburg was churning out propaganda for distribution to Stalin's Red Army. These pamphlets seethed with dehumanizing rhetoric. They spoke of "the smell of Germany's animal breath," and described Germans as "two-legged animals who have mastered the technique of war"—"ersatz men" who ought to be annihilated. "The Germans are not human beings," Ehrenburg wrote, ". . . If you kill one German, kill another—there is nothing more amusing for us than a heap of German corpses."[26]

On the modern battlefield, our troops are asked, on the one hand, to fight an enemy with clear-sighted and dispassionate efficiency. We also expect them to adhere to the ethos and values of the modern military profession. At the same time, we want them to be sensitive to the mores of a foreign culture, winning the hearts and minds of its citizenry and forming strong and mutually trusting working relationships with members of its military. It takes an intense motivation for the commitment to an ethical code to override immediate, obvious, high-stakes self-interest such as the need to stay alive or preserve the lives of one's companions. Motivations that are external to the warrior are too contingent to be reliable in the context of combat. A robust warrior's code, well grounded in tradition and reinforced by ritual, can provide a powerful motivational force that can help troops summon the will necessary to show restraint, even when dealing with enemies who appear to have none.

Notes

1. Steven Morris and Richard Norton-Taylor, "Royal Marine must serve at least 10 years in jail for Taliban murder," *The Guardian*, December 6, 2013.
2. Michael Walzer famously—and controversially—addresses this issue with the doctrine of "supreme emergency" in his classic work *Just and Unjust Wars*.
3. See Lt. Col. Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (Boston, MA: Little, Brown & Company, 1996).
4. See Shannon E. French, and Anthony I. Jack, "Dehumanizing the enemy: The intersection of neuroethics and military ethics," *Responsibilities to Protect: Perspectives in Theory and Practice*, David Whetham, Ed. (Boston, MA: Brill/Martinus Nijhoff Publishers, 2015).
5. See Shannon E. French, "No separate sphere: Assessing character and morality in the context of war," *Philosophy in the Contemporary World*, David Chan, editor, special issue on War, Character, and Virtue, 19, no. 2, 2012 (pp. 50–60).
6. William Shakespeare, *Henry V*, Act III, Scene III.
7. Homer, *Iliad*, Munford trans. pp. 241–242 (Book Eighteen, lines 94–127).
8. Munford trans. pp. 437–438 (Book Twelve, lines 421–446).
9. Homer, *Iliad*, trans. Stanley Lombardo (Indianapolis, IN/Cambridge: Hackett Publishing Company, 1997), 24.45–59.
10. Michael Grant, *Latin Literature: An Anthology* (New York: Penguin Books, 1958), p. 35.
11. Shannon E. French, *The Code of the Warrior*, pp. 77–78.
12. Marcus Aurelius, *Meditations*, Book Seven, trans. M. Staniforth (New York: Penguin, 1964), p. 107.
13. Marcus Aurelius, *Meditations*, in *Ancient Philosophy*, Eds. Walter Kaufman and Forrest E. Baird (Englewood Cliffs, NJ: Prentice Hall, 194), p. 450 (quote from Plato's *Apology*).
14. Marcus Aurelius, *Meditations*, Book Seven, pp. 110–111.
15. Jesse L. Byock, trans., *The Saga of the Volsungs: The Norse Epic of Sigurd the Dragon-Slayer* (Berkeley, CA: University of California Press, 1990), p. 47.
16. Alice Marriott and Carol K. Rachlin, *Plains Indian Mythology* (New York: Thomas Y. Crowell Company, 1975): 32–33.
17. Chief Joseph White Bull, *The Warrior Who Killed Custer: The Personal Narrative of Chief Joseph White Bull*, translated and edited by James H. Howard (Lincoln, NE: University of Nebraska Press, 1968), pp. 43–44.
18. William Scott Wilson, trans., *Budoshoshinshu: The Warrior's Primer of Daidoji Yuzan* (Santa Clara, CA: O'Hara Publications, 1984), p. 19.
19. Ibid.: 81.
20. Ibid.: 50.
21. Ibid.: 127.
22. Gregory L. Vistica, "One awful night in Thanh Phong," *New York Times Magazine*, April 25, 2001.
23. Grossman, *On Killing*, p. 158.
24. David Livingstone Smith, *Less Than Human: Why We Demean, Enslave, and Exterminate Others* (New York: St. Martin's Griffin, 2012), p. 71.

25. See again French and Jack, "Dehumanizing the enemy."
26. Livingstone Smith, *Less Than Human*, p. 16.

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13

MILITARY ETHICS

From Theory to Practice

Brigadier General Benoit Royal[1]

Permit me to begin by explaining my state of mind a number of years ago, when I first began to reflect seriously about the problems of fostering ethics in military service.

I. Teaching Military Ethics in the Midst of Field Operations

The event I recall took place in 2004 when, as a young colonel, I commanded a regiment in Britain. Once each year I would gather all my section chiefs, officers, and NCOs, in a retreat setting outside of the regiment boundaries, in order to conduct a leadership seminar. A few weeks prior to my annual gathering in 2004, the French Army had learned of an incident that took place in the Ivory Coast, where several thousand of our French soldiers had been engaged since 2002 in a peacekeeping operation, mediating a conflict between the regular forces, on the one hand, and "rebel" forces who had attempted a coup. This was dubbed "Operation Unicorn."

The mission of our troops in that country was to establish a buffer zone between the different armed groups, in order to allow for a political settlement of the situation. During this time, in the north, an Ivorian highwayman known as "Mahé" had been terrorizing the local population. Recognized as a murderer and rapist, he had already been captured once by the French soldiers, and had been handed over to the local police. He easily corrupted his guards, however, and was quickly released, whereupon he resumed looting and violence with his followers. He had subsequently been recaptured and injured, but on this second occasion had apparently died of his injuries during transport to hospital. A subsequent investigation of the circumstances of his death while in captivity, however, proved that he had actually been executed by suffocation with a plastic bag by French soldiers during his transport.

The military personnel who admitted the criminal act reported receiving explicit orders from their superior to ensure that—this time—the injured criminal should not reach the hospital alive. Proven beyond a reasonable doubt by the chief of staff of the Army, this case had provoked a great deal of controversy in the weeks leading up to my seminar. So I decided, then and there, to invite my section heads to reflect on this particular case. Out of the blue, I surprised them with the question: "If you had been in the place of the section chief in this vehicle, and received from your supervisor an order to execute this prisoner, what would you have done?"

Long seconds passed without anyone reacting. Then I caught the eye of a young lieutenant, who had just arrived to spend a year in our regiment, and I directed the challenge to him. He replied with some vivacity, "I think I would have done the same! This guy really got what he deserved. He was a bastard!"

I was a little shocked at first by this spontaneous reaction, the opposite of what I had expected. I declined to respond at once, and continued to seek the views of other participants. Then an NCO turned to the lieutenant and replied: "You have no right to say that, sir. It is not for us to resolve the case of bastards. It's not our job. In my case, I would not have carried out the order."

I then waited for new reactions from other participants, which came slowly, because I could sense that my question was disturbing. It seemed to bother everyone, because it was clearly an issue that my soldiers had never before been asked to consider. I then directly solicited another lieutenant, whose facial expression seemed vague and troubled. He replied: "I confess, sir, I do not know what I would have done. I would have been pissed!"

II. Understanding the Inadequacies of Military Ethics Preparation

The remainder of the evening afforded me the opportunity to fulfill my role as an educator of consciences and to disseminate various lessons that I had prepared for my subordinates. That opening scene puzzled me, however, because I did not imagine that there could be such a lack of ethical reflection among my young professionals. This event marked the beginning of my approach to the subject of ethics education.

In fact, what I took initially to be a lack of ethical reflection among my cadres was actually a lack of ownership or internalization by them of their theoretical teachings, and a kind of failure to translate the broad principles of moral behavior into everyday situations. All of these men had been exposed to a quality education in ethical theory. They had learned the rules of war and the law; they had read the philosophers. But these readings remained trapped in some remote recess of the brain. The only one who responded to my question was a sergeant, well experienced in the field of conflict and military operations, even if less formally educated in other respects.

This bears directly on the underlying purpose of this handbook: namely, to understand the foundations of military ethics in the customs and best practices of military professionalism itself. On this topic, I wish to offer three observations.

1. Every military organization or service must have a solid foundation in fundamental theory at many different levels.

Specifically, two types of documented theoretical reference points are absolutely necessary to prepare the minds and moral consciences of military personnel. The first is a document that sets out a philosophical understanding of the great moral values and principles that underlie military customs and practices. This document is often drawn from a reflection on the historical experience of many nations, and aimed at recovering and setting forth many of the fundamental values emerging from that historical experience. For our British comrades, the relevant document is "The Military Covenant," while our military comrades in Germany point to the directive describing their fundamental conception of "*Innere Führung*," or "Inward Leadership." In France, it is "The Exercise of the Profession of Arms: Foundations and Principles." I did not find any equivalent document for our American comrades.

This approach is intellectually necessary because it helps set the general moral framework within which the military will come to operate. Because such foundational documents are often

a bit complex for the ordinary, practical level of performance, however, these texts must be complemented by other writings, more directly translatable into action in accordance with the different laws and regulations of our own respective nations, or that of a host government or nation within which we may operate.

From the opposite side, the ordinary soldier needs a different, much simpler and more straightforward document, written in the form of commands or codes (a "code of honor," or a "soldier's code"). This approach to inculcating moral values is often ritualized, but it is also directly comprehensible at even the lowest ranks, and by soldiers on the ground, facing the complexity of combat action. Sometimes, to be sure, the character of these codes seems almost like a simplistic caricature of the fundamental moral values they incapsulate. Nonetheless, they are of particular importance in allowing a military organization to highlight what is considered essential "ground truth." These documents are generally condensed or reduced to lists of simple and accessible commands or principles comprehensible to all. We find these in virtually all armies: the "Soldier's Code" (France), the British "Soldier's Oath," the American "Soldier's Creed," and so forth.

2. The foregoing documents may not be sufficient in themselves, and ethics education must be supplemented by the study of historical and contemporary case studies at three distinct levels of the military hierarchy: the officer, the NCO, and the enlisted rank and file.

The case I discussed above illustrates this principle. It demonstrates the need to ask questions about specific and realistic situations, which should prove to be important even in the eyes of those who think themselves to be experienced. There should be many such examples that encourage military personnel, both men and women, to reflect substantially on what they themselves might have done in the given circumstances.

In training my staff officers, for example, I typically provided summaries of 10 case studies and invited my lieutenants to discuss and vote among themselves on a particular solution. I provided all participants with the power to choose, and then showed them the solution that was chosen in reality. I then showed them the consequences of those decisions, and we would discuss the circumstances even further. These sessions constituted essential training, and were very well accepted.[2] In France, we customarily provide such discussion sessions and case studies for our junior and senior officers, but we do not do nearly enough at the other levels of command (such as chief warrant officer and enlisted ranks), although such training is essential for them as well.

3. Finally, and perhaps of greatest importance: ethics education must be removed from the classroom in order to infuse and nurture all aspects of operational readiness on the ground.

It is essential that ethical reflection should take place in the midst of field exercises. It must leave the comfortable classroom environment, in which everyone has the luxury to reflect on the cases presented, taking time to think apart from all operational pressure. Instead, the idea is that there should not be a single field exercise without at least one case study in ethics included within that exercise. The aim is to accustom military personnel to embedding these moral reflections within their execution of tactical actions in the field, in the midst of difficulties, under the pressure of time, weather, and real stress. We have to understand that the behavior of a soldier in combat must be constantly influenced by the spirit and the core values we have taught them, and come to recognize that there is no boundary between theory and practice.

The goal is not to provide "typical recipes" that will work every time. It is unrealistic to attempt to classify field situations. There will always be specific cases in which a good solution can never be found, but in which a solution will be instead the "least bad solution." It is well to ensure that we have equipped our military to prepare for these tricky situations, and allow them to develop solutions or responses whose consequences they will be able to bear. The more they have confronted such situations in advance, the better they will have been equipped and trained to respond, and the easier they will find it to make a conscientious and appropriate decision when the time comes.

III. Conclusion

Napoleon used to say to his men: "In battle, the happiest initiative is often a reminiscence." We may, however, reverse this adage with regard to ethical behavior in combat. In war, when a decision is needed urgently, the solution that emerges is itself often reminiscent of the lessons learned, the actions performed, and the moral values that everyone has cultivated themselves. These values, these pillars that will help to arm the conscience of soldiers, develop more readily if they are grounded in:

1. education that refers to an entire hierarchy of documents of different scope: aimed at both philosophical understanding and practical implementation, as well as compliance with the established provisions of codes of conduct;
2. education that does not fail to incorporate the extensive study of historical cases (and often mistakes) and other concrete examples that demonstrate the best possible application of theoretical principles; and
3. education that is carried out in the field, where it is conducted under the pressure of events, so as to fit into the daily operational readiness of the military.

Under these conditions, the best—or sometimes, at least, the "least bad"—solutions naturally come to mind, as the result of reflections, readings, and prior experience.

History has shown that technical strength alone cannot defeat an enemy consistently. The "naked sword" is not enough. We need also the spirit that animates the sword. This spirit is the spirit of ethics in action, defending well-established moral values. The spirit of the sword is a way to conduct a war action founded upon beliefs that, in turn, are rooted in the conscience of each and every individual soldier, and which serve to galvanize their collective action. This spirit is itself founded on a delicate balance between the causes defended through the strength of a group, and the values transmitted and taught through military ethics.

Notes

1. This chapter is based upon the author's presidential address for the fourth annual meeting of the European chapter of the International Society for Military Ethics in Koblenz, Germany on May 26, 2014; translated from the French by George R. Lucas, Jr.
2. For examples of such cases and discussions, see my recent book *L'éthique du soldate français—La conviction d'humanité*, 2nd ed. (Paris: Economica, 2010). Trans., *The Ethical Challenges of the Soldier: The French Experience* (Paris: Economica, 2012).

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14

MILITARY ETHICS IN SUN TZU'S *THE ART OF WAR* AND ITS CONTEMPORARY SIGNIFICANCE

Colonel Shang Wei

Sunzi, or Sun Tzu, was the greatest military strategist in ancient China. It has been over 2,500 years since the advent of his masterpiece, *The Art of War*. In this long historical river, *The Art of War* not only has been worshiped by military commanders of various eras in China, but also has been revered as a military classic around the world. In the preface to an English translation of *The Art of War*, Liddell Hart, a famous English strategist, pointed out that the thoughts of this ancient Chinese military strategist living over 2,500 years ago are very beneficial to the study of wars in the nuclear age.[1] In fact, the guiding theories on military affairs contained in *The Art of War*, a pamphlet of just 6,000 Chinese characters, still have very important realistic meaning in the current age of information. In particular, the military ethics in this treatise deserves due learning and reflections by contemporary people.

I. Reconciling Sun Tzu's Emphasis on War with his Discretion Regarding War

Putting an emphasis on the importance of war is the root of Sun Tzu's military thoughts. Sun Tzu gave military affairs and war the paramount position in the affairs of state. He said at the very beginning of *The Art of War*: "The art of war is of vital importance to the State. It is a matter of life and death, a road either to safety or to ruin. Hence it is a subject of inquiry which can on no account be neglected."[2]

Laying stress on war necessitates the solid strength accumulated for war and the adequate preparations made for war. One of Sun Tzu's important doctrines concerning the use of force is: "The art of war teaches us to rely not on the likelihood of the enemy's not coming, but on our own readiness to receive him; not on the chance of his not attacking, but rather on the fact that we have made our position unassailable" (VIII: 11, "The Nine Variables").

Sun Tzu, however, was not a warmonger. On the contrary, while he gave military affairs and war an extremely important position, he advocated discretion regarding war. In his opinion, war is accompanied with many disadvantages. He observes, for example, "when your weapons

are dulled, your ardor damped, your strength exhausted and your treasure spent" (II: 4, "Waging War"), and "the daily expenditure will amount to a thousand ounces of silver. There will be commotion at home and abroad" (XIII: 1, "The Use of Spies"). He also cautions, "other chieftains will spring up to take advantage of your extremity. Then no man, however wise, will be able to avert the consequences that must ensue" (II: 4, 15–16, "Waging War").

Therefore, Sun Tzu was extremely cautious about waging war. He emphasized one basic principle, namely "Move not unless you see an advantage; use not your troops unless there is something to be gained; fight not unless the position is critical. If it is to your advantage, make a forward move; if not, stay where you are" (XII: 17, "The Attack by Fire"). He also admonished people that "a kingdom that has once been destroyed can never come again into being; nor can the dead ever be brought back to life," and consequently, "no ruler should put troops into the field merely to gratify his own spleen; no general should fight a battle simply out of pique" (XII: 21, 17, "The Attack by Fire"). Undoubtedly, the rational core of simple military humanitarianism is contained in all these views, which shine with a military strategist's deep-level perceptions of loyalty to the state and protection of the people, with his profound reflections on the values of war, and with his human-centered concern over the destiny of the state.

Closely related to his emphasis on war and discretion in war, Sun Tzu attached great importance to "preventing the junction of the enemy's forces" (III: 3, "Attack by Stratagem"). Sun Tzu was living in a strategic environment highly different from our present time, of course, but his situation has one similarity with ours: namely, "multi-polarization." During the Spring and Autumn Period in ancient China, the royal families were declining and the feudal princes contended for hegemony. There were checks and balances among them, imposed in part by who harbored intentions to kill their rivals. Therefore, a slight move in one part might affect the situation as a whole, and a misstep might lead to utter destruction. In this kind of complex "multipolar" landscape, the optimal means of competition was *not* direct "victory in battles and success in attacks" (XII: 15, "The Attack by Fire"), but gaining benefits by relying on different forces to inhibit the onset of war while waiting for opportunities to arise.

It was because of this that Sun Tzu attached extremely great importance to achieving political aims by means of "preventing the junction of the enemy's forces." The so-called "preventing the junction of the enemy's forces" is to disrupt the enemy's alliances through diplomatic struggles, so that "the enemy's allies are prevented from joining against him" (XI: 12, 54, "The Nine Situations") and that the enemy will not dare to hastily wage a war because the enemy does not have enough manpower and resources. Meanwhile, his own alliances should be expanded to "ally himself with all and sundry" (XI: 55, "The Nine Situations") and establish an extensive unified front.

The strategic environment of modern war is extremely complex. Any country or any bloc of countries, no matter how powerful, which brazenly wages war in violation of the will of the international community will not achieve its ultimate political aims. Indeed, sometimes the losses may even outweigh the gains, although it may win military victories for the time being. As a result, in the system of modern international relations, the actors concerned ought to be more rational, and give adequate consideration to the extremely cruel and destructive consequences of modern wars, so that they can be more cautious in dealing with war.

It must be noted that abiding by the principle of "fighting not unless the position is critical" (XII: 17) is not equivalent to weakness and cowardice. Likewise, blindly using all armed might to indulge in aggressive wars may cause the warmonger to be stuck in the mire of war and unable to help himself out of it, thus leaving endless troubles in his wake. Thus, in the face of various crises and conflicts, the international community, especially the parties concerned, should spare no effort to carry out diplomatic activities so as to avoid as much as possible the outbreak

of war. In case the curtains of war have been drawn, both warring parties should try their best to minimize the damage caused through their use of force, and, as the war progresses, they should continue their diplomatic mediation to strive for an early end of the war and the achievement of peace.

Following the end of active hostilities, both sides should try their best to solve their contradictions and differences via diplomatic negotiations, and adopt the good neighbor policy that "in country where high roads intersect, join hands with your allies" (XI: 9, 50, "The Nine Situations") so as to improve mutual understanding and erect a bridge of friendship and reciprocation. Otherwise, even the winning side may face a variety of dangers, and discover that it cannot properly handle various potential situations and take appropriate methods to tackle them. This is exactly what Sun Tzu meant by saying that "unhappy is the fate of one who tries to win his battles and succeed in his attacks without cultivating the spirit of enterprise" (XII: 15, "The Attack by Fire").

II. The Unification of Victory in "Tao" (the Moral Law) with "Complete Victory"

The direct goal of war is to win a victory, which is also a core concept in Sun Tzu's *The Art of War*. On the issue of how to attain the goal of "wining a victory," however, Sun Tzu developed a consummate approach: namely, the unification of victory in "Tao" (the moral law) and a complete victory.

"Tao" is an important category in ancient Chinese philosophy, but, due to their different ideological systems, different philosophers and thinkers have different understandings of the connotation of "Tao." For example, the "Tao" of Lao Tzu, the Chinese philosopher of the late Spring and Autumn Period and founder of Taoism, emphasizes particularly the origin and laws of everything in the universe. Lao Tzu's is thus a kind of "Tao of laws" and "Tao of nature." However, the "Tao" of Confucius, the founder of Confucianism, places emphasis instead on the norm and moral character of social ethics and is a kind of "Tao of etiquette" and "Tao of culture."

In Sun Tzu's *The Art of War*, a polysemous use of the concept of "Tao" can be found here and there. The so-called "Tao" in military victory and "Tao" (the moral law) mainly means that Sun Tzu regarded "Tao" (the moral law) not only as a common political pursuit of the sovereign and his subjects, but also as the all-important condition in winning victory in war. In Chapter 1, "Laying Plans" or "Estimates," Sun Tzu ranked "Tao" (the moral law) at the top of the "five constant factors" (I: 4), and, similarly, he put "which of the two sovereigns is imbued with the moral law?" as the very first of the "seven considerations" when forecasting victory or defeat. In Chapter 4, "Tactical Dispositions," Sun Tzu once again pointed out that "the consummate leader cultivates the moral law, and strictly adheres to method and discipline; thus it is in his power to control success" (IV: 16). Sun Tzu repeatedly emphasized that the sovereign should be "imbued with the moral law" through "cultivating the moral law" in order to maintain a well-regulated political environment and form a strategic posture for victory.

In Sun Tzu's time, being "imbued with the moral law" conveyed a very high stature. In Book II, "Duke Hwan," of *Zuo Zhuan* (or *Tso Chuan*), sometimes translated as the *Chronicle of Zuo* or the *Commentary of Zuo*, there is the following description:

> The sovereign ought to be loyal and faithful to his subjects. In all the three important farming seasons of spring, summer and autumn, no harm should be done to the cause of husbandry so that the people can cultivate their farmlands in good order and lead

> a harmonious life while expecting fruitful years. As far as his actions are concerned, the sovereign should be fair and square and make good friends with the neighboring states. At the same time, the sovereign should be able to share happiness and woe with his people and he is perfectly justifiable and dispatch troops with just cause when it is necessary to use force to fight wars. Thus, the people will not harbor hatred and libel against the sovereign and such a sovereign then can be said to be wise emperor who is imbued with the moral law.[3]

Sun Tzu himself held that only by being "imbued with the moral law" could a sovereign arouse the people's enthusiasm in politics and "cause the people to be in complete accord with their ruler, so that they will follow him regardless of their lives, undismayed by any danger" (I: 5, "Laying Plans" or "Estimates"). He taught that people at all levels are of one mind, act in synergy and unity, live and die together, and fight staunchly; and that if they have to fight against any enemy, they will win victory. Therefore, pursuing victory in "Tao" (the moral law), if viewed on the surface, requires the decision-maker to step out of the purely military mindset and resort to political and moral means to achieve victory in war. When viewed at a deep level, it emphasizes that the decision-maker should bring the intellectual factor into full play, employ means of stratagems, plan effectively for the overall situation of the war, win over the hearts of people, mobilize their strength and resources, inspire the morale of his own side, and disrupt the morale of the enemy in order to discern a war posture that will bring victory first to him.

Sun Tzu emphasized not only victory in "Tao" (the moral law), but also the pursuit of a "complete victory." By "complete victory," he meant that one should force the enemy to submit to one's own will and attain the goal of achieving victory by using as much bloodless (or less bloody) means as possible. In the Spring and Autumn Period in which Sun Tzu lived, even if a state won a war at the cost of "dulling its weapons, damping its ardor, exhausting its strength and spending its treasure" (II: 4), it might become the next state to be annihilated. Therefore, in order to seek hegemony under heaven, any state should not simply hope for "emerging victorious in every battle," but instead emerge victorious by "breaking the enemy's resistance without fighting" (III: 6). This is the very core of Sun Tzu's "complete victory" strategy.

More centrally, Sun Tzu's conception of winning a "complete victory" by "breaking the enemy's resistance without fighting" not only is an extremely sophisticated military strategic pursuit, but also implies a higher pursuit of the values of pacifism. This kind of humanitarian spiritual character in the yearning of people in the world embodies not only the care and respect for the life and the value of the military and civilian personnel on one's own side, but also the respect for and protection of the safety of the life and property of the enemy's military and civilians. In Book 3, "Attack by Stratagem," Sun Tzu pointed out at the very beginning that "[i]n the practical art of war, the best thing of all is to take the enemy's country whole and intact; to shatter and destroy it is not so good. So, too, it is better to recapture an army entire than to destroy it, to capture a regiment, a detachment or a company entire than to destroy them" (III: 1). Subsequently, he wrote: "Therefore the skillful leader subdues the enemy's troops without any fighting; he captures their cities without laying siege to them; he overthrows their kingdom without lengthy operations in the field. With his forces intact he will dispute the mastery of the Empire, and thus, without losing a man, his triumph will be complete. This is the method of attacking by stratagem" (III: 6–7).

This shows that Sun Tzu's outlook on war has already crossed the boundaries of war itself and entered into the sublime ideal stature of "forestalling war with war." This kind of "laying no siege" mindset can greatly preserve one's own war strength and reduce the enemy's violent destruction, thus being very beneficial to both sides in their recovery of economic development,

stabilization of social life, weakening in the will to resist, alleviation of the revenge mentality, and rebuilding of peaceful bilateral relations. This was not only true for that time, but also remained very obviously an advanced viewpoint, even during the early stage of mankind's entry into the industrialized society.

In the current era, all kinds of emerging technologies have entered into the military field rapidly and the outcomes of war have become even more cruel. For the sake of his own survival and that of earth, mankind has been exploring ways, such as signing disarmament and nuclear nonproliferation treaties, to keep war at bay. Some forces in the international community, however, still embrace the bold-faced law of the jungle. For the sake of narrow-minded and even irrational "national interests," they disregard the moral principles universally held by humankind and ignore the ultimate concern for all of society. By only relying on "gentlemen's agreements" between major powers, humankind cannot forestall wars fundamentally. It is an imperative instead to compel the world to change our conceptions in the face of conflicts of interest and ecological disasters, so as to enable us to explore new paths. Although Sun Tzu's "complete victory" concept, that "to subdue the enemy without fighting is the acme of skill," is somewhat idealistic and may not be fully applicable in the practice of war, it can guide humankind to employ a new way of thinking to assess strategic objectives, examine the course of war, and foresee the outcomes of war. In particular, the pacifist tendency and humanitarian feelings contained in his thought are profoundly in line with the aspirations of the world's peoples, who collectively yearn for peace and development. In addition, these concepts of Sun Tzu have great military strategic value, as well as significance for military ethics, which cannot be underestimated, in striving for and keeping peace, as well as in forestalling and opposing wars. Hence, Sun Tzu's "complete victory" conception is worth spreading far and wide, and passing on from one generation to another.

III. The Art (Tao) of Combining Benevolence with Statutes to Govern the Military

Soldiers are the main body of the armed forces and are the primary element of war-fighting capabilities of any armed forces. When discussing the art of governing and operating the military, Sun Tzu not only emphasized strict military discipline and rigorous enforcement of regulations and instructions, but also stressed the fundamental role of benevolence, suggesting the principle of benevolence in both running the military and deciding to deploy armed forces. Both aspects are in parallel and used in an integrated way.

In the first chapter of *The Art of War*, "Laying Plans" or "Estimates," Sun Tzu raised the question, "On which side is discipline most rigorously enforced?" and placed it in a subordinate position after the first three questions, which were: "(1) Which of the two sovereigns is imbued with the moral law?", "(2) Which of the two generals has most ability?", and "(3) With whom lie the advantages derived from Heaven and Earth?" Thus, he placed military discipline only at the fourth position among the seven major determinants of victory or defeat in any war.

Emphasizing the rigorous enforcement of regulations and instructions requires the proper formulation of such statutes in the first place. In Book 1, "Laying Plans" or "Estimates," Sun Tzu pointed out: "By method and discipline are to be understood the marshaling of the army in its proper subdivisions, the graduations of rank among the officers, the maintenance of roads by which supplies may reach the army, and the control of military expenditure" (I: 10). That is to say, Sun Tzu elaborated his ideas on the organization, establishment, tasks, and duties of armed forces, as well as the charge of military supplies and materiel.

With the proper statutes having been made available, the commander must then have a definite awareness of the statutes and conduct a proper orientation to these statutes among officers and enlisted ranks, in order to guarantee that "military orders are like mountains" (namely, military orders must be obeyed). Otherwise, "when the general is weak and without authority and when his orders are not clear and distinct," the soldiers "will be like spoilt children." Likewise, "when he is indulgent, he is unable to make his authority felt; when he is kind-hearted, he is unable to enforce his commands and incapable of quelling disorder" (X: 18, "Terrain"). Under such circumstances, "they are useless for any practical purpose" (IX: 42), and, even if they are used, he will incur defeat with certainty.

Meanwhile, the enforcement of statutes must be fair and just, and faith must be kept in awarding recognition and executing punishment. In particular, the commander must give timely rewards to those officers and men who have fought the enemy bravely on the battlefield. Sun Tzu said: "there may be advantage from defeating the enemy, they must have their rewards. Therefore, in chariot fighting, when ten or more chariots have been taken, those should be rewarded who took the first" (II: 17). Sun Tzu also broke conventions and raised the novel prospect of "bestowing rewards without regard to rule" (XI: 56): that is, special rewards not specified by statutes and regulations, in order to maximally inspire the fighting spirit among officers and men. To be sure, any reward must be authentically deserved and convincing. Sun Tzu said: "If in training soldiers commands are habitually enforced, the army will be well-disciplined; if not, its discipline will be bad. If a general shows confidence in his men but always insists on his orders being obeyed, the gain will be mutual" (IX: 44–45).

In administering the armed forces, Sun Tzu not only emphasized statutes, but also stressed benevolence. Sun Tzu believed that generals and marshals should treat their soldiers in the way they treat their own children. He said: "Regard your soldiers as your children, and they will follow you into the deepest valleys; look upon them as your own beloved sons, and they will stand by you even unto death" (X: 25). This philosophy has been widespread in China, and has become one of the important ideals in traditional Chinese culture of military ethics. Since the creation of the Chinese People's Liberation Army (PLA), it has inherited this good tradition and carried it forward without interruption, and endowed it with new meanings. There has been unity and equality between officers and men. Superiors and subordinates are of one heart and one mind, just like close brothers with an internal relationship of solidarity, fraternity, purity, and harmony.

Sun Tzu's concept of benevolence is also embodied in his advocacy for being kind to prisoners of war (POWs). Starting from the perspective of reducing the harm of war, regarding the enemy soldiers captured in war, Sun Tzu advocated that "our own flags should be substituted for those of the enemy, and the chariots mingled and used in conjunction with ours. The captured soldiers should be kindly treated and kept" (II: 1, 17). We not only should keep them alive, but also should ensure that they receive kind treatment. Even in the aspect of their classification, we should not call them "captives," "prisoners", or "POWs," but should call them "soldiers," just like we call our own soldiers. This concept embodies Sun Tzu's rational reflections on the objectives and values of war, suggesting that he attained a rather elevated stature in his perception of human values, and went far beyond the confines of his time. When reflecting on the evil of human nature and the loss of morality and virtuous conduct exposed in those inhumane prisoner abuse incidents taking place in the modern civilized society in the twenty-first century, we are compelled to be full of respect for this great military strategist, who had such foresight and kindheartedness, even over 2,500 years ago.

Sun Tzu's *The Art of War* is broad and profound. The Chinese science of strategy is long-standing and well established. As John M. Collins, a famous contemporary American strategic

theorist, commented in his 1973 monograph *Grand Strategy: Principles and Practices*, Sun Tzu was the first great figure who formed his own strategic thoughts in ancient times. He finished writing the earliest famous treatise *The Art of War* sometime between 400 BC and 320 BC. His work can be put on a par with those famous works of different eras, including Clausewitz's *On War* (written 2,200 years later). Today, no one is more profound than him in conceptualizing strategic relations, raising important military issues to be considered, and so on. Most of his views still have equally important significance in our current political environment.

Notes

1. Sun Tzu, *The Art of War*. Trans. Samuel Griffin, with Foreword by B. H. Liddell Hart (Oxford: Oxford University Press, 1971).
2. Sun Tzu, *The Art of War*. Trans. Lionel Giles (London: The British Museum, 1910): Book I, 1–2. All references to Sun Tzu hereafter will cite book and chapter, as above, referring to this edition, available online from GoogleBooks: https://docs.google.com/document/d/1J74qQQOeTzeWQG3r5T2Vw6KcVC2rZGHU6g4HoBrWbCE/edit?pli=1.
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15

THREE SYNOPTIC VIEWS OF CHINA'S "PEOPLE'S LIBERATION ARMY" ON MILITARY ETHICS AND JUSTIFIED WAR

Ping-cheung Lo

This chapter examines three recent publications by the Chinese People's Liberation Army (PLA) on military ethics and just war theory. Though this is not an exhaustive investigation, the views analyzed certainly are representative of certain significant segments of the PLA establishment. This is because in all official publications, no PLA author is authorized to articulate his or her own views on major issues. Instead, published works invariably reflect the official government's stance.

I. Just War in Communist Ideology

The *Military Science* volume of the *Encyclopedia of China* is entirely prepared by the PLA (ECMS 2007). It is the best reference work on this subject matter (1,078 pp.), as the *Encyclopedia of China* series is considered to be the most authoritative set of references in the People's Republic of China.

This volume on (and by) the Chinese military establishment contains 2,116 entries, one of which is "Just War and Unjust War."[1] Its explanation of "just war" is very general, stating: "those wars that promote the fundamental interests of the people and advance social progress are just wars" (ECMS 2007: 888). Examples of general categories of justified war include war in which oppressed and exploited people fight for liberation, wars in which colonized countries fight for independence and against international oppression, and also wars in which sovereign nations fight against aggression. This encyclopedia entry further explains that just wars have a significant role in enhancing social progress in terms of education, social awakening, moral progress, social mobilization, and, above all, the unleashing of economic productivity (ECMS 2007: 888).

This kind of account seems obviously more ideological than scholarly. Its primary function is more a legitimation of the Chinese Communist Party's armed revolt against the earlier Chinese

Nationalist government following WWII. Only after this defense has been offered does the article go on to observe: "in contemporary conditions, the major sources of unjust wars are imperialism and hegemonism" (ECMS 2007: 889). Accordingly, this article on just and unjust war only touches briefly on *jus ad bellum* as conventionally understood, and confines its treatment to "just cause" only.

This encyclopedia article twice quotes Mao Zedong; hence, it is worthwhile to review what Mao has said about the topic. Mao twice writes that "History knows only two kinds of war, just and unjust. We support just wars and oppose unjust wars" (Zedong 1936: 183; cf. 1938: 150). Mao picks up the term "righteous war" (*yi zhan*) made famous by Mencius, and makes use of it to describe the just wars waged by oppressed people against their oppressors.[2] In differentiating just and unjust wars, the only factor Mao considers is the cause. In one essay, he cites the oppressed people united to fight against the oppressors as the only just cause for war (Zedong 1935). In another essay, a year later, he considers the only just cause to be ultimately the elimination of war and establishment of a stable and enduring peace. To start revolutions for this purpose is thereby justified. Such revolutionary wars are salvific for humankind.[3]

In still another essay, he invokes the vague criteria of "inducing progress and impeding progress" to distinguish just from unjust wars. He deems progressive wars not only just, but even sacred.[4] In short, Mao understands just war only in terms of *jus ad bellum*, and only in a restricted sense of that conception. *Jus in bello* concerns, by contrast, receive no attention in his discussion of just war.

In a recent Chinese publication by a prominent Major General in the PLA, this 80-year-old Maoist idea of just war is still affirmed.[5] It seems to me that this Maoist explanation of just war is more for internal political purposes and is quite far away from the modern international understanding.

II. Offensive Realism and the Politics of Just War

The contemporary reaffirmation of Mao's views above was, in fact, undertaken by Major General Peng, a well-known PLA strategist and a very familiar name for those who are studying the Chinese military. He recently contributed an essay to the *Oxford Handbook of War* that helps us tremendously in understanding the PLA's collective understanding of "self-defense."[6] The background understanding we need to have in reading this article is the Chinese government's long-standing military strategy of "active defense," which, again, can be traced back to Mao Zedong while he was leading the guerrilla war against the government.

Mao commented at the time (in 1936):

> Active defence is also known as offensive defence, or defence through decisive engagements . . . Passive defence is actually a spurious kind of defence, and the only real defence is active defence, defence for the purpose of counter-attacking and taking the offensive.
>
> *(Zedong 1936: 207)*

Hence, the phrase "active defense" is actually a euphemism for "offensive defense." This strategy has been reaffirmed repeatedly by the highest decision-making body of the People's Republic of China (PRC) since 1949, viz. in 1955, 1956, 1965, 1988, and in 1995 (Peng 2009: 199–200).

Major General Peng, in a recent Chinese book, elaborates on "active defense" as follows. In defending national sovereignty, security, and territorial integrity, China will:

1. Not fire the first shot;
2. Restrain and postpone war by military and political means;
3. Use active counter-attack and offensive battles to reach the goal of strategic defense.

(Peng 2009: 200–201; translation mine)

In the *Oxford Handbook of War* article, Major General Peng further explains this strategy. Concerning defense, he writes:

> In future wars, the PLA will be always in a defensive status in general. Strategic defence means safeguarding national security, national unity, and territorial integrity and *interests* . . . War is the continuation of politics. The possible high-tech local war we might launch in the future will be another means for continuation of the fundamental political requirements to ensure the sovereignty and security and safeguard the *fundamental interests* of our country.
>
> *(Peng 2012: 298, 300; emphasis added)*

Departing from previous explanations, "defense" in this essay is broadened beyond "national security, national unity, and territorial integrity."[7] In this instance, it also includes concern for "national fundamental interests." Given this new understanding about self-defense, Peng goes on to explain:

> Our aim is peace, not war. Our principle is: "We will not attack unless we are attacked; if we are attacked, we will certainly counterattack." . . . Once the enemy invades our territory and [*sic*, a mistranslation; should read "or"] offends our national interests, it means that the enemy has already fired the first shot strategically and crossed the border of our strategic defence . . . after the beginning of the war, we should try our best to fight against the enemy as far away as possible, to lead the war to the enemy's operational base, even to its source of war, and to actively strike all the effective strength forming the enemy's war system.
>
> *(Peng 2012: 298–299)*

Accordingly, to go hand in hand with a new understanding of self-defense, the phrase "firing the first shot" is also understood liberally. The Chinese government will not hesitate to act on the strategy of "offensive defense" when she deems that China's fundamental interests have been harmed. China will take military initiatives to safeguard her national interests.

The PLA's strategic thinking seems very close to a straightforward doctrine of "offensive realism," as found in contemporary international relation theory:

> As John Mearsheimer points out, in an anarchic world marked by uncertainty and fear, "states quickly understand that the best way to ensure their survival is to be the most powerful state in the system." States strive to maximize their share of relative power over others, because the more power a state has, the more secure it will be . . . States, therefore, are "primed for offense." Although their aim is security, states are driven by anarchy to think and act aggressively in the system because the best defense is a good offense. States are not content with passive defense that simply protects borders from attacks or allows them to strike only after being attacked. Rather, they prefer to take the initiative by going on the offensive.
>
> *(Wang 2011: 22)*

John Mearsheimer himself, as one of the grand theorists of this kind of thinking, fully expects the People's Republic of China to embrace offensive realism and aspire to be a regional hegemon (Mearsheimer 2014: 360–411). He should not be disappointed. Major General Peng's elaboration of active or offensive defense is certainly an echo of offensive realism.

Strictly speaking, a realist is not fond of the language of just war. Peng, however, does make use of this language. When he talks about "just war" in his Chinese book, he unabashedly quotes Mao Zedong: "In every just war the defensive not only has a lulling effect on politically alien elements, it also makes possible the rallying of the backward sections of the masses to join in the war" (Mao 1936: 207). Peng then elaborates: "The strategy of playing defense to a certain extent can elicit grief and sympathy and render our war just" (Peng 2009: 195). In other words, it seems as if, finally, the language of "just war" is employed more for political effect rather than an expression of any genuine concern for ethics. Appeal to "just war" language provides the political advantages of silencing political dissidents and rallying national support.

General Peng elaborates this political theme elsewhere in the book, writing: "The winning or losing of a war is to a large extent to be decided by whether or not the war is just, whether or not there is enough popular support, and the military morale—these are the manifestations of politics" (Peng 2009: 99).

III. Just War as Political Propaganda

A recent award-winning book by another Chinese military scholar speaks even more boldly about the politics of just war.[8] He devotes his entire Chapter 3 to just war theory. He first affirms that there is a recognizable form of just war thinking in traditional Chinese philosophy (Tan 2012: 101–104), and then summarizes the development of just war tradition in the West (ibid.: 104–112). He makes the distinction between "just war" and "justice in war" (ibid.: 112–118), which seems to suggest that the PLA, in following Mao Zedong, confines the term "just war" only to *jus ad bellum*, and is now reserving the term "justice in war" for *jus in bello*. The author then goes on to analyze and justify the Chinese participation in the Korean War by making use of the tripartite distinction of *ad bellum*, *in bello*, and *post bellum* (ibid.: 127–130).

In spite of the author's familiarity with Western just war ethics, he ultimately casts doubt on the usefulness of such refinements in just war discussions. This is because, by virtue of the condition of "international anarchy" in current state relations, there are no enforceable regulations on war. Regrettably, he observes, just war ethics cannot in the final analysis effectively restrain war and war conduct (ibid.: 119). Hence, this book on "military core values" seems to be more inclined toward political realism than toward genuine just war ethics. This is evident also in this author's discussion of the just war challenges facing the PRC in current affairs. He comments:

> In this new historical condition, our country is facing defending national sovereignty, territorial integrity, solidarity among races, unity of country, national interests and national dignity from being harmed. Such wars . . . are undoubtedly just wars.
>
> *(Tan 2012: 130)*

Here, the principle of "just cause" is further broadened not only to include defending national interests, but also defending national dignity. This kind of thinking is moving even further away from conventional Western understandings of just war. Indeed, it seems much closer to political realism.

The last section of this particular book chapter is very revealing: its title is "Enhancing the Image of 'Just Warriors' in this New Age." Here, the author first affirms that "whether a war is just is decided not by military might, but by whether or not one can gain broad political support, both domestically and internationally" (ibid.: 131–132). This is the age of media and press, hence no warring country can afford to fight without restraint. The political backlash will be too costly. The Chinese government needs to make sure that when she fights, she will be perceived as fighting for a just cause. Hence, the war in the so-called "smokeless theatre" (that is, in the hearts and minds of people, interpretation of international law, public opinion) will be of equal importance (ibid.: 133). In short, once again, the language of just war seems to be invoked primarily as an instrument of public relations for the government.

IV. Concluding Observations

The Chinese PLA, as these samples demonstrate, is actually rather fond of the language of "just war." But their usage is usually confined to *jus ad bellum* in general, and to notions of "just cause" in particular. Unlike some Western discussions (for example, "Nothing but aggression can justify war," Walzer 1977: 62), moreover, the PLA understands just cause very broadly, viz. as involving defending national core interests. The PLA does apparently subscribe to just war ethics outwardly, but, in strict obedience to the government, the PLA is actually oriented toward a doctrine of "offensive realism." Hence their preferred collective silence on *jus in bello*. And, on the rare occasions in which they do talk about this second topic, it is for the political purpose of fostering good international public relations.

According to Mearsheimer, the Chinese government has been closely "following in Uncle Sam's footsteps" (Mearsheimer 2014: 368). This strategy is dictated by the human and the international condition. One may hope that in the future, however, there will be independent voices on military ethics in China and that their voices will be heard, at home and abroad.

Notes

1. The English translations of classical texts and references are provided by the publishers for an English-language audience. In some cases, I have corrected mistakes in these translations, and provided my own English translations of names, texts, and titles.
2. Mao Zedong, "On tactics against Japanese imperialism," *Selected Works of Mao Tse-Tung*, Vol. 1 (Peking: Foreign Languages Press, 1965): 170–171. "There is the old adage, 'In the Spring and Autumn Era there were no righteous wars.' This is even truer of imperialism today, for it is only the oppressed nations and the oppressed classes that can wage just wars. All wars anywhere in the world in which the people rise up to fight their oppressors are just struggles. The February and October Revolutions in Russia were just wars. The revolutions of the people in various European countries after World War I were just struggles. In China, the Anti-Opium War, the War of the Taiping Heavenly Kingdom, the Yi Ho Tuan War, the Revolutionary War of 1911, the Northern Expedition of 1926–27, the Agrarian Revolutionary War from 1927 to the present, and the present resistance to Japan and punitive actions against traitors—these are all just wars."
3. Mao Zedong, "Problems of strategy in China's revolutionary war," *Selected Works of Mao Tse-Tung*, Vol. 1 (Peking: Foreign Languages Press, 1965): 182–183. "War, this monster of mutual slaughter among men, will be finally eliminated by the progress of human society, and in the not too distant future too. But there is only one way to eliminate it and that is to oppose war with war . . . History knows only two kinds of war, just and unjust. We support just wars and oppose unjust wars. All counter-revolutionary wars are unjust, all revolutionary wars are just. Mankind's era of wars will be brought to an end by our own efforts, and beyond doubt the war we wage is part of the final battle . . . A war waged by the greatest majority of mankind and of the Chinese people is beyond doubt a just war, a most lofty and glorious undertaking for the salvation of mankind and China, and a bridge to a new era in world history . . . the era of perpetual peace for mankind."

4. Mao Zedong, "On protracted war," *Selected Works of Mao Tse-Tung*, Vol. 2 (Peking: Foreign Languages Press, 1965): 150. "History shows that wars are divided into two kinds, just and unjust. All wars that are progressive are just, and all wars that impede progress are unjust . . . Our war is sacred and just, it is progressive and its aim is peace. The aim is peace not just in one country but throughout the world, not just temporary but perpetual peace."
5. Guangqian Peng et al., *What is Military Science?* 《軍事學是甚麼》 (Beijing: Peking University Press, 2009): 60, translation mine. Peng observes that just wars "promote social progress, promote the further liberation of productivity; they are for the people, for revolution, and against aggression." Unjust wars, on the other hand, "hinder social progress, suffocate new productivity; they are for aggression, expansion, and robbery."
6. See Guangqian Peng, "The twenty-first century war: Chinese perspectives," *The Oxford Handbook of War*. Eds. Julian Lindley-French and Yves Boyer (New York: Oxford University Press, 2012), 287–301.
7. Guangqian Peng et al., p. 209, translation mine. Here, General Peng predicts that "all wars that China might have to fight in the future will be forced upon her, e.g., when territorial integrity, sea border rights, and national unification are under serious threat. Such wars will be just and defensive wars, and will be fought with no other choice."
8. Jizun Tan, *Foundation of the Ethics of Military Core Values* (Beijing: Military Science Press, 2012). This military author is currently in the Department of Marxist Theory, PLA Nanjing Institute of Politics. Subsequent references in my chapter to Tan (2012) cite passages and pagination from this volume.

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16

JAPANESE WARFARE ETHICS

Vice Admiral Fumio Ota

In his book *The Soldier and the State*, Samuel Huntington stated: "To a larger extent, the officer's code is expressed in custom, tradition, and the continuing spirit of the profession."[1] When looking at Japanese warfare ethics, we should search accordingly for the origins of military customs and traditions in the *Kojiki*, written in the sixth century, which is Japan's oldest publication. In the *Kojiki*, we find the statement of the ideal warrior, named Itsu-no-ohabari, "Reverently I will obey and serve," as typical of the ethics that symbolized bravery and loyalty during a state of national emergency. This spirit of utter loyalty is also found in Prince Shotoku's 17-article constitution as "absolute submission to imperial commands,"[2] and in Sakimori, the frontier guards' poetry of Japan's first known poet, *Manyoshu*, as "reverence for the majesty of the great lord" during the seventh century. Warfare ethics during ancient history in Japan are symbolized in loyalty with propriety.

During the eighth century, Sun Tzu's *The Art of War* was introduced through Japanese missions to Tang China. From the end of the eleventh century to the beginning of the twelfth century, the first Japanese warfare code, *Tousenkyo* (meaning "Bible for fighting the war") prevailed. *Tousenkyo*'s motto was sincere and straightforward, and criticized Sun Tzu's *The Art of War* as a deceitful book, while expressing admiration for *Wuzi* as a more ethical Chinese military strategy. Japan, however, was defeated by China three times in her history by following the latter creed, which emphasized warfare fought "straightforwardly, without manipulation."

I. Impact of Foreign and Domestic Ethical Teachings on Military Practice

The first Japanese military defeat was the Battle of Baekgang in 663, when Japan and her ally, Baekje, fought against the allied forces of Silla and the Tang Dynasty of ancient China. Allied forces were trapped at a narrow river, whereupon the Japanese warriors attacked frontally and were completely defeated. The second Japanese defeat followed the Japanese invasion of Korea at the end of the sixteenth century, when Toyotomi Hideyoshi attacked the combined forces of the Joseon Dynasty of Korea and the Ming Dynasty of China. The attacks were carried out bravely but without sufficient cunning, and were once again defeated. The third example was the Second Sino-Japanese War from 1937 to 1945. The Japanese Imperial Army defeated the Kuomintang Army in each battle tactically, but was strategically defeated by the Communist

Party of China, who cunningly let the Japanese Imperial Army and the Kuomintang Army fight each other. There, too, however, Japanese warriors made "straightforward valor" very important.

From the end of the twelfth century to the nineteenth century, Japan was governed by the samurai (also known as *bushi*), who developed the bushido code. The Japanese philosophical basis for warfare ethics was derived from bushido.

What is the bushido? Dr. Inazo Nitobe, who served as Undersecretary General of the League of Nations at the beginning of the twentieth century, wrote a book titled *Bushido* in 1990. In his book, Dr. Nitobe listed bushido's nine typical virtues. Those are: "Rectitude or Justice; Courage; Benevolence; Politeness; Veracity and Sincerity; Honor; the Duty of Loyalty; the Education and Training of a Samurai; and Self-Control."[3]

His motivation to write the book *Bushido* was as follows: he was asked by a venerable university professor "Do you have any religious instruction in your schools?" After Dr. Nitobe responded with "No," this professor was surprised, and replied by saying "No religion! How do you impart moral education?" The moral prescripts that Dr. Nitobe learned in his childhood days were not taught any longer in schools, and he found that the core of his early childhood education had been bushido.[4] My own view, however, is that Japanese morals are derived from not only bushido, but also through general education done by the family and civil community.

After the Meiji Restoration, the Emperor Meiji created *The Imperial Precepts to the Soldiers and Sailors* in 1882. This consists of five articles, which were: Loyalty; Propriety; Valor; Faithfulness and Righteousness; and Simplicity. At the end, it stated "Now for putting them into practice, the most important is sincerity."[5]

II. Comparison of Indigenous Moral Doctrines with Those of Other States

At present, many people in Japan criticize *The Imperial Precepts to the Soldiers and Sailors* as obsolete and old-fashioned. However, if you extract the common aspects of all countries' military codes of ethics, the five codes in *The Imperial Precepts to the Soldiers and Sailors* reflect those common points.

For example, the United States' military ethics emphasize Loyalty, Duty, Respect, Selfless Service, Honor, Integrity, and Personal Courage.[6] The United Kingdom's military ethics emphasize Duty, Honor, Mutual Trust, Morality, and Quick/Relevant Decision-Making. In Germany, Loyalty, Duty, Discipline, Valor, Moral Values, and Democracy are taught.[7] France identifies Discipline, Respect for Traditions, Selfless Commitment, Frugality, and Self-Sacrifice.[8] That frugality is similar to the ethic of simplicity, the last item of *The Imperial Precepts to the Soldiers and Sailors*. The moral code of the Israeli Defense Force includes: Mission Perseverance, Responsibility, Trustworthiness, Personal Example, Human Life, Purity of Arms, Professionalism, Discipline, Loyalty, Representativeness, and Comradeship.[9] Therefore, if we, as Western armed forces, were to attempt to establish common military codes of ethics for coalition use, I believe that such would be feasible and advisable.

In my opinion, *The Imperial Precepts to the Soldiers and Sailors* is better than the bushido spirit itself. That is because the *bushi* (or warriors) themselves were a privileged class, set above farmers, artisans, and merchants during the feudal age. This left no role for members of classes other than *bushi*. Their loyalty was focused only on their lord and not to their state, Japan.

III. Impact of Moral Teachings on Military Practices

In 1992, when I was a visiting scholar at Stanford University, the university sponsored a seminar in warfare ethics. Many of the participants criticized Japanese soldiers' brutal behavior in World

War II, especially the Nanjing Massacre and the "comfort women" system, which happened despite the existence of such splendid codes in the *Imperial Precepts*. There is an argument, however, that perception of those two particular issues has been heavily influenced by Chinese and Korean propaganda, and include some exaggeration.

For example, the Chinese say that Japanese soldiers killed more than 300,000 Chinese in Nanjing.[10] However, 20 days before, and immediately prior to the fall of Nanjing, the city's entire population numbered only 200,000 according to Europeans and Americans who were there at the time. Eight days after the fall of Nanjing on Christmas Eve, it was still 200,000.[11] After the Chinese Commander of Nanjing, General Tang Shengzhi, fled the battle, Chinese troops stripped off their uniforms and mingled with the civilian population. By doing so, they became unlawful combatants not protected by the Regulations Concerning the Laws and Customs of War on Land annexed to the Hague Convention. And yet, during the 11-year period spanning December 13, 1937, the day Nanjing fell to the Japanese, to December 1948, when the Tokyo Trials ended, no one accused Japanese troops of having killed prisoners of war in violation of the aforementioned regulation.[12]

In 1894, during the first Sino-Japanese War, China (Qing Dynasty) sent the same kind of propaganda to the American news media, describing what they called the "Port Arthur massacre." However, international investigators determined that the Japanese Army merely attacked and killed Chinese soldiers who had stripped off their uniforms and mingled with civilians.[13]

Originally, Japan incorporated much of continental Chinese culture, such as Buddhism and the use of Chinese characters. They rejected two central practices, however: the Chinese practice of castration to create eunuchs, and the practice of brutal execution. Brutal executions exhibited in Chinese and Korean museums are falsehoods created by Chinese and Korean imaginations, inasmuch as we never imported such brutal techniques from the Continent.

The United Kingdom began to count on Japan militarily after the Boxer Rebellion in 1899. British soldiers were deeply impressed by the Japanese soldiers' bravery, discipline, and ethical behavior.[14] This was the origin of the Anglo-Japanese Alliance of 1902, which also reflected the common interest of the U.K. and Japan in stopping Russian aggression in the Far East. The U.K. was unable to do that alone at the time, because of its simultaneous commitment to the Boer War in South Africa.

The "comfort women" system of prostitution was privately, rather than publicly, run. It was not forcibly arranged by either the Japanese Imperial Army or Navy, although both of those forces did conduct some administration and oversight of the system, such as public health and sanitation. During his first term, Prime Minister Abe stated in 2007 that there were no documentary materials that indicated that either the military or any government authority forced women to be comfort women. Kono, then the Chief Cabinet Secretary, had issued the earlier report in August 1993, when I was in the National Institute of Defense Studies (NIDS), which claimed to be based on historical documents. The background evidence provided to Secretary Kono by NIDS at the time, however, was that there were no documents to indicate that the military forced women to be comfort women. However, Kono twisted the facts because of Korean pressure.

The comfort women system is, of course, wrong, judging by current moral standards, but I believe it was viewed as a necessary evil at that time. Also, it is not true that Japan was the only state who permitted such a system of prostitution for the military.

Undoubtedly, however, the Japanese Imperial Army treated prisoners of war (POWs) brutally during World War II. This was a consequence of Japanese arrogance against Asians, which came about especially after Japan's victory in the first Sino-Japanese War and the Russo-Japanese War. Many Japanese soldiers and sailors forgot *The Imperial Precepts*, especially the second

item, propriety. As British Strategist B. H. Liddell Hart stated in his book *Strategy*, "Chivalry in war can be a most effective weapon in weakening the opponent's will to resist, as well as augmenting moral strength."[15]

In the Imperial Japanese Navy, "Five Reflections" were established in 1932 on the occasion of the 50th anniversary of the promulgation of *The Imperial Precepts* by Rear Admiral Hajime Matsushita, then the superintendent of the Japanese Imperial Naval Academy. He was concerned about the views of naval officers involved in an attempted *coup d'état* by Imperial Army and Navy young officers in 1932. Rear Admiral Matsushita invited a British instructor named Cecil Bullock to be an English teacher, and said to him, "Mr. Bullock, what I want you to do is to teach our midshipmen what the British gentleman is, and how gentlemen behave."[16]

The "Five Reflections" were: "Hast thou not gone against sincerity?"; second, "Hast thou not felt ashamed of thy words and deeds?"; third, "Hast thou not lacked vigor?"; fourth, "Hast thou exerted all possible efforts?"; and fifth, "Hast thou not become slothful?" After study and before going to bed, each midshipman was required to read aloud those five reflections and examine himself on that day. The Imperial Naval Academy's infrastructure transferred into the current Maritime Self Defense Forces' Officer Candidate School and the five reflections are still followed by midshipmen today.

In January 1941, the *Field Service Code* was promulgated by Army Minister General Tojo. This was a reaction to violations against military discipline during the Sino-Japanese conflicts.[17] The *Field Service Code* accordingly stated: "Do not despise your enemy or the natives," "Be mindful to protect enemy property and resources," "Must not indulge in wine and women," and "Be gentle towards and protect innocent inhabitants in a spirit of benevolence." However, the code was not well received because it was written in very difficult Chinese characters, and was not understood by many soldiers, who were fortunate if they had an elementary school education.

IV. Reforming the Limitations of Indigenous Doctrines

In addition, there are several erroneous theories promulgated in this work, as judged from the perspective of military science. For example, the notorious phrase "Do not suffer the disgrace of becoming a prisoner" was in the *Field Service Code*. Additionally, the concept that the "Imperial Army has a tradition of a hundred wins out of a hundred battles" was inconsistent with historical facts because of the defeat in the Battle of Baekgang in 663 and the defeat of Toyotomi Hideyoshi in the sixteenth century. The *Field Service Code* denies the concept of "retreat," which is also mistaken from the military science perspective. Samuel Huntington criticized the Japanese soldiers' concept of professionalism by citing the *Field Service Code* in *The Soldier and the State*,[18] but he failed to mention *The Imperial Precepts to the Soldiers and Sailors*, which was much more influential for both soldiers and sailors.

After the end of World War II, the Japanese government established the *Ethos of Self Defense Force Personnel* in 1961, which consists of five virtues: "Awareness of Mission; Individual Development; Fulfillment of Responsibility; Strict Observance of Discipline; and Strengthening of Solidarity."[19] These virtues are in the Self Defense Force pocketbook, and every Self Defense Force member is able to review them at any time. Knowledge and practice of these virtues are often examined by higher officials during inspections. Personally, I believe that *The Imperial Precepts to the Soldiers and Sailors* is much better than the *Ethos of Self Defense Force Personnel* because, first, the *Ethos of Self Defense Force Personnel* does not specify Loyalty and Valor (probably because the *Ethos of Self Defense Force Personnel* was created during a period of pacifism right after World

War II). Second, the *Ethos of Self Defense Force Personnel* has less emotional and inspirational appeal than the *Imperial Precepts*.

Each Self Defense Force service has sought to define its own set of core ethical principles. About 10 years ago, the Japanese Ground Self Defense Forces established its service ethos, which consisted of: "Challenge, Dedication, and Sincerity." The Maritime Self Defense Forces tried to create their own new set of core ethical principles, consisting of "Pride, Valor, and Loyalty," but these have not yet been officially authorized. Interestingly, those qualities are very similar to the *Imperial Precepts*. I believe that this similarity demonstrates that the servicemen's virtues do not change appreciably over time and geography.

Our Japanese Air Self Defense Force does not yet have an overall set of core ethical principles. About eight years ago, however, then Chief of Air Staff Office provided a set of core ethical and leadership principles for pilots, which exhort them to "be bright/frank, train/prepare, and lead/practice."

The Japanese National Defense Academy, equivalent of a combination of Annapolis, West Point, and Colorado Springs in the U.S., was established in 1953. The first president, Tomoo Maki, was a graduate of Oxford University. So his ethics education derived from the United Kingdom.

The class of 1965 cadets created an "Honor of Conduct" system, which consists of three virtues: "Honor, Courage, and Propriety."[20] The concept of Propriety in the Honor of Conduct is slightly different than that of "Propriety" in *The Imperial Precepts*, which means rather "courteous or polite." Those three items are displayed on the floor at the entrance of the main building. The National Defense Academy annually establishes an Honor of Conduct Committee, which monitors how well cadets demonstrate honor in their conduct.

When I was a cadet in the late 1960s, I was made Chairman of the Honor of Conduct Committee. I asked all of my fellow cadets to find out the roots of the Honor of Conduct in our history. Thereafter, I reached the conclusion the primary virtues of the Honor of Conduct code had been derived from Tesshu Yamaoka's *Bushido* in the nineteenth century, which had emphasized "Propriety, Valor, and Honor."[21]

During their second year, cadets and midshipmen at the National Defense Academy undertake an Iwo Jima battlefield tour. This helps develop their motivation and provides a good opportunity to consider warfare ethics.

Many military schools provide education in leadership and discipline, teach warfare ethics, and sometimes offer seminars using case studies. Commanders and higher-ranking officers occasionally make presentations regarding morals in the service. Additionally, in many Self Defense Force bases, there are museums that focus on brilliant soldiers and sailors from throughout the world, ever since the beginning of the military history. Self Defense Force personnel look at those examples and are impressed by their achievements. This is the so-called "Leadership and Ethics Through Example" method.

V. Military Ethics and Professional Practice in Japan Today

Under the constraints of the current Constitution, the Japanese Self Defense Forces have so far not been used in actual combat missions. They have, however, been conducting Peacekeeping Operations (PKO), Nation-Building Operations, Anti-Piracy Operations, and Humanitarian Assistant and Disaster Relief (HADR) since 1992, including Cambodia (1992–1993), East Timor (1999–2012), Operation Enduring Freedom in the Arabian Gulf (2001–2010), Iraq (2003–2008), Sudan (2008–today), Gulf of Aden (2009–today), Indian Ocean Tsunami (2004–2005), and the

aftermath of the Tohoku earthquake and tsunami followed by the accident of the Fukushima nuclear power plant (2011). The SDF's behavior and professionalism during those PKO and HADR operations earned the highest respect. Especially during the 2011 earthquake, Self Defense personnel demonstrated strong selflessness and dedication. Subsequently, according to a recent national survey, the most reliable institution in Japan is the Self Defense Force. This is the same in the U.S., where the U.S. armed forces are consistently ranked as the "number one" reliable, trustworthy, and admired institution or organization.

When they are stationed in Japan, most of the American soldiers and sailors find out that Japanese people are kind, honest, and work hard in general, and that Japan is one of the safest countries in the world, with a very low crime rate. Japan is a safe society where a single young lady can walk alone even at midnight. According to a BBC Global Poll during the last year, Japan is regarded as having had the most positive influence in the world. I think this is the greatest soft-power asset.

Commodore Matthew Calbraith Perry, who was the first U.S. naval officer to land in Japan in 1853, also wrote of the same impression at that time. Our DNA did not drastically change during World War II. Therefore, I would say that notorious stories such as more than 300,000 massacred in Nanjing and 200,000 compulsory sex slaves are exaggerated propaganda from China and Korea.

Finally, I would like to touch upon our Prime Minister's recent visit to the Yasukuni Shrine. Consider that the morale of soldiers and sailors cannot remain high if the Supreme Commander of the Armed Forces fails to pay homage to the souls who sacrificed their lives while doing their duties Prime Minister Abe paid a visit to Yasukuni Shrine in December 2013, whereupon he expressed his sincere condolences, paid his respects, and prayed for the souls of all those who had fought for the country and made the ultimate sacrifice. He had no intention whatsoever to hurt the feelings of the Chinese and Korean people.

I believe that the Japanese Prime Minister's visit to the Yasukuni Shrine is entirely the same as an American President's visit to Arlington Cemetery on Memorial Day. In the Arlington Cemetery, there are many soldiers buried from the Confederate States of America. The U.S. President's visit to Arlington does not mean to rationalize or exalt the ideals of the Confederate States of America. The President's visit is surely not taken as a sign that he secretly condones slavery, for example.

Why should it be otherwise with our Japanese Prime Minister, visiting our national shrine in memory of the fallen? "A" class war criminals from the International Military Tribunal for the Far East were enshrined at the Yasukuni Shrine in 1978 and it was open to the public in 1979. From 1979 to 1985, Prime Ministers Ohira, Suzuki, and Nakasone visited the Yasukuni Shrine more than 20 times in all, yet China and Korea never objected to those visits at the time. During the late 1970s and the beginning of the 1980s, when the Japanese economy was much bigger than China, Korea received a considerable amount of Official Development Assistance (ODA) from Japan, while the Chinese main threat was the Soviets. China seemed much more appreciative of the U.S.-Japan alliance during that period, and even encouraged Japan to spend more on defense budgets. The current criticism leveled against Japan's Prime Minister for visiting the Yasukuni Shrine thus may have less to do with its history or significance, and much more to do with the current political tensions and ever-changing political landscape between these various nations.

In conclusion, the current Japanese military organization has no specific system of warfare ethics education. However, each Self Defense Force member has a philosophical basis of bushido, and then learns ethics through *Ethos of Self Defense Force Personnel*, as well as through the guidance received from their superiors and the heroic examples displayed in museums.

Notes

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3. Nitobe Inazo, *Bushido: The Soul of Japan* (Philadelphia, PA: Leeds & Biddle Co. 1900): Table of Contents.
4. Ibid.: 23.
5. *The Imperial Precepts to the Soldiers and Sailors* (1882). Cited in Tsunoda et al., *Sources of Japanese Tradition, Vol. II* (New York: Columbia University Press, 1958): 198–200.
6. United States Army Values: www.army.mil/values/index.html.
7. Lieutenant Commander Hajime Sakuma, "Leadership concepts in the Self Defense Force," *Hatou* [*Japan Maritime Staff College Review*] 9, no. 6 (November 1971): 67–68.
8. Henri Hude, "Reshaping the ethical training of future French commissioned officers," in Robinson, Lee, and Carrick, Eds., *Ethics Education in the Military* (London: Ashgate, 2006): 112.
9. See: www.idfblog.com/about-the-idf/idf-code-of-ethics/.
10. Statement of Xi Jinping, President of the People's Republic of China, in Berlin, Germany (March 28, 2014): http://eg.china-embassy.org/eng/zgyw/t1142670.htm.
11. Shudo Higashinakano, *The Nanking Massacre* (Tokyo: Sekai Shuppan, 2005): iii.
12. Ibid.
13. *Editor's note*: The statement of conservative reformer Serion Hidetsugu Yagi, quoted in the newspaper *Sankei Shinbun* (January 22, 2014): http://japanfocus.org/-Koide-Reiko/4101.
14. Kinji Shimada, "Saneyuki Akiyama before the Russo-Japanese War," *Asahi* (1990): 23. [*Editor's note*: prominent Japanese newspaper; see also Phillips O'Brien, *The Anglo-Japanese Alliance, 1902–1922* (Abingdon: Routledge, 2003).]
15. B. H. Liddell-Hart, *Strategy* (New York: Meridian Books, 1991): 322.
16. Toshiichi Yamane, "Edajima and five reflections," *Hatou* 184 (May 2006): 47–48.
17. Tadayuki Okamura, *Soshiki-wo-Ikasu* (Tokyo: Keisei-Sha, 1986): 29–30.
18. Samuel P. Huntington, *The Soldier and The State*, p. 129.
19. Defense Agency of Japan, *Defense of Japan (2008)*. Reference 65: p. 385.
20. National Defense Academy, *National Defense Academy of Japan*, 2005, p. 1.
21. Managa Katsube, Ed., *Yamaoka Tesshu's Bushido* (Tokyo: Kadokawa Printing, 1999): 29.

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17

ARMED FORCES OFFICERSHIP

An International Military Capability

Patrick Mileham

In recent years, some nations have conceived of, and written up extensively in formal military doctrine, the practice of command and management. To these dynamics, many nations recognize the concept and practice of leadership. How leaders lead is well rehearsed in the literature,[1] even if defining their activities both precisely and in general terms is problematic. Undoubtedly, the art of commanding and leading in the military, generating sufficient fighting determination and spirit, goes far in winning wars. The same leadership determines good faith and restraint in winning the peace. What more is there to say?

Ever more analysts, however, are recognizing that the dynamic of military "officership" is another concept and practice that needs to be seriously considered and developed by those who serve in professional armed forces. Is "officership" fact or phenomenon? It connotes something contextual beyond doubt for military commanders and leaders. This chapter, therefore, while fully acknowledging that fighting spirit and, increasingly, codes of military ethics are vital, discusses the concept and performance of "officeship," as well as the quality of officerships exhibited by practicing military officials and leaders in all armed forces, particularly those that explicitly claim to be professional.

The term "officership" has existed in the English language since 1775. It is a collective noun meaning "the rank or position of an officer, a staff of officers," according to the *Oxford English Dictionary* (OED).[2] "Skill" and "capability" are closely associated concepts. However, unlike the word "generalship," officership did not feature in the usage of Britain's armed forces until 2004, when it became part of the syllabus of the Royal Military Academy at Sandhurst. Ten years on, it is in need of revision, and also needs to be put into a valid tri-service and international context.

Although the OED definition cited above does not specify "military," a "staff of officers" seems to describe accurately a military officer corps or chain of command. This chapter concentrates on the first part, the formal "position" of an officer within armed forces. An implicit understanding of the word "rank" indicates a recognition of graduated responsibilities of persons who hold military "office." For a clearer understanding, appropriate alternatives to the word "position" are "post, appointment, capacity, role, function, duty, authority and agency."[3]

A working definition of officership that might result is something like: "the concept, performance, character, and quality of military *office*." The purpose of this chapter is to suggest a

comprehensive group of first or fundamental principles for the holding of professional military *office*, in order to promote international discussion and greater understanding of no less than the profession of arms itself.

I. The Civil–Military Relationship

Between 2002 and 2005, research was conducted into the meaning and substance of "professional armed forces" at the request of Christopher Donnelly, senior adviser to the NATO Secretary General. In this work, certain normative "professional disciplines" were identified. The civil–military relationship was deemed to have, unequivocally and as a first principle, the "objective control" of the military institutions by the civil power.[4] This is one of the defining characteristics of democracy. Other normative disciplines in the same article included the quality of relationships between persons holding office, and the hierarchy of rank. These relationships, significantly, are both professional and personal.

In 1957, using the term "officership," U.S. author Samuel Huntington attempted to express the complex nature of the professional standing of military officials and the civil–military relationship within a liberal democracy. He therein stipulated "officership as a profession."[5] The defining professional relationship is one of mutual trust between the officer and the state. The concept and practice of military office-holding, qua public office, he considered as self-evident. That might be a first principle for the military profession, but not necessarily for the same person who is also a citizen[6] in a liberal democracy. Members of armed forces are both. "A profession," Huntington continued, "is a peculiar type of functional group with highly specialized characteristics." True, but special characteristics often involve many other principles. For instance, the gap between "the officer corps" and "enlisted corps"[7] has closed in many military institutions since the 1950s, for good reason. Many of the "specialized characteristics" have changed, with wider responsibilities and much more specialist functions added to what is expected by governments and populations of their militaries.

While featured in the military lexicon of the U.S. armed forces (notably in the U.S. Army), and also in the Canadian Defence Force, "officership," or a single term similar in other languages, has not been adopted formally for use by other nations, as far as I am aware.[8] Every nation, however, has a formal and informal relationship with its armed forces and military officials, whether or not such a collective word is used. So the concept and practice of officership exists in some form, usually *sine nomine*, in virtually all 192 recognized nation-states of the world.

Because of the specialized nature of the military profession, one recognizes that persons involved within a civil–military relationship incur a number of unique moral obligations, albeit regulated by formal compunction and discipline. Obviously, there are limits to such arrangements: one cannot easily hold individual persons legally liable to win wars, kill specified quantities of adversaries, or successfully destroy certain enemy facilities as some sort of "absolute duty," for example. The precise nature of civil–military relationships, of course, varies widely from nation to nation. Some are obvious from the wording of the nation's constitution, or its national laws. For a nation without a written constitution, however, legal arrangements and instruments will nevertheless exist (as, for example, in the U.K.) defining the military's relationship with the constitutional and political institutions.

Constitutions and laws, alongside the dynamics of national military–civil relationship, were also recognized, and their significance highlighted, nearly 200 years ago by Clausewitz, the master of military first principles, concepts, and practices. He referred to such arrangements as the interrelated dynamics of "people, the commander and his army, and the government."[9] He also wrote about "moral forces" provided by the synergy of the three components above,

including the habit and culture of "fighting spirit." Note the position of "commander," the supreme appointed officeholder among officeholders, squarely at the center. Note also that the sort of government Clausewitz was writing about accurately described the youthful, democratic U.S., as well as all other types of governments at the time of writing in the 1820s.

Circumstances have changed, but Clausewitz's concept about nations and their military institutions remains firm. Seeking to explain and understand the same phenomenon, or fundamental principle, the British Army itself recently conceived of what it deemed a "moral understanding" between the same three parties, set forth in a package of ideas and actions comprising what the Army termed "the military covenant."[10] In addition to constitutions and laws, all nations have some such similar moral understanding, healthy or unhealthy, with their military forces, even if that understanding remains unarticulated in any meaningful sense. A moral understanding, however, is one thing. What fundamental principles and universal ethics consist of, is something else.

Today, moral philosophy and military service are being brought together enthusiastically by academics and practitioners, notably through the work of the North American branch of the International Society for Military Ethics (ISME) and its European partner (frequently dubbed, somewhat tongue in cheek, as "EuroISME"). Accordingly, the remainder of this chapter aims to take account in general of the customs, practices, laws, and military regulations in the armed forces of democracies. It also addresses the underlying moral understandings that reinforce the voluntary spirit motivating those persons who join professional armed forces in those countries. Commonality of officership factors can be found in the next two sections, while differences lie chiefly in the section on military cultures.

II. Officership: Constitutional and Legal

Sovereignty of states implies the existence of a constitution, usually in written form, as the fountainhead of all political, social, and much economic activity within the state and its relations with other states. Sovereignty is dominated and defined by a number of institutions, such as a lawmaking body as a means of political representation, an independent judicial system, a currency, and a civil service, as well as civil police and armed forces, who provide for national security principally by holding a monopoly of the justifiable use of force. All such components operate within a recognized geographical territory supported by a largely consensual population recognizing the above components. That, at least, is the theory.

Taking Huntington's arguments further, armed forces personnel nowadays are given due recognition in current democratic nations as holders of not only a specialized *military office*, but a significant *public office*, both respective and irrespective of rank.[11] Rank adds varying degrees of professional responsibility and trust, from commander in chief through the ranks, to the corporal and equivalent in other services, and including enlisted persons. All, however, could be said to share in the onerous, specialist duties of fighting capability.

Most mature military institutions have a large array of legal instruments and regulations for promoting and maintaining disciplined conduct. Self-disciplined motivation is also demanded from members of the corporate body of professionals, who can rely on each other in extreme conditions. Functional-technical reliance is one thing for the efficient and objective delivery of military capability; legal and moral reliance is another. This leads to consideration of faithfulness to the *fact* of holding public office, above and beyond any contractual factors.

Many nations adopt what is also expressive of another fundamental principle. They require an oath of service, or oath of office, to be taken by their soldiers, sailors, and air personnel. The formal swearing of a personal oath, whether to the constitution or to the head of state, is

a legal procedure invoked before military service begins, a promise both *in general and in advance*,[12] to be true to a range of explicit and implicit professional demands. Truth and integrity are what is promised, in order to meet many specified and regulated imperatives, as well as general and unspecified expectations, and sometimes even surprises. The deep significance of a military oath is often overlooked and barely thought about in regard to questions of constitution and sovereignty.

The moment of truth regarding such obligations, however, came on March 3, 2014, for the Ukrainian Rear Admiral Deres Berezovsky, who took a new oath of allegiance in public to the Crimean Russian authorities, and tried to induce (unsuccessfully) his subordinate officers also to do so.[13] It was an example of wavering officership, on the one side, and, on the other, officership faithfully upheld (at least for the time being).

Some nations have explicit legal documents, perhaps a military commission or oath of office, constituting another and tangible fundamental principle. For yet other nations, the wording of the oath or contract that binds them is to be found, more or less, in published military regulations having the force of law. It would be very instructive to compare and contrast what documents exist about such military authority. The U.S., British, Canadian (bilingual), Australian, and New Zealand commissions, for example, are almost identically worded, coming from the same eighteenth-century source. The wording is old fashioned but comprehensible and unequivocal. My view is that a document, given to only a very few groups of public officials, is significant because it places such persons in a categorical "fiduciary relationship"[14] directly with other people, the significant words being "especial trust and confidence." This phrase denotes that the named person is held to a duty of double trust, demanding that they act with fidelity and truth, person to person, but also in general company. These are the exact same words found in another phrase in civilian usage, denoting the position of a trustee, or "a fiduciary" in English law, specifically that of equity and trusts.[15] Whether written into a legal deed of trust or into a military commission document, however, the understanding of the adjective "fiduciary" indicates a significant moral relationship: one in which the agent is expected to put the client's interests ahead of his own.

That brings us back to the professional basis of the civil–military relationship within any liberal democracy. The expression "confidence" has many meanings. It includes an extension of trust, generally signifying mutual faith between all parties. It can also strengthen physical and moral courage and a spirit of risk-taking above the call of ordinary duty. Such attention to duty should endure long-term. The individual's oath of service and the expected imperatives of the commission-holders continue until final discharge from office.[16] These significant facts make many who join for military service feel they are entering into a vocation, a true calling in which sacrifice is implicit, even of life. Many would argue that this, too, constitutes a fundamental principle, validated by free-will volunteer military service.

The facts also emphasize that faithful service cannot only be the preserve of commissioned officers, but all who hold warrant and other appointments of military office of any rank. The combined strength of the confidence of the officers corps and the noncommissioned cadre (whatever terms are used)—together commanding and leading the army, navy, and air force of a nation with all probity and at all levels of responsibility—provides a significant capability of fighting power. General Sir John Hackett observed, in 1970, that "Military institutions . . . form a repository of moral resource that should always be a source of strength within the state."[17] Today's German armed forces inculcate in all their personnel the guiding spirit of *Innere Führung*, self-discipline, self-control, conscience, being guaranteeing factors of character, altruism, and absolute personal integrity.

Finally in this section, the justification for going to war (*jus ad bellum*) and criteria for rightful conduct in war (*jus in bello*), as expressed in international law, include the concept of "competent

authorities," both civil and military: the former to declare a war, the latter to prosecute it faithfully. The concept of competent authority in the midst of combat includes the requirement that combatants themselves "be commanded by a person responsible for his subordinates."[18] This, too, is an explicit and fundamental defining principle for all military persons who hold command, whether commissioned or noncommissioned. But it is also a general precondition of officership as a legal status, internationally recognized. In occupied territory (or, say, under a "Chapter of Understanding," enabling the exercise of military command and authority), as well as during coalition operations, the legal status and other appropriate understandings should hold good for all military persons in command identified with that capacity of office, of "officership," whereby they are constantly being "held responsible." This is a significant fiduciary precondition for military persons, many of whom may be of quite junior rank.

III. Officership: Functional and Professional

The next set of fundamental principles of officership can be grouped as those of function, agency, and profession. Agency is about "the power to affect the world," in general and in detail, "by producing actions."[19] Command, as just discussed, is a function of military agency. Space precludes exhaustively detailed discussion of command in particular, or of "agency theory" and practice in general; but "military agency" is what commanders profess to do, while the people under their command serve as their "agents." To profess, for its part, as Col. Don Snider noted earlier, is to assert and avow. The employment of those who serve in the armed forces, both in commissioned and noncommissioned capacities, may well differ from nation to nation, but there are many factors that are general. Functional and professional factors are among them, and can be understood generally as:[20] how military people's time and talents are finally and specifically employed.

1. Combat

The command, training, and deployment of soldiers, sailors, and air personnel is a central function, a form of professional specialization. A high proportion of those employed serve in combat (infantry, armour, and naval or air offensive), or else in combat support arms (artillery, engineers, signals, intelligence, and information systems personnel), as well as on warships and air squadrons directly exposed and engaged in the combat function. Combat support personnel have two professional occupations: in the Army, for example, serving both as a trained soldier and as a qualified engineer. The combat service support arm usually includes soldiers, sailors, and air personnel occupied in logistics and personnel functions, who are being deployed on operations with their own close support function. Many military persons are thus "professionals" twice over (as several other contributors in the following section discuss in the cases of medicine, engineering, and social science in particular).

2. Technical

The technical specializations of policy, training, support, research, and development functions of armed forces are conducted by commissioned and noncommissioned officers, as well as MOD civilians and contractors. Many persons progress in their careers from the combat functions alone to more specialized, technical roles. In all professions and occupations, the tendency is for people to rise from discrete specialist functions to generalist roles, from operatives and administrators to managerial occupations, and then on to directorial roles, performed by senior people.

3. Logistics

The same factors apply as for technical functions and roles for those who specialize in logistics. Provision and movement of supplies, medical and technical support, research and development, and materiel acquisition and procurement also become large-scale functions in which management and direction are of vital importance. For modern high-technology armed forces, logistics are equal in importance to the primary combat function, providing for a complete and comprehensive capability to engage in all types of offensive, defensive, and humanitarian operations.

4. Human Resources

Human resource specialists have been growing in importance and number as the military profession becomes more sophisticated. All members of armed forces need to be supported by the right sort of management and direction to meet professional imperatives. There are huge demands on people's intellectual, emotional, and physical capabilities given all the contradictions and paradoxes of international relations in an increasingly globalized world. Domestic and international employment law, health and safety, duty of care, and the international law of human rights are all becoming more and more central and significant for fully professional armed forces.

5. Defense Policy

The existence of armed forces and their primary use in combat functions and other roles, including aid to the civil power and humanitarian relief, has to remain under the direction of the civil power, as already mentioned. While in times past there was a firm distinction between policy and function, increasingly armed forces officers are becoming engaged in activities that have a political, social, and economic component, as Professor MacIntyre observes in his opening chapter, while politicians and civil servants are taking on responsibilities closer to the military "front line." Even junior ranks can become involved during operations in politico-military and economic-related functions (as MacIntyre again noted). The devolution of budgetary responsibilities to armed forces officers in many nations is another significant feature of military service (as Major General Latiff notes in this volume).

For the delivery of security, fighting power, and defense capability, the actual institutional environments where military people are employed are fairly consistent across the nations—ground force units, ships, and air squadrons; training and educational institutions; higher level operational groupings and formations, including joint and combined or alliance forces; headquarters and civilian management agencies; international training establishments; and ministries of defense and agencies for defense procurement and logistics.

The present-day and future responsibilities, within the foregoing functional activities and professional roles, require commissioned officers, and increasing noncommissioned officers, to possess substantially enhanced personal and professional qualities. Such persons are employed for their command, leadership, and management (CLM) roles and expertise. Initially on joining, and subsequently in order to qualify for promotion, personal and professional skills, competences, and potential capabilities have to be assessed and assured. The following criteria and aptitudes can be generally identified as part of the capability of successfully holding military office. Constituting yet another group of fundamental principles, individuals need to possess identifiable and measurable:

- intellectual ability, including thinking and communicating conceptually;
- specialist professional and technical skills and wider general understanding;
- self-discipline to meet substantial responsibilities;
- conscience, a sense of reliability, and moral courage;
- depth of character;
- potential and ability to lead, motivate, and develop others;
- commitment beyond normal duty *in extremis*; and
- emotional control, particularly in command functions.[21]

Such personal and professional requirements are matters for national armed forces to determine, assess, and develop among their personnel. This should be undertaken in accord with the general underlying conception of "officership," which each particular nation's military wants to promote and sustain at each rank and level of specialization. How they organize and assess their professional personnel, however, needs to be set in the context of national culture and the cultural dynamics of the particular armed force, as well as the different environments, including on land, at and under the sea, and in the air.

IV. Officership: Cultural and Human

The preceding sections have dwelt on the conceptual foundations of a "professional occupation." How the profession lives and works on a daily basis exposes several rather different questions. This portion of my chapter can only briefly cover the subject of military cultures, where the greatest national differences are likely to be found.

That having been said, cultures and the human beings who form them can hardly be removed from a strong connexion with the fundamental professional principles outlined above. In those nations with a long unbroken institutional and war-fighting history, cultural practices are often of the nature of phenomena reaching far back into that history, hard to unravel, let alone proven to be useful or useless, strengths or weaknesses. A newly formed military institution may struggle to instill and develop a strong corporate military culture into its working practices, including the sort of "moral forces" and fighting spirit mentioned above. The civil–military relationship, and how the armed forces identify with and reflect national society and aspirations, is crucial. This is my most general account of the difficulties and concerns raised with respect to the national military forces of African countries in an earlier chapter.

Often, one has simply to accept many manifestations of national and institutional cultures, however inexplicable. *Vive la différence; à chacun son goût.* National military symbolism, rites and rituals,[22] habits and customs, subcultures, language, interpersonal networking and processes of communication, values and internal relationships, as well as psychosocial anthropological details of every sort, are often greatly significant to the moral health and *esprit de corps* of the profession, as well as to the general population. In some armies, unit distinctiveness and cohesiveness based on combat and cultural history is of great importance to them in furthering their efforts to possess that Clausewitzean "moral force," with, for example, stories of legendary heroes who performed daring and courageous exploits. The culture of risk-taking is another dynamic.

The constitutional, functional, and cultural distinction between commissioned officers and noncommissioned ranks is also significant, but so is the strength of the professional partnership between those two groupings. Ability for cultural change, alongside externally driven functional and professional change, is equally important. Those who hold office in the military need to handle change like any other professional, but even more urgently because lives are at risk. Adopting what is best of new developments, while adapting or preserving what is the best of the old, is an important capacity or skill to cultivate.

Cross-cultural understanding, including the ability to cope with what one might call alien cultures—and, in particular, adversarial cultures—is likewise a matter of consideration as part of the quality of officership. It is a curious fact that often even intelligent people, while coping intuitively, do not understand the depths of their own personal and national cultural motivation and are surprised when they witness other cultures at work. This is a matter of education and leadership insight required to gain a deeper understanding of the human condition both at home and abroad. Cultural awareness is a significant factor in military operations and institutions generally. Indeed, it is a factor leading to the development in the U.S. case of its Army's "human terrain systems" (HTS) program for more effective operation in unfamiliar cultures (to be described later in this book by Col. Dan Zupan).

National cultures also affect the recruitment and regenerating of armed forces. Tentatively, the substance of culture within the dynamics of daily living in the community is as follows:[23]

- sense of nationhood and national life;
- type and effectiveness of government;
- respect of laws, legal institutions, and processes;
- value of life and personal health;
- personal and institutional psycho-philosophical values;
- religious traditions;
- demographics within the population;
- livelihoods, job security, and prosperity;
- educational opportunities;
- levels of violence and crime; and
- social divisions, tolerance, and acceptance of diversity.

These social-anthropological factors also affect the perceptions of defense and the activities of officership (and the collective "staff of officers") at the higher level, of which military professionals are trustees. The cultural effects include: perception of defense needs; history of civil–military relations and current standing of the military and its reputation in civil life; military traditions, ethos, and prestige; willingness of young persons[24] to volunteer to join and remain in military service; the democratic will of the population for their armed forces to conduct military operations; national cultural change; and the perceptions of future national and international life.

As I mentioned at the outset, much has already been written about leadership and the military. One of the chief human dynamics, with a culture of its own momentum, is how leaders lead within the confines of the institution and beyond. Leaders are "agents"; they get things done. The term leadership, however, is an uneasy one. It can be made to mean virtually anything positive in human interaction. Chiefly, it is about a leader or leaders inspiring voluntary effort above mere formal duty. Such agency is needed in contexts of significant choices, inasmuch as fundamental change and high risk are frequently causes of anxiety and real fear among the military rank and file, as well as in the wider population generally.

While officership is the formal act of holding office and its obligations, how officers (of any rank) lead becomes an intensely human activity. Officership and leadership are twin adjuncts, corollaries of each other, the objective and impersonal side of the coinage joined to the subjective and human side. Of necessity, leadership must proceed from a strong ethical base in persons such as military officers, who require intellect and intuition to see beyond immediate problems and actions in their search for the common good. Leading would-be friends and former enemies toward peace is the supreme test of a military leader. Acting in good faith is the essence of the matter. But nothing can happen outside a context of personnel governed or led by whomever

comes to occupy the formal "position" (and its attendant responsibilities) of the "leader-official." This observation brings us back to the OED definition of officership. In essence, the unique personal character and conduct of the individual *becomes* the "public office." The public office defines the person who holds it, while, through his or her agency, the person generates or constructs the "office" itself.

Taken all together, all nations and every national armed force has to be aware and take account of such cultural matters in their own way, but also have the imagination to recognize and accept how other nations see themselves and their armed forces. Institutional ethos, identity, and reputation go together.

V. Conclusions: The Power of Ideas

The precise manner in which constitutional, legal, and functional realities affect the individual and cultural substance of military professionals' roles in democratic societies are considerations of deep interest for the profession of arms. Armed forces of every nation need to attend to the following primary or universal principles of officership, which include:

- the primacy of civilian authority and control, as personified in the civil–military relationship;
- the concept of "public office," as it relates to command and profession;
- fiduciary obligation, confirmed by oath, promoting and sustaining mutual trust;
- the commission, warrant, and formal appointment procedures;
- the authority of rank and its command authority and accountability, particularly under international law;
- the duty of agency and the various management functions;
- the military's capacity for corporate fighting power;
- risk, and the vocational nature of membership of the profession of arms;
- leadership potential and personal authority;
- human capability, character, and quality of the individual;
- military culture itself as a potentially cohesive "moral force"; and
- the ethical responsibilities of the military-citizen toward humankind.

General Sir John Hackett saw the profession of arms as a special profession, with many characteristics that were irrespective of, if not above, national factors and characteristics, without losing the moral strength of individual military institutions. He wrote that "the major service of the military institution" in the future could well lie "in the moral sphere," based on the quality of its people and their part in achieving postwar reconciliation (what we now term *jus post bellum*).[25] He also wrote of military commanders, and of officership (without using the term) thus:

> The officer is endowed with the power of coercion. In a society of free men this power cannot be safely bestowed on those who do not have the detachment and liberality of mind to use it wisely.[26]

Finally, Sir John observed that a military person is employed *in extremis*, a professional agent, but with a sense of being part of humanity, for the "ordered application of force under an unlimited liability."[27] That suggests that *everyone* who wears a uniform is, finally, an "officeholder" of one description or another: all alike must recognize themselves as trustees and fiduciaries of their own military institutions, as well as of the international identity, dignity, and integrity of the profession of arms itself.

Notes

1. Professor John Adair, speaking at the COMEC/Sandhurst leadership conference (September 5, 2013), estimated that some 75,000 books have been written on leadership during the past 50 years.
2. *Oxford English Dictionary* (Oxford: Oxford University Press, 2007). No distinction of rank is indicated.
3. *Oxford Thesaurus of English* (Oxford: Oxford University Press, 2009).
4. Patrick Mileham, "Civilized warriors, professional disciplines, ethos, and European armed forces," *Connections* 3, no. 1 (March 2004): 75–94.
5. Samuel Huntington, *The Soldier and the State* (Cambridge, MA: Belknap Press, 1957): 7–18.
6. A point emphasized by General Sir John Hackett in his book *The Profession of Arms* (London: Sidgwick & Jackson, 1983): 202. Hackett was an Australian-born Arnhem veteran, who became a university principal in retirement.
7. Huntington, p. 18.
8. Googling the word "officership" on the Web brings countless U.S. and Canadian references. Exhortations to vocational service predominate, particularly in the former. The Baltic Defense College, Tartu, Estonia, have a faculty of "Officership and Management," its official English-language title.
9. Karl von Clausewitz, *On War*, trans. Michael Howard and Peter Paret (Princeton, NJ: Princeton University Press, 1989): 89.
10. See: www.gov.uk/the-armed-forces-covenant. Without going into detail, this type of covenant or accord cannot be a formal contract. It is a moral understanding between individual soldiers, sailors, and air personnel to be predisposed toward willingly accepting extra occupational risk, acting with fidelity, and providing trusted service in return for guaranteed personal goods and services, of recognized value to them and their dependants.
11. Arguably, this has been so ever since the Nuremburg Tribunal findings in 1945–1946 about the extent of obedience and greater responsibilities toward humanity beyond the military chain of command. General Sir Richard Dannatt, Chief of the General Staff, acknowledged this in his foreword to a group of papers, "Take me to your officer," Ed. Patrick Mileham, Strategic and Combat Studies Institute, Shrivenham, *Occasional Paper 54* (2008).
12. An oath taken in a court of law is usually taken to give the historic and narrative truth *after a specific event*.
13. *The Times* (March 4, 2014).
14. Professors Don McCuish, of the U.S. Air University Command and Staff College, and Martin L. Cook, of the U.S. Naval War College, have both written on the fiduciary obligations, respectively, of officers to their subordinates, and of the state to its armed forces.
15. John McGhee, *Snell's Equity*, 21st edition (London: Sweet & Maxwell, 2005): 152.
16. In the U.S., traditionally, retired officers do not critically engage in political controversy. But see the incident termed "The Revolt of the Generals," in this volume, described in the chapters by McCausland and Eaton, respectively, in the following section.
17. General Sir John Hackett, "The soldier in the service of the state," *War Morality and the Military Profession*, Ed. Malham Wakin (Boulder, CO: Westview Press, 1986: 119.
18. Annex A of the 1907 Hague Convention IV, Regulations Respecting the Laws and Customs of War on Land.
19. Jerome Shaffer, *Philosophy of Mind* (Englewood Cliffs, NJ: Prentice-Hall, 1968): 85.
20. U.K. Ministry of Defence, "The Future Career Management of Officers" (2000).
21. Adapted from U.K. MOD D/AG/DAPS/4520.B (October 29, 2004).
22. Unit and regimental distinctions; drills, bands, and parades; messes and dinners; idiosyncrasies of dress and regimental styles; such form the richness of culture in many peoples' eyes. Others consider military formalities and traditions as hindrances to the professional function. The judgments seem irrelevant to the fact.
23. See Patrick Mileham, "Moral dynamics in culture-centric warfare," *The Moral Dimension of Assymetric Warfare*, Eds. Th. van Baarda and D. E. M. Verweij (Leiden: Martinus Nijhoff, 2009): 327–342).
24. Some nations wish to maintain a strongly youthful spirit of risk acceptance within their armed forces. Others require more mature and likely longer-serving members to meet their defense needs.
25. Sir John Hackett, *loc. cit.*, p. 120.
26. Sir John Hackett, "The education of an officer," *Journal of the Royal United Services Institute* 6, no. 2 (1961): 33.
27. Sir John Hackett, 1983, p. 202.

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18

MILITARY ETHICS AND STRATEGY

Senior Commanders, Moral Values, and Cultural Perspectives

Shannon Brandt Ford

Senior military officers have an important role to play in deciding how a state views the place and role of military force in statecraft. The use of armed force is a most difficult form of government policy. Not only are the political outcomes of warfare unpredictable, but also the ambiguity and complexity of modern conflict can easily reinforce national prejudices and self-deception.[1] Despite the well-established history of theorizing about the use of force in international politics, the study of security issues has been made more complex by the increase in forms of violence that do not fit conventionally understood categories.[2] This means that the development of effective strategy, which has always been a difficult and contentious enterprise, is becoming even more arduous.

In this chapter, I explore the importance of ethics education for senior military officers with responsibilities at the strategic level of government. One problem, as I see it, is that senior commanders might demand "ethics" from their soldiers but then they are themselves primarily informed by a "morally skeptical viewpoint" (in the form of political realism). I argue that ethics are more than a matter of personal behavior alone: the ethical position of an armed service is a matter of the collective responsibility of the people who constitute it, and senior military officers, having authority to give the orders, have a particularly important role. First, I discuss the continued prominence of a neorealist mindset in strategic thinking. Neorealist theory assumes that ethics is a largely irrelevant concern for strategic decision-makers. In contrast, I argue that consideration of moral values should be at the center of strategic theory and practice. Then, in the second section, I explore the "professional ethics" of senior military officers in order to develop an appreciation of the shared values and expectations regarding required conduct within any professional military service. I argue that senior military leaders should be concerned with what it means to be "good" and that this concept of the good can, and should, be applied across cultures and national boundaries. In the final section, I examine armed conflict and briefly discuss the moral reasoning involved to justify deliberate killing and destruction. I conclude that senior military officers require an understanding of sound moral reasoning to implement effective strategy.

I. Addressing a Neorealist Mindset

In this first section, I examine the way that discussions about norms and values, as a response to neorealism, have recently manifested in security studies scholarship. It would be better to recognize that moral values are at the center of strategic theory and practice rather than maintaining that strategy is fundamentally a self-interested rational process somehow separate from political and moral values.

1. The Prominence of Neorealism

Over the last few decades, reference to values has been considered problematic for understanding and explaining international politics. This is largely due to neorealism's dominance as the theoretical paradigm of choice. Kenneth Waltz's *Theory of International Politics* (1979) is the most important exposition of neorealism. In it, Waltz argues that states' actions are explained by their rational response to forces that operate at the systems level, and he recast the tenets of classical political realism using a positivist methodology.

Political realism argues that international politics will always be a ruthless and dangerous business. Despite the occasional peaceful and cooperative period, political realists hold that great powers cannot help but be suspicious of each other and will be forced to compete for power. They claim that they are simply facing the reality of thousands of years of human conflict. Although often criticized for having an unnecessarily bleak view of humanity, political realists respond that they are simply being intellectually honest about the reality of international politics and the inevitability of future conflict.[3] In other words, political realism adopts an "amoral" viewpoint: it is skeptical about the worth of ethics.

Although neorealism is a species of political realism, it is distinct from the classical view because it adopts a systems approach to explaining the ugliness of world politics. The essence of neorealism is materialism.[4] That is, the positivist (or naturalist) methodology of neorealism more directly reflects the received model of the natural sciences and, since it is exclusively concerned with measurable causes and effects, favors material variables such as the distribution of power for understanding international politics. In this way, neorealist theorists are more likely to rule out the possibility that cultural and ideational variables—such as moral values—can explain political behavior. Its pervasiveness and influence in the late 1970s and early 1980s effectively stripped international relations of normative commitments.

2. Norms and Moral Values

In more recent scholarship, however, an increasing reference to "moral values" reflects an emerging concern with "norms" in the study of international politics and security. In contrast with neorealism, the concern with norms aims to resurrect E. H. Carr's maxim that "Political science is the science not only of what *is*, but of what *ought* to be."[5] Normative contestation is in large part what politics is all about; it is about competing moral values and understandings of what is good, desirable, and appropriate in our collective communal life.[6] Although it acknowledges the importance of material structures, a concern with norms in international relations is generally characterized by an approach that gives priority to cultural factors because international actors act on the basis of the meanings that they assign to such factors. Norms and moral values, so this approach to international relations theory suggests, is an evaluative aspect of culture and identity, analytical concepts that theorists are finding increasingly useful alternatives to traditional notions such as power and geography.[7]

Despite the many references by strategists to Karl von Clausewitz's notion that the use of military force should always be viewed as a means in the pursuit of a political end, the significance of moral values for security is an issue that is frequently overlooked.[8] Even where the political objectives and context of strategy is recognized, it is considered a distraction that "erodes the cold rationality of the strategic process."[9]

But value preferences, political ends, and strategy are linked.[10] Strategic and political cultures (and their institutions) are interdependent, and the function of a nation's military is closely related to political views about the use of force. Any country that ignores its own political history, social values, and ideology is unlikely to develop an effective strategy.[11] The choice of a strategy involves a decision about which values to pursue. By eschewing disciplined discussion of values, realist policy science disarmed itself from consideration of the strategic question: that of the political objectives at stake.[12]

In many cases, culture shapes a strategic actor's interests or preferences in ways that contradict the logic of the strategic environment or prevent cooperation when it is clearly beneficial.[13] There exists within a state (or like politically relevant group) a distinctive and lasting set of beliefs, values, and habits regarding the threat and use of force, which have their roots in such fundamental influences as geopolitical setting, history, and political culture. These beliefs, values, and habits constitute a strategic culture that persists over time, and exerts some influence on the formation and execution of strategy.[14] States have different predominant sets of strategic preferences that are rooted in the "early" or "formative" military experiences of the state or its predecessor, and are influenced to some degree by the philosophical, political, cultural, and cognitive characteristics of the state and state elites as these develop through time.[15]

In short, rather than pretending that strategy is a rational process somehow separate from politics, it would be better to recognize that values are at the center of strategic theory and practice.

II. Personal and Professional Values

In this next section, I discuss the link between values and strategy by focusing on the personal and professional values of senior military leaders. In particular, I note the tension caused by disagreements over whether certain moral values are always culture-specific or can be broadly agreed in some cases. I argue that in the high politics of strategic decision-making, there should be a concern that senior military leaders are "good."

1. Good Leadership

First, we need to establish what a "good leader" is. According to Joanne Ciulla, a good leader is one who is both competent and ethical.[16] Certainly, a good leader is one who is competent. That is, someone who is good at achieving the ends of the organization. We can judge good leaders according to whether or not they facilitate the successful pursuit of the proper goals of the organization they manage. In contrast, bad leaders impede or undermine the successful pursuit of the proper goals of the organization they manage.[17] But good leadership should be understood not only in the sense of being technically competent, but also in the sense of being unselfishly motivated to pursue a common purpose.

This aspect of good leadership is a reference to determining what is morally right or wrong. Goodness or justice in the peculiar circumstance of war is about resorting to force and conducting hostilities in accordance with certain rules, but the significance of moral values extends further than that. The exercise of leadership in the military profession calls for personal virtues that are seldom exhibited in civilian life, and the identity and purpose of warriors in general is largely derived from military ethics.

2. Different Cultural Perspectives

But one might have a number of objections to considering what is ethically good. It might be argued that nobody can really know what is ethically good. After all, so this thinking goes, we have no objective reference points on which to judge right and wrong. Additionally, even if we can know something about what is good, it might be argued that it is too complex to say for sure. It is simpler and more predictable to assume that people are self-interested rational actors. Or perhaps it is arrogant to assume that our cultural ideas of what is good are better than the idea of good we find in other cultures.

The notion that moral values are (at least largely) determined by culture is one that resonates with senior military officers, particularly when considering strategic questions.[18] Can countries cooperate on security issues? In dictatorships, one assumes the government dictates values—to what extent is this similar in democratic societies? Are our interests shaped by our values or is it murkier than that? Perhaps our interests are not as close to our values as they should be? Is the concept of values in international relations becoming more important to the discourse on security relationships? What is the great values-based success story at the international level? Is there one?

These are good questions that correctly recognize the different understandings of moral good we can observe between cultures. I do not dispute the truth of the observation. The theory that moral values are to some extent relative to different cultures is a form of thinking known as relativism. But it is important, at this point, to make a distinction between cultural relativism and ethical relativism. Ethical relativism (or moral skepticism) is the notion that all values, including moral values, are only cultural. There are no universal values. The attraction of ethical relativism is that it seemingly resolves the difficulty of finding an overall theory of ethics. It appears to make ethics easy: everything is simply a matter of opinion.

Cultural relativism, in contrast, is the factual claim that cultural practices can only be understood relative to that particular culture. The existence of cultural relativism does not preclude an approach to ethics based on truth claims. P. C. Lo, for example, argues that the Chinese and Western traditions of just war can communicate with each other meaningfully. The recovery of ancient Chinese just war ethics, he suggests, can enrich the global moral discourse on war and peace and, he hopes, provide one further step toward finding and formulating "a cross-cultural consensus on rules of war."[19]

Of course, Chinese perspectives on war are different to the Western understanding. Lo compares the ancient Chinese traditions with the just war ethics of the Chinese Seven Military Classics and concludes that from the Chinese perspective, there is no moral presumption against war per se. Statesmen and military strategists are duty-bound to resort to war when necessary so they would not consider war inherently immoral.[20] But even if we agree with this view, it does not rule out agreement on fundamental moral principles such as the presumption against killing, which I discuss in the final section.

3. Problems with Moral Skepticism

If we assume that everybody is coming at what is good from different perspectives, we can assume that view is also a "theory" of what is good (that is, the view from nowhere does not exist). And there remain considerable theoretical and practical problems in choosing this approach to determining what is morally good. First, it tends to ignore the importance we place on shared humanity. We do, in fact, agree on many moral issues. Most of us think that there are right and wrong answers in ethics. For example, most would agree that it is morally wrong to set a child on fire for the mere pleasure of watching him burn. Is there any reasonable

person who seriously doubts the truth of this claim? An ethical relativist, however, does not have grounds to condemn anything.

Second, the conclusion advanced by the ethical relativist argument does not by necessity follow from its premise. Ethical relativism concludes that there is no objective truth in morality (what really is the case) from the premise that different cultures have different moral codes (what people believe). So what it is saying is that what really is the case (what is morally good) follows unproblematically from what people believe (approved of in the agent's society). This is not necessarily true. For example, if meat eating is approved of in our society, then ethical relativism claims that meat eating is morally good. But surely even in a society that mostly approves of meat eating, the moral status of meat eating can still be disputed.[21] The moral question is not settled by a culture's approval or disapproval.

Third, it denies the possibility of moral progress (for example, slavery and colonialism). If it is true that right and wrong can only be judged within a culture, then we have no way of effectively judging the moral transformations throughout history. For example, we might argue that society is morally better off without the "blood sports" and gladiatorial contests that were, at times, normative during periods of the Roman Empire. But from the perspective of ethical relativism, we could not say that it was wrong for ancient Roman culture to force enslaved people to kill each other for entertainment. And we could only say that it is wrong now because most people today disapprove of it, but only while they disapprove of it.

Fourth, it is incoherent in the sense that suggesting there are no moral values is to demand that tolerance be accepted as the universal moral value. Tolerance is an acknowledgement that we have no right to interfere with other autonomous individuals' actions, unless they are hurting others. People have a right to be wrong, and tolerance is a way of expressing our respect for their autonomy. But if we accept that people have a right to this type of moral autonomy, then we should not choose to refrain from all moral judgments outside our own culture. To do so, as is advocated by ethical relativism, is more likely to be disrespectful than tolerant. This is because we can too easily dismiss the objective moral perspectives of the other culture in preference for our own.

Finally, how do we identify the culture to which moral norms belong? The ethical relativist argument relies on defining morality in terms of a culture's norms, but how do we determine where to draw the boundaries of that culture, and who are its members? Even if we manage to identify a single culture, and its members, then there still exists a variety of moral perspectives within a single culture. Furthermore, it is normal for individuals to be members of several different cultures at once. So how do we decide which culture's norms should be preferred?

In short, various kinds of ethical relativism have been advanced as alternatives to universal concepts in ethics, but they often fail because they do not explain how reasons can be advanced and arguments used to change ethical positions. If we base all our decisions just on what we already happen to believe or on what our society has historically accepted, then we cannot explain how we come to change our ethical views or how progress is made. It becomes impossible to engage in productive criticism when deciding which options may be better or worse.

4. Overlapping Consensus

Even if there is no single answer to a moral dilemma, there are certainly some answers that will be wrong, and some answers that are more right than others. What is needed is a framework of principles or values, supported by justifying reasons that we endorse through a process of rational argument. Otherwise, we can become simply bound by tradition, without any means to question whether some (or all) of our traditions may be bad (or no longer relevant).

On the other hand, it is now also widely accepted that the Enlightenment idea that everything can and should be a matter of pure rationality is also limited. Communities rely upon traditions and established institutions. This produces stability and predictability in social interactions, and adapts a system of government or law to the particular form of life of a people. We also rely upon things other than rationality for our own moral judgments: things such as emotional insight; personal relationships; long-term commitments; and religious faith and other metaphysical beliefs that cannot be tested by formal logic. One's approach to ethics should allow for an appropriate balancing of critical rationality with other important values such as emotion and culture.

As an example, the American philosopher John Rawls proposed one way to achieve this balance. Writing primarily in the context of political philosophy, and the design of modern institutions, he proposed what he called the "overlapping consensus." Rawls argued that every person, regardless of personal beliefs or culture, still needs to protect their own capacity to pursue the form of life that seems right to them. We each need to be left alone by others, to enjoy security and to be safe, to have access to economic opportunity, and to have things such as healthcare and education so that we can pursue our own life goals and interests. If we had to sit down and strike a bargain with others, we would, he argues, agree to respect the ways of life of others if they would agree to respect ours, and would provide in common whatever was needed to give everyone an acceptable and equal level of self-respect, autonomy, opportunity, and security.[22]

The idea of an overlapping consensus provides a basis for a conversation about what the state is for that allows us to be critical of existing institutions, and provides a common ground that avoids cultural specificity. It also delivers a very clear conception of what the law and legal institutions should aim to deliver. This consensus is meant to be found in public discourse about our basic legal, political, and economic institutions, and emerges where people from diverse backgrounds discover mutual basic interests they need to protect and promote within the context of cultural and moral difference.

III. The Ethics of Armed Conflict

This final section examines the specific context of armed conflict, where the political commitment to valuing both individual rights and upholding state duties is tested. Of particular moral concern is the deliberate killing and destruction that go with armed conflict. And the central moral consideration in war is not just the taking of human life, but the likelihood of taking many lives, especially those who are innocent.

1. Moral Reasoning and Killing in Self-Defense

First of all, most persons tend to agree that deliberate killing is prima facie wrong. That is, there exists an important moral presumption against killing. All things being equal, most of us believe that killing a human is wrong. We recognize that to kill someone is to destroy something of considerable moral value, a human life. Ultimately, if we agree with the claim that it is wrong to kill another human, then we believe there is a basic right not to be killed by another person. To overcome this presumption, there needs to be a very strong justification that changes its moral status from an action (or intention) that is wrong to one that is neutral or right. In the absence of any discernable and sufficient moral reasons, the deliberate killing of human beings should be judged as a serious moral wrong.

It is generally agreed that self-defense is one clear example of a strong justification for killing. Put another way, the strongest moral justification for killing a person is in cases where one person is forced to defend himself against someone who attempts to kill him. In a case of self-defense, one is morally justified in killing an attacker when it is necessary to prevent one's own death at the hands of the attacker. Similarly, we are justified in killing someone to defend the life of a third person who is being attacked.

This rights-based moral justification for killing in self-defense is grounded in the idea that a victim of aggression has a basic right to life. That is, all human beings have a right not to be killed by an unjust aggressor. The defender is permitted to kill the attacker because she is entitled to protect her life from the unjust aggression that threatens to kill her. Since it is a human life that is at stake, the defender is permitted to take the life of the deadly attacker. The protection of the innocent person's life is the goal of self-defense.

Furthermore, some argue that there is an obligation to intervene when it is necessary to prevent an innocent person from being killed. This is because, without our intervention, an innocent person will otherwise die. This is especially the case when the rescuer is a member of the police or military. Such professions take on special responsibilities (on behalf of the state) to protect innocent persons.

But some people argue that killing is always morally wrong. Pacifists, in particular, assume that the use of violence is *never* justified. Pacifism is the view that the use of physical force against another human being is unconditionally wrong, and can never be made right by a justifying principle such as self-defense. It might be that a person has a right to defend himself, but this right does not extend to the use of deliberate violence against an attacker. Ultimately, the pacifist renounces the moral right to kill proportionately in self-defense, believing that nonviolence has a hidden power to transform conflict.[23] While both the soldier and the pacifist share in common a willingness to die for their values, the pacifist refuses to kill for them. If necessary, the pacifist accepts the path of suffering and death.[24]

But an important problem with the nonviolent view of killing in self-defense is that we end up accusing the victim of an unjust attack of acting immorally if she attempts to protect herself. At best, she might be excused for killing another person in self-defense but we can never conclude that a defender has done the right thing since the details of the case are irrelevant to our moral judgment on the defender. There can only be degrees of acting wrongfully. This view is grossly unjust when we consider incidents where a person is the victim of a murderous attack that is clearly brutal and unprovoked.

For example, in a case in New Delhi, India, a group of men attacked a young law student, Jyoti Singh Mandey, and raped and murdered her. It would be a harsh judgment to conclude that an innocent victim such as Jyoti would be doing something wrong by killing her attackers in self-defense if that option was available to her.[25] Therefore, it is incorrect to say that in every case of killing in self-defense, we should conclude that the defender has done something wrong.

In addition, the nonviolent view incorrectly condemns a third party for using forceful intervention to protect the life of a victim of an unjust attack. It might be permissible for a person to sacrifice his own life when faced with an unjust attack but this does not then mean he is permitted to allow the sacrifice of another life. In Jyoti's case, her friend, Awindra Pandey, fought the assailants and consequently received a broken leg.[26] Yet the nonviolent view of self-defense argues that Awindra should not have physically confronted the men.

Ultimately, advocates of the nonviolent approach to self-defense allow gross violations of individuals' basic rights for the benefit of their violators, in the hope that this will create a better overall result. But it is not clear how stepping back and allowing unjust attacks will then lead to just outcomes or a better society. Their assumption is that the use of violence in response

to violence will always produce more violence, since it is all part of the same problem. But it seems just as likely that allowing unjust violence will reinforce the use of more unjust violence. The better approach is to distinguish between just violence and unjust violence.

2. Moral Reasoning and Killing for Self-preservation

Moving in the other direction, the self-preservation view also makes the assumption that moral judgments about killing in self-defense are not problematic per se.[27] Self-preservationists argue that an individual is *always* justified in killing if his own life (and not merely the life of another) is at stake.

The self-preservationist (or Hobbesian) view of self-defense is the opposite of the nonviolent view. It makes the assumption that a person is *always* justified in using lethal force if it is necessary to preserve her life. Self-preservation is simply an act (or set of actions) intended to prevent or reduce harm to a person from a deadly threat.[28] The most important notion promoted by this perspective is the belief that survival is the only human interest that matters. This view might be referred to as the Hobbesian approach to killing in self-defense because self-preservation (or the rational avoidance of death) plays such a central role in Hobbes's political theory.[29] Hobbes states that:

> The Right of Nature . . . is the Liberty each man hath, to use his own power, as he will himself, for the preservation of his own Naturel; that is to say, of his own Life; and consequently, of doing any thing, which in his own Judgement, and Reason, hee shall conceive to be the aptest means thereunto.[30]

In this respect, Hobbes maintains that self-defense is an inalienable right that is grounded in one's rational concern with his own self-preservation.[31]

Although an act of self-defense is a subset of self-preservation, we can (and should) distinguish them from one another. First of all, self-defense, like self-preservation, maintains the same condition of an act that intends to prevent or reduce harm to one's self from a deadly threat. But acts of self-defense are "those acts of self-preservation which presuppose an immediate threat from an agent who intends . . . to kill or seriously injure you, and which themselves consist of immediate counter-attacks directed at that agent and at no-one else."[32]

Importantly, self-defense does seem to constitute a legitimating moral principle that justifies an act (or series of actions) of self-preservation. And there are a number of reasons why we should be careful to make this distinction and reject the view that one's life being at stake is sufficient justification for killing. First, in situations where lives are at stake, most of us agree that there are limits on the actions one can take to preserve lives. A common example in ethics is the doctor who has the opportunity to save the lives of five sick patients by killing and removing the organs of one healthy man. Most of us would agree that the preservation of the five lives in this case does not justify killing the healthy man.

A second problem with the self-preservationist view is its failure to prohibit harm to innocent bystanders in situations of mortal danger. We might imagine a situation where one person (Meg) is shooting at a second person (Sam) and the only way Sam can save his own life is by pushing a third person (Rory), an innocent bystander who happens to be within reach, into the line of fire. Most of us would agree that Sam's sacrifice of Rory in this way is impermissible, and should not be justified on the basis that it is an act of self-preservation by Sam.

A third problem with the self-preservationist account of killing in self-defense is the concern that it reduces morality in conflict to brute force. Not just anything goes in self-defense. We

cannot simply say (as Hobbes essentially does) that "all bets are off when you will otherwise die," and thus that the premise "A will otherwise die" is sufficient for the conclusion that A may kill B. If we take this approach to killing in self-defense, then moral justification would simply be a matter of power and strength.[33]

In short, one's life being threatened is a *necessary* but *not* sufficient condition to justify killing in self-defense: there needs to be something more to make an act of self-preservation count as justified killing in self-defense.

3. The Just War Tradition

In the specific context of armed conflict, the political commitment to valuing both individual rights and enacting state duties makes the situation even more complicated. War, whether it is conceived as a threat to security or as a pathway to security, occasions everyone it touches to ask what values matter most, why they matter, and whether or how some other values might need to be subordinated for the sake of security. The conventional account of justified killing in war (which is known as the just war tradition) gives combatants special permissions for killing enemy combatants.[34] By "moral exceptionalism," I simply mean the exceptional duties and permissions we grant soldiers in active theaters of war to use lethal force.[35] The just war tradition attempts to explain the "rightness" or "wrongness" of the decision to go to war (*jus ad bellum*) and the way in which a war is conducted (*jus in bello*).[36]

The just war tradition agrees with the nonviolent view that war is a terrible thing, but, rather than concluding that war is the main problem, instead presumes the problem is injustice. It holds that in some circumstances, war is preferable to the injustice that results without it. The purpose of just war is to create a just peace. Hence, military victory is pointless unless it can be transformed into the right type of political success, which can only be hampered by ignoring the normative restraints of conflict.[37]

Augustine (AD 354–430), one of the historical architects of the tradition, argued that not all wars are wrong, and that some wars can be ethically justified. In particular, Augustine emphasized the idea of war only being just if it is being fought with the right intention, suggesting that the evil in war was not so much the deaths that it caused, but the desire to harm and the lust to dominate. Thomas Aquinas (1225–1274) centuries later used the authority of Augustine's arguments in an attempt to define the conditions under which a war could be just. Later, the classical jurists laid the foundations for international law, based on natural law. Hugo Grotius developed these ideas outside such an exclusively Christian tradition by placing them within a more legalistic framework. The just war tradition assumed more importance after the Peace of Westphalia in 1648, which is usually seen as the birth of the era of the modern nation-state and the beginning of the modern system of international diplomatic relations.

What we in the present conventionally understand as the just war tradition at its most basic level, however, is the thinking reflected in Michael Walzer's book *Just and Unjust Wars*, and the humanitarian ideals and protections enshrined in international law, particularly in the Geneva Conventions. Walzer's approach is largely a response to the hegemony of neorealism in international relations theory (as well as to the Vietnam War), and he builds his just war theory on the notion that states (much like individuals) have a right of self-defense, which he refers to as the "domestic analogy." The Geneva Conventions understand the laws of armed conflict as "a compromise based on a balance between military necessity (that is, those measures essential to attain the goals of war) and the requirements of humanity."[38] According to Michael Gross, for example, humanitarian reasoning (or humanitarianism) guides combatants in their treatment of one another and of noncombatants (including soldiers who are no longer a threat). It infuses

the law of armed conflict (LOAC) and international humanitarian law (IHL), and is enshrined in the 1949 Geneva Conventions and the 1977 Protocols (I and II) to the Geneva Conventions.[39]

IV. Conclusion

The rhetoric of national strategy might be the language of national interests, rational self-interest, and competition. But senior military officers working in the area of high levels of government decision-making must still attend to the role of ethics, political values, and global cooperation to implement effective strategy (very much as PLA Professor Shang Wei concludes in her chapter, on the basis of her analysis of the "political realist" Sun Tzu).

The consequences of this recognition are threefold. *First*, senior military officers should seek to apply ethical reasoning at the strategic level. *Second*, military ethicists should seek to engage the tenets of political realism, which was Michael Walzer's project. *Third*, we should reject the notion that moral truth claims are incommensurate with cultural understanding.

Notes

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2. M. L. Gross, *Moral Dilemmas of Modern War: Torture, Assassination, and Blackmail in an Age of Asymmetric Conflict* (Cambridge: Cambridge University Press, 2009): 2; Fritz Allhoff, *Terrorism, Ticking Time-Bombs, and Torture: A Philosophical Analysis* (Chicago, IL: University of Chicago Press, 2012): 36; Chris Brown, *Sovereignty, Rights and Justice: International Political Theory Today* (Oxford: Polity Press, 2002): 113; S. Brandt Ford, "*Jus ad vim* and the just use of lethal force-short-of-war," in *Routledge Handbook of Ethics and War: Just War Theory in the 21st Century*, Ed. Fritz Allhoff, Nicholas G. Evans, and Adam Henschke (New York: Taylor & Francis, 2013): 63.
3. John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York: W.W. Norton & Company, 2003): 2.
4. Alexander Wendt, "Identity and Structural Change in International Politics," in *The Return of Culture and Identity in IR Theory*, Eds. Y. Lapid and F. V. Kratochwil (Boulder, CO: Lynne Rienner Publishers, 1996): 62.
5. E. H. Carr, *The Twenty Years' Crisis 1919–1939: An Introduction to the Study of International Relations* (Basingstoke: Palgrave Macmillan, 1981). 6.
6. Martha Finnemore, "Norms, culture, and world politics: Insights from sociology's institutionalism," *International Organization* 50, no. 2 (1996): 342.
7. Peter J. Katzenstein, *The Culture of National Security: Norms and Identity in World Politics* (New York: Columbia University Press, 1996): 520.
8. Michael Doyle, "Politics and Grand Strategy," in *The Domestic Bases of Grand Strategy*, Eds. R. N. Rosecrance and A. A. Stein (New York: Cornell University Press, 1993): 22.
9. Frederick M. Downey and Steven Metz, "The American political culture and strategic planning," *Parameters* 18, no. 3 (1988).
10. The main approach to culture in modern political science and international relations views it as shaping value preferences. This follows the lead of Max Weber and Talcott Parsons in suggesting that culture tells us "what to want, to prefer, to desire, and thus to value." Valerie Hudson, *Culture and Foreign Policy* (Boulder, CO: Lynne Rienner Publishers, 1997): 8.
11. Michael Evans, *The Tyranny of Dissonance: Australia's Strategic Culture and Way of War 1901–2005* (Canberra: Land Warfare Studies Centre, 2005): 8.
12. Tarak Barkawi, "Strategy as a vocation: Weber, Morgenthau and modern strategic studies," *Review of International Studies* 24, no. 2 (1998): 181.
13. Paul Kowert and Jeffrey Legro, "Norms, identity, and their limits: A theoretical reprise," in *The Culture of National Security: Norms and Identity in World Politics*, Ed. Peter J. Katzenstein (New York: Columbia University Press, 1996): 462.
14. Alan Macmillan, Ken Booth, and Russell Trood, "Strategic culture," in *Strategic Cultures in the Asia-Pacific Region*, Ed. K. Booth and R. B. Trood (New York: St. Martin's Press, 1999): 8.

15. A.I. Johnston, *Cultural Realism: Strategic Culture and Grand Strategy in Chinese History* (Princeton, NJ: Princeton University Press, 1998): 1.
16. J. B. Ciulla, Ed. *Ethics, the Heart of Leadership* (New York: Praeger Publishers, 2004); J. B. Ciulla, T. L. Price, and S. E. Murphy, *The Quest for Moral Leaders: Essays on Leadership Ethics* (Cheltenham: Edward Elgar, 2005); J. B. Ciulla, "The state of leadership ethics and the work that lies before us," *Business Ethics: A European Review* 14, no. 4 (2005).
17. Seumas Miller and Michael Palmer, "Authority, leadership and character in policing," in *Police Leadership in the Twenty-First Century: Philosophy, Doctrine and Developments*, Ed. R. Adlam and P. Villiers (Winchester: Waterside Press, 2003): 105.
18. These questions were in response to my March 2014 lecture on "Values and Security" to the Centre for Defense and Strategic Studies (CDSS) at the Australian Defense College (ADC), Canberra. The CDSS is the senior educational institution of the Australian Defense Force (ADF). It delivers educational programs in strategic defense policy and planning, leadership and management, and security issues of global, regional, and national importance. The CDSS includes senior civilians who are working for the Australian government. It also includes military officers from other countries, especially the Asia-Pacific. The CDSS is senior officer education with a focus on the Asia-Pacific and it is particularly concerned with the "strategic perspective."
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20. Lo, "The art of war corpus and Chinese just war ethics past and present," 436.
21. Andrew Alexandra and Seumas Miller, *Ethics in Practice: Moral Theory and the Professions* (Sydney: University of New South Wales Press, 2009): 25.
22. J. Rawls, *Political Liberalism* (New York: Columbia University Press, 1993): 181.
23. Alastair McIntosh, "A nonviolent challenge to conflict," in *Ethics, Law and Military Operations*, Ed. David Whetham (Basingstoke: Palgrave Macmillan, 2010): 46.
24. Ibid.
25. Hugo Gye and Suzannah Hills, "'She's as guilty as her rapists': Fury as Indian guru blames tragic student, 23, for the vicious gang attack which killed her," *Mail Online*, www.dailymail.co.uk/news/article-2258422/Fury-Indian-guru-Asaram-Bapu-blames-Delhi-rape-victim-vicious-gang-attack-killed-her.html.
26. Francis Elliott, "Jyoti Singh Pandey's rape ordeal needs 'to wake up India'," *The Australian*, www.theaustralian.com.au/news/world/jyoti-singh-pandeys-rape-ordeal-needs-to-wake-up-india/story-fnb64oi6-1226550662862.
27. Brown, *Sovereignty, Rights and Justice: International Political Theory Today*: 100.
28. Jenny Teichman, *Pacifism and the Just War: A Study in Applied Philosophy* (Oxford: Basil Blackwell, 1986): 84.
29. B. Gert, "Hobbes and psychological egoism," *Journal of the History of Ideas* (1967): 518.
30. Thomas Hobbes, "Leviathan," in *Hobbes: Leviathan, Revised Student Edition*, Ed. Richard Tuck (Cambridge: Cambridge University Press, 1996): 91.
31. Gert, "Hobbes and psychological egoism," 518.
32. Teichman, *Pacifism and the Just War: A Study in Applied Philosophy*: 84.
33. Judith J. Thomson, "Self-defense," *Philosophy & Public Affairs* 20, no. 4 (1991): 305.
34. For a discussion on just war theory and the ethics of killing in war, see: Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th ed. (New York: Basic Books, 2006); Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009); David Rodin, *War and Self-Defense* (New York: Oxford University Press, 2003); Brian Orend, *The Morality of War* (Ontario: Broadview Press, 2006); Fritz Allhoff, Nicholas G. Evans, and Adam Henschke, *Routledge Handbook of Ethics and War: Just War Theory in the 21st Century* (London: Taylor & Francis, 2013).
35. For more on exceptionalism, see: Andrew Fiala, "A critique of exceptions: Torture, terrorism, and the lesser evil argument," *International Journal of Applied Philosophy* 20, no. 1 (2005); Allhoff, *Terrorism, Ticking Time-Bombs, and Torture: A Philosophical Analysis*: esp. Chapter 3; Jonathan H. Marks, "What counts in counterterrorism," *Columbia Human Rights Law Review* 37, no. 3 (2005).
36. David Whetham, "The just war tradition: A pragmatic compromise," in *Ethics, Law and Military Operations*, Ed. David Whetham (Basingstoke: Palgrave Macmillan, 2011).
37. Ibid.: 68.

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19

TOWARD A EUROPEAN CODE OF CONDUCT FOR MILITARY AND PEACEKEEPING FORCES[1]

Second Lieutenants Hakim Bouzid, Pierre Falzon, Eudes Foutel, Malik Ibrahima (Bénin), Quentin Le Goaziou, Sylvain Mve Ongoua (Gabon), and Charles N'Gandy

"Europe" is not itself a state, so much as a state of mind. There is, strictly speaking, no "European army," only a limited military cooperation between states, and that fact alone confronts us with the problem of political unity. Jean Monnet, the great architect of European unity, observed that there is "no Europe without culture." European defense, in this view, should be formulated in the crucible of this European culture, and, even more, Europe must not represent a myth, but a shared political ideal.

Not only has Europe no common army, but it could not in fact act unilaterally to "declare war" in the same manner in which, for example, one of its member states (or any member state of the United Nations) might claim the right to wage a war of self-defense. The member states of the European Union, of course, individually have armed forces, which sometimes may be brought into a coalition military operation either under UN mandate, or as part of NATO. Strictly speaking, however, a uniquely "European" code of military ethics would not really be applicable either to a UN, or to a NATO military coalition. Neither could such a joint "European" code of military ethics be reduced to the several national codes of conduct that apply to the military forces of the European Union's member states. Hence, what meaning and what form could be given to such a concept?

I. Background of Our Project

Chronic crises in the present have revealed the deep scars and divisions in our social fabric that previous generations either failed to perceive, or refused to acknowledge. These divisions are reflected in the rise of extremism, religious fundamentalism, and a re-emergence of extreme forms of nationalism and narrow patriotism in some countries. These rifts have worked to increase distrust among nations, even among allies, and will almost certainly serve to provoke resort to armed violence in the near future.

Europe is not exempt from these relentless divisions and resentments. The European Union itself grew out of a great hope for a common and peaceful future, nurtured by the harsh lessons

inherited from a violent and war-torn past. Unfortunately, at present, that vision of a united and peaceful Europe is challenged, ridiculed, and widely denounced. Economically, Europe's great and ambitious experiment in financial union, the euro, has not enjoyed the success anticipated for it, and the European Central Bank is increasingly challenged by its range of policy choices. Politically, critics currently argue that economic stagnation and persistent financial crises themselves constitute the inevitable result of that ambitious experiment. Was it ever truly realistic (they argue) to expect mutual understanding and agreement on so large a range of complex economic and political issues?

What kind of Europe are we really talking about? Our primary focus, of course, the European Union and its member states, including countries outside the so-called "eurozone" (Britain, Denmark, and Sweden, in particular), inasmuch as they participate more widely in "Europe" politically, economically, and militarily. In other words, we speak of Europe's common cultural, historical, and social, religious, and political heritage, as well as of its geography. Sometimes, however, we will expand the scope of our study even further to NATO, including some of its members outside of geographical Europe but encompassed within the Western tradition (e.g., Canada and the United States). Finally, we sometimes also intend to include Russia and its neighboring Slavic states, also contained within the continent of Europe, which likewise share, to some extent, a common culture and which (despite Russia's current policy shift toward Asia) were often allies of the several countries of Western Europe (for example, of France during WWI, prior to 1917).

Is there perhaps a common future for our armed forces, involving a new European political awareness, and perhaps also a common awareness of what we often term "the profession of arms?" And, would this new awareness simply signal the unwanted resurgence of militarism, or might it lead us instead to wholly *reconceive of the military itself* within our respective societies? In particular, how are we to envisage a common security and defense policy (one, for example, that might finally lead authentically to a common *European* defense, as provided for in the Lisbon Treaty of 2007) unless we are also willing to embrace a common code of *military ethics*, grounded in our common values and cultures in Europe, and requisite for its proper defense?

II. Why Focus on "Military Ethics?"

Many communities of common practive are engaged, at the present time and in many regions of the world, in developing a professional "ethos" whose moral requirements are directly related to the specific kind of duties performed in that individual community. The advent of modern technological weapons and the increasing occurrence of "irregular" warfare imposes a real need for precisely such reflection among E.U. military forces concerning *the ethics of their common profession*.

Modern Europe was initially unready for the new and profound challenges that such novel developments in warfare presented. It was only after 1945, and the subsequent birth of the United Nations, that the desire for peace and common security grew into a genuine continental union. The context of the Cold War later helped to forge a common military culture among the majority of European countries, while the formation of NATO proved to be the cornerstone of these new military relationships. From that point forward into the present century, these new European military alliances, coupled with the moral values embodied in the Charter of the United Nations (as well as in the military practices of the United States as Europe's principal supporting ally), governed our understanding of military ethics.

Contemporary conflicts have prompted the need for a distinct approach to military ethics within Europe. Indeed, between 1991 and 2010, the European Union has continuously faced a new military and security reality (including terrorism, asymmetric warfare, ethnic cleansing, and the proliferation of new military threats, such as cyberattacks and biochemical weapons)

within which a common code for European coalition armies has slowly but steadily become ever more necessary. This code would function not only to establish a strategic defense policy that would be stable, realistic, and practical, but also to guide and protect individual soldiers themselves, as professionals, as they attempt to confront these new types of post-Cold War conflicts.

The code of military ethics for Europe should be both ethical and also "political-strategic" in order to enable European militaries to fulfill their duties properly, while fully understanding the underlying meaning of what they do, as they seek to "win the hearts and minds" in the midst of complex ethnic and asymmetric conflicts. There are not simply two options (that is, choosing between a purely professional ethos, and an ethics that would guarantee peace of mind at a price of accepting defeat). Ethics instead now lies at the heart of the fighting effectiveness. In the long run, victory in the new kinds of contemporary warfare cannot be achieved without ethics.

A genuine European code, and a common conception of European military ethics, would hark back to the common core values of the European Enlightenment and its medieval heritage, particularly with regard to the dignity and respect accorded to the autonomy and self-determination of each individual, coupled with acknowledgement of his basic human rights. For, as Robert Schuman, another great architect of European unity, also remarked: "Europe, before being a military alliance or an economic entity must be a cultural community in the highest sense of the term."[2] Indeed, Europe has much to draw on amidst its rich historical and cultural roots, from which to develop a military ethics and a code of professional practice that would be uniquely its own, and that would ensure each person a stake in the security and defense of its civilization.

III. Common Grounds for European Security and Defense of the E.U.

There can be no Europe without defense, nor can there be only a "defense" of Europe alone. Indeed, within a globalized world of united continents, only by playing a wider global role can the European Union realistically expect to fill gaps in its own regional defense. Especially in the midst of the current climate of doubt about the very relevance of the European project, accordingly, the amout that the European Council agreed to spend on defense in December 2013 was hailed as a major event for European security and defense policy.[3]

The weight of the many internal and strategic socioeconomic policies of its individual member states, however, often proves to be an obstacle to a stable and feasible policy of pan-European defense. The sphere of NATO, moreover (seen largely as subservient to the United States), sometimes serves as an obstacle to developing greater self-reliance and self-determination for a genuinely European conception of common defense. Yet even if the resulting current policies seem pro-NATO, while the European population itself seems mired in "*débéllicisée*," still the formulation of European military ethics should be attempted by and for Europeans. Such an enterprise might in fact help to bring about a stronger European defense posture, grounded in a uniquely European identity, without jeopardizing NATO.

From another perspective, however, a common European professional military code should not consist merely of an unweildy amalgamation of the previous national policies or codes of European armies. Instead, it should reflect the common foreign policy that unites these countries, thereby representing a fresh approach to our common and unique cultural ethos. The resulting code, this European code of military ethics, will also be obliged to address some of the current anomalies of rules of engagement (ROE) and new military technologies (such as robotics), which are crucial to future European defense policy, and where the ambitions and

interests of pan-European defense sometimes differ from the approaches developed within the Atlantic Alliance.

In Europe, but even in the Atlantic Alliance armies outside Europe (for example, in the U.S. and Canada), the codes or types of discipline and the vision of military ethics may evolve from one army to another, despite an apparent common culture. For example, Britain focuses on the character and moral integrity of its individual soldiers, while Germany promotes a social conception of citizen-soldier as the underlying principle of military ethics. These codes of conduct come in various formats, ranging from a small plastic card carried by the warfighter in his pocket, to the promulgation of international law through regulations, guidelines, and, very often, embedded within the oaths of commission individually taken by soldiers, either when they are hired or at the conclusion of their military training. The use of a simple reminder card does not rule out the alternative option, of education and orientation toward a body of laws and regulations, defining the rights and duties of the military. All these documents and approaches toward education have much in common with one another, while putting more or less emphasis (depending on the culture and history of each country) on certain specifics, such as:

- respect for the military's overriding security and defense mission;
- pursuit of victory at all costs and/or refusal to accept defeat;
- service to country, the state, the nation, or the people;
- physical and moral courage;
- the willingness to sacrifice one's life in public service;
- the meaning of honor;
- a sense of discipline and respect for leaders;
- camaraderie and team spirit;
- professionalism and exemplary behavior;
- political and religious neutrality;
- the duty of confidentiality;
- respect for tradition; and
- honesty, selflessness, honesty, and discretion.

These similarities are normal to the extent that the job itself is essentially the same in all countries of the world, and that national military service is similarly referenced to international law, and to the various conventions and treaties that have been signed and ratified by the vast majority of states concerning the use of military force, and the conduct of combatants. To provide further evidence for this common ground of military and professional ethics, we engaged in an examination and comparison of the cases of military ethics and of "the Soldier's Creed" as found in several Western or Eurasian armies. We examined with special interest three of these covenants that remain benchmarks for European defense: the British Army, the German Army, and the French Army, and compared these also with the creeds of the American and Russian Armies.

1. Great Britain (U.K.)

The British Army, at Sandhurst, has their personnel study different principles of war, while insisting on two pillars of law and morality: *jus in bellum* (justice of war) and *jus in bello* (justice and ethics in war). The army in Britain otherwise adheres largely to the Aristotelian tradition, and the officer is expected to personify appropriate military and moral virtues, with the aide of noncommissioned officers (NCOs), for soldiers in the rank and file, so that nothing is left to

pure abstraction. All this preliminary work on the status of the officer finally culminates in the Victorian and loyalist military tradition. The British Army has published a collection, "Army Operational Doctrine," which sets forth all the core values to be applied by the English soldier, including: loyalty and duty; respect for others and respect for humanity; integrity, discipline, determination, and courage; patriotism, sacrifice; and, finally, ingenuity, intelligence, and humor (the last of which seems unique to the military culture and the British spirit). All this comes with the professionalism that is ultimately part of the military spirit in Great Britain (England was one of the first countries in Europe to have a professional army) and has been proven in various conflicts, from Ypres to the Falklands.

We note that the role of the soldier is not hidden under some strip of wood or cover, unacknowledged or unjustified: the role is to wage war and seek victory, within the framework of the strong professional military ethics of humanism and duty. Each of the distinct military services has its own reference document: for example, "Values and Standards" for the Army (2008) and Navy (2007), and "Ethos, Core Values and Standards" for the Air Force (2008). But the most original and relevant of these is a complete chapter on ethical foundations found within each service's manual of operations, linking the morality of military operations very clearly with military efficiency. Finally, it is worth noting the importance of "covenant" (moral agreement) between the nation and its armed forces, with the recognition that, within the terms of this covenant, military personnel individually often give more than they receive.

2. Canada

As for Canada, we cannot help but recognize an exceptional degree of excellence in the careful and detailed ethical reflection undertaken by the military forces of this country. Their professional code of military ethics, which applies to all employees who perform military operations (outside of domestic law enforcement within Canada itself) is dedicated to fostering precise and detailed compliance with the principles and requirements of the international law of armed conflict. Disobedience of the law of armed conflict is a crime. It is even stated in the last article of the Canadian military code that each soldier is required both to report breaches of the law, and to take appropriate measures to halt or prevent them.

The Canadian Army has, in addition, published a comprehensive booklet entitled "Use Wisely." Encompassing the soldier's code, the pamphlet devotes special attention to the moral responsibility of leaders, stating: "it is the responsibility of leaders to equip young officers and soldiers with basic moral principles. Zero tolerance should not be confused with zero accidents. Do not confuse error, always possible in the 'fog of war,' with willful misconduct. The commander may delegate authority in a mission, but never his responsibility." This discussion also defines the ethos of the Army, in terms of a grouping of values. Values that guide moral behavior, for example, constitute what we are willing or unwilling to do when "nobody is looking." Each unit is required to appoint an ethics coordinator and establish a plan of overall operations based on the assessment of risk of moral error or deliberate wrongdoing. Finally, a portion of this booklet is devoted to respect for the dignity of all people, which leads to respect for oneself.

3. Germany

In the German Army, freedom of action and individual responsibility remain primarily legal and political concepts, but also include the moral conception of what the *Bundeswehr* itself terms "*Innere Führung*." The key element of this conception of "inward leadership" is that of the "citizen

in uniform." This "citizen soldier" is at once a free person, a morally responsible citizen, and a willing volunteer, committed to military service. The requirements and principles of this conception applies to all military personnel. The principles of *Innere Führung* are an essential component of military service. On the one hand, commanders and supervisors are expected to set an example by leading their subordinates according to standards and principles that reflect the social and political circumstances surrounding the undertaking of the military mission. Yet, at all times, the military also needs to uphold values and benchmarks that provide guidelines and moral support in the midst of the most difficult and complex missions (especially during conflict prevention and crisis management). All military personnel should know that their common core values serve to protect the dignity, rights, and freedom of all. It falls to them to defend these values, embedded in the German Constitution, by military means if necessary.

German military personnel also have experience in the nonviolent control of conflict in a democratic state. This experience provides them with valuable support and guidance during military actions abroad that also involve their mediation between conflicting parties during peacekeeping missions. In order to fulfill these tasks successfully, the German soldier must have both solid moral convictions and a great power of persuasion. This ideal of military service using the least force possible forms a central part of the Army's booklet. Of course, in keeping with the goal of civilian political control over the military, the text also cautions against raising concerns apart from preparing the warrior to fight. Throughout this training and education manual, however, there is clearly a desire to prepare the soldier for cases involving ethical dilemmas and the exercise of moral judgment, and thus prepare him to fulfill his duty.

Preparing military personnel for their eventual involvement in peace operations is the principal responsibility of the Center for Civic and Moral Education (*Zentrum für Innere Führung im Koblenz*) of the German Federal Forces. Their instructors teach military and civilian members of the various units and commands five essential criteria pertaining to "decision-making in the midst of an ethical dilemma," including:

- verification of the legality of orders received;
- consideration of the potential effects on public opinion of the actions being contemplated;
- examination of the veracity of the information received;
- respect for the "golden rule" (the ethics of reciprocity); and
- consideration of the categorical imperative (a central Kantian conception of morality).

The "code entered on a pocket card" does not exist in the German Federal Forces. The regulation of military conduct is instead the subject of a law, the "law on the status of soldiers." In the first portion of this law, we find the "duties and rights of soldiers." Behavior in overseas operations is, in addtion, regularly subject to specific rules of engagement written for each theater. These rules mainly specify:

- primacy of the military mission;
- principles for the use of military force: the principle of proportionality, the principle of compliance, the principle of necessity (illegal means of warfare excluded), the principle of discrimination;
- soldiering skills: for example, giving orders; prohibiting entry; stopping, searching, and disarming local citizens; prohibiting the leaking of information; monitoring people and vehicles; confiscating, commandeering, or destroying weapons and ordinance, in order to defend against aggression; and
- the rules of self-defense and assistance in emergencies.

4. The Netherlands

In the Netherlands, military codes of conduct were introduced at the joint-service level in 1997, with some significant service differentiations. For the Navy, the code of ethics is more of an internal regulation, while the Army's Military Police have formalized their code in an official concept paper. Of greatest interest for our purposes, those of the Army and the Air Force indicate quite explicitly that the soldier must respect the law of armed conflict. Strangely, this requirement disappears in the joint-services unified code of 2007, which instead emphasizes professionalism, responsibility, teamwork, integrity, and respect for others.

Since 1996–1997, special attention has been given to the teaching of ethics and integrity. This is very likely a result of the tragic consequences of the military's performance in Srebrenica, where a small battalion of Dutch peacekeepers under UN command abandoned their defense of the city under threat of attack from Serbian ethnic militia forces, who then slaughtered over 7,000 Muslim men in the city.

5. Russian Federation

The case of the ethos of the soldier of the Russian Federation is interesting and worthy of study, at very least because Russia, when all is said and done, remains culturally close to Europe. In its current version (Act of March 28, 1998), the text of the Russian soldier's oath reads as follows: "I (followed by first and last name) make the solemn oath to be loyal to my country, the Russian Federation. I respect the sacred Constitution of the Russian Federation, and swear this oath to conform to the rigorous requirements of military regulations, and to obey the orders of the commanders and chiefs. I swear to perform my military duty with dignity, and to vigorously defend the freedom, independence and the constitutionality of Russia and its people."

For many centuries, the czars, governments, and various political regimes seceded one another in Russia, and, in parallel, the text of the military's oath was the subject of many changes. The same overall emphasis is found in virtually all its versions, however: namely, that the oath has been and remains a solemn promise of loyalty and sacrifical service to the homeland. It is understood that the military oath shall commit those who swear it to defend the interests of Russia, even at the price of their own lives. In the current text of that oath, however, the aspect of "sacrifice for the Fatherland" is not so strongly emphasized.

6. France

The professional code of the French soldier is without a specific reference to good ethical conduct. Instead, it obligates the soldier to "fulfill his mission with the will to win, and to win, if necessary, at the risk of his life." Various recent military interventions by French armed forces, including in Afghanistan, and in wars of counterterrorism and counterinsurgency in African nations, have demonstrated this resolve of French military forces.

All of these tasks invoke the idea of a soldier as a "member of a united and fraternal team." This code promotes loyalty, fortitude, devotion to national and democratic values, and strong discipline, because the French military "obeys orders in compliance with laws and international conventions." Additionally, the code proclaims that as "master of his strength, he respects the adversary," which indicates that the code embodies a moral emphasis on according respect to others. Finally, this French code promotes the image of a *professional soldier*, maintaining "capabilities" that "demonstrate leadership," which is "attentive to others" and works "for cohesion and dynamism of his unit," serving his country while being "proud of its commitment,"

and, finally, acting with "honor, duty and loyalty." These are clearly moral virtues. One finds here the legacy of the Enlightenment and of the French secular footprint, setting forth the image of a military that is "open to the world and society, and which respects differences," and which "speaks with reserve so as not to undermine the neutrality of military personnel."

Although the soldier must obey his superiors, he cannot perform acts that are "contrary to international conventions or that are crimes or offenses, in particular against the security and integrity of the state." The responsibility of the subordinate in such matters, however, does not remove the obligation of superior officers to ensure that their orders are legal and moral. Finally, the governing principles regarding the use of force also emphasize success, efficiency, and the necessity to win by all means consistent with the law of armed conflict. This requires that the French soldier adhere above all to the *principle of controlled force*: "This controlled force is based on professional excellence, enlightened firmly by appropriate training."

The French military code of conduct also appears to encourage a certain reciprocity: a chief, for example, also has duties to his subordinates. These responsibilities to subordinates are highlighted in the document "Exercise of Command in the Army" (September 2003), according to which the foundations of leadership rest in the requirements (and in the example set by the leader) of competence, decisiveness, humanity, justice, and trust.

Finally, an earlier document, "The Foundations and Principles of Military Service in the Army" (1999), offers a guide for reflection and action, and serves as well as a reference for ethics. It reads:

> The soldier is a citizen in the service of his country. His duties and rights are first and foremost those of the citizen and servant of the state. The stringent requirements of duty lie, moreover, in the fact that they are exercised by him in the name of the nation from which he derives his legitimacy and responsibility, both directly and indirectly, to inflict destruction and death at the risk of his own life, in compliance with the laws of the Republic, as well as, at all times and in all places, in compliance with international law regarding the pursuit of war. Specifically, the use of military force adheres to a principle of efficiency, in whose behalf all means and all energies must contribute to military success . . . which may bring the soldier into conflict with the principle of respect for human life. This apparent contradiction must be transcended through the notion of *controlled force*, a use of military force that relies on professional excellence, and is firmly enlightened by appropriate training.

The complexity but also the nobility of the military profession is summarized in these sentences. The acquisition, through training and education, of an enlightened civil and military consciousness, is absolutely essential.

7. Spain

Spain provides good examples of both codes of conduct and military ethics. Indeed, a revised code of ethics in national life in 1978 provides a true collection of rules of conduct for military or civil defense. It dictates a marked respect for national symbols, especially when an oath of office is taken before the flag, and insists on respect for authority and human dignity. Gender equality applies without distinction between the various categories of military jobs to a degree equaled in few other European countries. Finally, ethics in military operations demands the progressive use of force in accordance with the rules of engagement for the specific misssions in which the soldiers are involved, all in accordance with both the international conventions

ratified by Spain, and with the principles of international humanitarian law. The essential mission of the soldier is to defend Spain and its interests, even at the cost of his life (deemed an essential duty). Broad principles of ethics and military professionalism include: strict accountability of officials; objectivity, impartiality, and integrity; neutrality and transparency; confidentiality, dedication, and exemplary accessibility; efficiency and hardiness; and honesty, respect, and care for the environment and culture.

8. Portugal

In Portugal, there are regulations of military conduct that cover situations similar to those listed in the code of conduct for the French military. The "Military Regulation of 2009" has the force of law for all members of Portugal's armed forces. All military personnel and the national police force take an oath after their initial training (after five weeks for the soldiers; at the end of their first full year for officer cadets), regardless of rank or type of weapons carried. The text of this oath dates back to the political regime of the 1930s, and has never been subject to change: "I swear, as a Portuguese citizen, and as a soldier in the serving armed forces, to perform military duties, and to protect the Constitution and the laws of the Republic. I swear to defend my homeland, and always be ready to fight for freedom and independence, even at the risk of my own life."

9. United States

The U.S. Army redefined its policy on military ethics following the terrorist attacks of September 11, 2001. In 2003, it developed a genuine "credo," termed the "Soldier's Creed," in which the American soldier swears faithfully to fulfill his mission, first and foremost, to serve the American people and the "American way of life," never surrendering, on the assumption that the individual soldier is both a strong warrior and a member of a team in which defeat is unacceptable. It is a text inherited from a strong warrior climate already instilled in the "Rifleman's Creed" of the U.S. Marine Corps.[4] The new Army policy originated with the "Army Training and Doctrine Command" (TRADOC), which also developed the "Warrior Ethos," in which every soldier (no matter what his or her specific assignment) is primarily regarded as a warrior. This is a strongly hawkish ethos, inspired by a powerful code, both pragmatic and intangible, that brings to mind the warrior ethic of the Roman Legion during its imperial phase.

These features of the American ethos stand in opposition to all that is happening in Europe, and underscore the already paradoxical and strong cultural differences between the two Anglo-Saxon countries (U.S. and U.K.), as well as between America and Europe. The aspirations of professionalism and efficiency seem to outweigh ethical concerns for moral restraint and order. One might raise legitimate concerns about the impact of such an indoctrination on the young recruit: if victory is the only measure of things (a victory that also ensures the systematic destruction of the enemy), what limits does the "warrior" admit to his actions? Moreover, the values essentially represented are either professional (related to competence), or else relate to the internal dynamics of the group (the team).

Does the American doctrine of exceptionalism play a role in shaping the ethos of the warfighter? The American way of war appears to exalt individual personal and professional competence and the "absolutism" of victory, without any corresponding notion of proportionality in action (much as does the oath of the Russian soldier). One ought not to draw the hasty conclusion that the American military does not attach importance to ethical, philosophical, and moral issues. If the ethos of the American warrior is defined as total commitment to achieving victory through

implementing the values of loyalty, sense of duty, honor, respect, integrity, and courage, this inspires confidence that respect for the law of armed conflict is also a major theme.

10. Comparing and Contrasting These Varied Approaches to Military Ethics

The French, German, and British texts adopt a moderate tone, insisting to a greater extent on instilling respect for others than to emphasizing unconditional victory in combat. "*Innere Führung*" is the text that goes furthest in this direction, in a sense, as one might conclude that it almost ignores the context of armed conflict. None of the aforementioned texts directly calls for the destruction of the enemy, or emphasizes killing the enemy, to the degree that such emphasis is found in the American "Soldier's Creed" (as well as in the corresponding documents and doctrine of the U.S. Navy and Marine Corps). It may also prove surprising to notice the individualism that underlies the various American texts. When one reads these texts immediately after the French code, for example, the difference is obvious. Who, for example, serves as judge of adherence to the rules that are set? In the code of conduct of the French soldier, the rule is external to the subject, and it is up to the soldier (or legionnaire) to comply. In the American creed, by contrast, the soldier must first be a "warrior," the best ever. Indeed, the very term "creed" etymologically means "I believe," an individual act, personified, while a code is something independent of, and external to, the individual person.

A British general officer who served with the U.S.-led coalition in Iraq, General Aylwin-Foster, caused a scandal in the United States with the publication in a U.S. Army periodical of an analysis he had made of how, in the Iraqi theater, American soldiers appeared to fight.[5] He openly blamed the ineffectiveness of the American military in that ongoing conflict on an exaggerated warrior vision of soldiering. The American army was, he said, "genetically programmed" for massive offensive operations (what he termed "going kinetic"). Citing specifically the "Soldier's Creed," he argued that this text does indeed consider only one form of interaction with the enemy: namely, his destruction! He regretted that the emphasis was so strongly placed on avoiding military defeat, as alternative conceptions of effectiveness and victory "would open the field to other options, more politically relevant." He also noted what he termed the "insularity" of the American military, ingrained in its collective behavior, which was a source of tensions and misunderstandings (alongside the obvious strengths) among members of the military coalitions in both of these theaters of asymmetric warfare.

Ultimately, and sometimes surprisingly, are the competing visions of war exhibited in these various documents: an absolutist vision that can be found in the United States, and a more elliptical, nuanced vision largely shared by European armies. Where the British, German, and French codes are very fussy about maintaining control of violence, one does not find a trace of this concern in any of the American texts considered.

IV. A Proposal for European Code of Military Ethics and Professionalism

Our proposed code would be the first stone laid by European soldiers toward a credible and stable European army, a horizon that is still far away. In the short-term, our effort aims to strengthen the human interoperability of military forces deployed under the European Union. It is therefore important to ask what, or which, are the underlying principles to which contemporary European soldiers can commit.

But while this code must be ethical, it must also remain unfixed, in order to allow freedom of conscience, as well as a role for free will in human action (the "ethical compass" spoken of

in regard to combat, for example). Yet the basic outlines of the theory must be sufficiently clear to define action, and not interfere with the individual's initiative and action in context. Finally, this proposed code must be expected, and allowed, to evolve in response to failures or feedback. Accordingly, we propose the following 10 Articles, or basic tenets of our common military profession and its ethic:

Article 1: True to his country and to the defense of European identity, the soldier serves with loyalty and honor, respecting both cultural differences and the desire to retain national independence.

Article 2: Attached to the history and culture of this continent, the European soldier lives in accordance with European democratic values and traditions to which he himself is committed.

Article 3: As a professional, able to take the initiative, the soldier must maintain his physical and intellectual capacity to adapt to any circumstance.

Article 4: Trusting in discipline and integrity, the soldier obeys orders, and respects the laws, customs of war, and international conventions. He fights while striving to minimize the consequences of the use of his weapons, with a view to sparing the people.

Article 5: With dignity, the European soldier respects the military and political hierarchy; he shall act always to safeguard national interests and the security of the people of Europe.

Article 6: Member of a group of fraternal solidarity and struggle, and proud of his commitment, the soldier acts with dedication, humor, and candor, and works ceaselessly to strengthen cohesion, *esprit de corps*, and the dynamism of his unit.

Article 7: Aware that he may be required to take the life of his adversary, he seeks to fulfill his mission to the end, sometimes at the risk of his own life and that of his comrades, superiors, and subordinates, with the will to win or evade defeat.

Article 8: With victory and future peace as his objectives in the long-term, the European soldier, recognizing that it may be required to take the life of his opponents, controls his power and respects adversaries or enemies without ideological discrimination.

Article 9: The European soldier protects the poorest, and strives to promote justice and dignity, and by his example and his modesty, he does his best to offer a noble image of the military profession and its unity.

Article 10: Fully a citizen, the European soldier is a key player in the city to which he belongs fully and in which he must also act as a resident citizen for the common good.

V. Conclusion

Today, it seems that the survival of Europe lies in its unification. But we argue that the attempts that point in this direction are not sufficient to safeguard a Europe in crisis. Our unification must be expressed in culture, identity, ethics, and morals. Through these, Europe must find the common underlying sources that unite its people. We, the contributors to this project, believe this to be happening today with the idea of European defense, based squarely on ethics and

on the "ethos" of common soldiers. This military unification should not be the sole means of unification, or merely a sharing of capabilities. Instead, we need to rediscover the existing common culture in Europe, which is sufficient to generate a code of ethics that allows us to make concrete decisions. Indeed, our work has shown that only a common ethic will allow us to overcome our respective differences of interests, and undertake authentic decisions that will endure and give reality to the E.U.'s common security and defense policy and direction.

Our work has allowed us to see that this code could be grounded equally in the Greco-Roman and Judeo-Christian heritage, as well as in the humanist legacy of the Enlightenment. The objectives of this work go far beyond just defense, and focus on nothing less than the question of the future of Europe. Although ambitious and visionary, a fresh, original approach to our common military ethics allows us, on the one hand, to give concrete meaning to the E.U.'s common security and defense in the short-term. Yet it also, on the other hand, addresses the aspirations of an authentic pan-European defense as we attempt to prepare for the future of our continent, maintaining democracy under the rule of law, while safeguarding the common good and the heritage of European culture. Our common code of professional ethics should allow the forces engaged under the banner of the European Union to intervene with similar rules of engagement, and to give a greater role to European diplomatic institutions. More importantly, through this effort, we rediscover what it is that unites European countries historically, and apply these findings in other areas of our common life. The bedrock of common European cultural and historical values is itself the foundation for any future building of Europe.

Notes

1. Translated from the French and abridged for this publication by George R. Lucas, Jr.

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   Dr. Henri Hude, Director of Ethics and Legal Environment Division at the Research Center of the School of Saint Cyr Coëtquidan (CREC); General Patrice Mompeyssin, French Army (retired); Colonel Manfred Rosenberger, German Armed Forces (retired), Executive Director of Euro-ISME; Dr Patrick Mileham, University of Defence in Britain; General Parakeet, President of EuroDéfense France; Dr. Eric Germain, Office Prospective within the Delegation for Strategic Affairs (Ecole Militare, Paris); Lieutenant Colonel Bernard Gaillot, French Armed Forces; Brigadier General Benedict Royal, Commandant of the French School of Artillery and President of Euro-ISME; Dr. Ronan Doaré, Director of the Center for Research Schools of Saint Cyr Coëtquidan (CREC); and Captain Loïc Le Rhun, Professor of Law of Armed Conflict at the French Military Academy at Saint-Cyr.

2. See Robert Schuman, *For Europe* (Paris: Nagel, 1963): www.robert-schuman.eu/en/doc/actualites/anniversaire-en.pdf.
3. See the final report on European defense spending prepared for the European Parliament by the European Council for Security and Defense (Brussels: October 15, 2013): http://eeas.europa.eu/statements/docs/2013/131015_02_en.pdf.
4. For the text and significance of this creed, see: www.usmcpress.com/heritage/marine_corps_rifleman's_creed.htm.
5. See the account of the controversy by American military critic Thomas E. Ricks in *The Washington Post* (January 11, 2006): www.washingtonpost.com/wp-dyn/content/article/2006/01/10/AR2006011001456.html.

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PART IV

Contemporary Issues in Ethics and Military Practice

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ETHICAL ISSUES IN DEFENSE SYSTEMS ACQUISITION

Major General Robert Latiff

Generally speaking, when one talks about weapon systems and ethics, the conversation is about the weapons' use in combat and whether such use is morally justified and adheres to the laws of war. To be sure, history is replete with issues of inhumane weapons, some of which ultimately came to be banned or considered unacceptable for use by civilized nations. Chemical and biological weapons, nuclear weapons, and land mines are but a few examples. Debates about potential employment of certain weapons should obviously occur well before such weapons are even built. What I wish to discuss in this chapter, however, are some of the less frequently discussed, but very important, ethical issues encountered in the actual process of acquiring weapons, *after* the decision process about the moral propriety of their potential operational use has already been evaluated. The manufacture and sale of arms is an important component of national identities, as well as national economies, and it is also the source of a great deal of morally questionable behavior. Scandals, and the questionable ethics that underlie them, have erupted regularly in the weapons procurement business. I begin by reviewing some of these regrettable events, and then proceed to analyze the weapons procurement process to identify where things can go wrong.

I. The Economic Importance of the Arms Industry: The Lure of Money

It is an observation from history that war and violent conflict are seemingly constant elements of the human condition. And, while the technology and the weapons themselves change with time, the importance of armaments and arms industries remains. One has only to consider the importance of ships and shipbuilding in ancient conflicts such as the Peloponnesian War, or the introduction of gunpowder weapons in fifteenth-century Europe, or the rise of arms makers during the U.S. Civil War, or the dominance of arms makers such as Krupp in Germany in World War I, or the emergence of powerful U.S. aircraft companies in World War II, or the rise of the nuclear weapons complex during the Cold War, or the continued growth and dominance of defense industries worldwide since the events of September 11, 2001. Aaron Plamondonin notes "the improvements in the industrialization of weapons and equipment production have altered the way wars have been fought throughout history. Those nations that

adopted better processes and were able to better equip their militaries often had the advantage on the battlefield. All nations were confronted with a new type of war, and *power began to be measured in how efficient a nation's defense industrial capability had become*."[1]

It goes without saying that combat operations are a tremendous drain on the human treasure of a nation. Weapon system acquisition, while it does not involve sending soldiers into combat, nonetheless represents a significant drain on the financial treasure as well. Defense spending accounts for large portions of many national economies, whether it is expenditures for imports or income from exports. While not necessarily on a per capita basis, the U.S. remains, on an absolute basis, the largest single investor and customer for defense industries, and the largest exporter of armaments. With a defense budget of close to $650 billion, spending on actual equipment is annually about $100 billion, with another $60 billion on research and development. Weapons purchases constitute a large fraction of a very large DOD budget, and the decision to invest heavily in weapons should be taken only after sufficient debate. Unfortunately, the debate often revolves not around the propriety of such investments, but rather around politics and which party's politicians will benefit from the defense work proposed. A great deal of money is tied up in weapons acquisition and, where there is a lot of money, there are unfortunately many opportunities for poor ethical judgment.

The enormous amount of money involved in weapons development and production is important to the national industrial base, but is especially so to primarily defense companies whose existence depends on government contracts. Often, if a company is not adequately diversified and does not win major weapons contract competitions, they will exit the business. As defense budgets decline and the number of weapon projects shrinks, this problem worsens, and the impetus for ethical misbehavior grows.

II. Past Scandals

History reveals that where there has been a demand for weapons, there have been repeated cases of unethical and illegal behavior. These ethical abuses take many forms, including shoddy workmanship, influence peddling, bribery, contract fraud, and procurement impropriety. Scandals can be found dating back hundreds of years. During the American Civil War, for example, J.P. Morgan bought defective rifles and sold them to generals in the field for obscene profit. The rifles would shoot off the thumbs of the soldiers using them. After the Civil War, with the boom in technology and armaments, graft and corruption reached a fever pitch.[2] Marshall Baron Clinard, in his wide-ranging book on corporate corruption, states that:

> Throughout the civil war, the country was also plagued by the corruption of the arms suppliers; bullets were even filled with sawdust instead of gunpowder. These rip offs continued into the twentieth century. During WWI, profiteering, abuse of political power, arrogance, and fraud typified the defense industry. During WWII, Harry Truman suddenly found himself catapulted into the Presidency of the United States, in part because of his investigations into arms-maker fraud and excessive profiteering. Congressional hearings conducted by Senator William Proxmire (D-Wisconsin) during the Vietnam War revealed similar defense industry exploitation.[3]

Incidents of negligence or exploitation by defense contractors in the U.S. have occurred more or less continuously throughout the nation's history. Clinard has noted, "[b]etween 1983 and 1990, a quarter of the 100 largest Pentagon contractors were found guilty of procurement fraud. In the 1988 to 1990 period, there were 16 cases involving 14 of the largest weapons

makers."[4] In a more recent example, the Defense Department Inspector General found that deaths reported in Iraq in showers installed by a military contractor were caused by "improper grounding or faulty equipment," leading to electrocution when it short-circuited. The report concluded, "multiple systems and organizations failed," leaving soldiers "exposed to unacceptable risk."[5]

Other spectacular cases have involved influence peddling. Melvyn R. Paisley, an Assistant Secretary of the Navy with major responsibility for procurement, brazenly exploited Washington's infamous "revolving door." According to the government, in the first 15 months after he left the Pentagon in March 1987, Paisley collected more than $500,000 in consulting fees from companies he had earlier befriended. Even worse, while in office, he corrupted the bidding process on hundreds of millions of dollars of weapons systems in order to divert contracts to those who secretly bought his services. The scams that swirled around Paisley were brought to light—and eventually to justice—as part of "Operation Ill Wind," the biggest and most successful federal investigation ever of defense procurement fraud. "Ill Wind" led to the conviction of government officials, Washington consultants, corporate executives, and seven companies.[6] According to *Wall Street Journal* reporter Andy Pasztor, more than 90 companies and individuals were convicted of felonies, including eight of the military's 15 largest suppliers, all of whom admitted to having violated the law.[7]

Most recently, a Singapore-based company was accused of an audacious bribery scheme to defraud the U.S. Department of Defense into overpaying at least $20 million for supplies and services. Allegedly, Navy officers ordered ships steered toward ports where the company had an office. The firm then submitted bills that were padded or that included services never rendered, according to the indictments. The personnel involved allegedly engaged in a conspiracy to commit bribery. As part of the conspiracy, a senior Navy officer allegedly sent the contractor information that the Navy had classified as "Confidential," including schedules reflecting the movements of Navy ships months in advance. This officer had also operated as an advocate within the Navy for the company's interests, urging decisions about port visits and contractor usage that were designed to benefit the company. In return, the company provided the officer with paid travel, luxury hotel stays, and prostitution services.[8]

The U.S. Army has also experienced its share of contractor fraud. According to federal officials, one company obtained contracts with the Army Corps of Engineers to provide technology-related work and services. Starting in 2007, several company individuals began directing orders for technology work to a subcontractor. The chief technology officer for the subcontractor then submitted fraudulently inflated quotes for work; the prime contractor then passed along those bills to the Army Corps. The contracting officers and company officials referred to the inflated work as "overhead," which was then paid out to the individuals originally ordering the work. In total, the unidentified company fraudulently inflated its invoices by about $20 million. For their help in the scam, the contracting officers received millions of dollars in kickbacks, flat-screen televisions, and luxury cars for themselves and their relatives, as well as high-end watches and liquor.[9]

The U.S. Air Force, too, has suffered from major procurement scandals. In the early 2000s, in an attempt by the Air Force to acquire new in-flight refueling tanker aircraft, senior Air Force and Boeing officials were convicted of procurement integrity violations and sentenced to prison for allegedly sharing procurement and competition-sensitive information.[10] At the same time, Boeing had been barred from government satellite launch activities because of procurement integrity violations stemming from the theft of rocket technical data from Lockheed Martin, their main competitor.

All of the above represent brazen acts that were both illegal and unethical, fueled largely by desire for personal gain. They are examples of the dangers involved when large sums of money are at stake involving contracts for weapons or services related to weapons. These are highly visible deviations from ethical behavior. Let us now turn to the process of weapon acquisition itself, and see where along the way the process can go wrong and facilitate or produce the behavior described above.

III. Where Can it Go Wrong?

In the weapons acquisition business, we recognize that there are three basic processes, each of which must operate properly for a well-designed and well-executed system of acquisition. They are:

1. the requirements process (embodied in the Joint Chiefs of Staff, Joint Capabilities Integration Development System) in which the senior warfighter leadership convinces itself a weapon is needed;
2. the financial process embodied in the DOD Planning, Programming, Budgeting, and Execution System (PPBES); and
3. the program management process embodied in DOD Regulation 5000.1.

These processes operate simultaneously and interact in multiple and complex ways, but each also has its own vulnerabilities. In the requirements area, we will discuss some potential issues as they relate to the very early phase of concept development in which the most basic decisions about the system are made. In the financial area, where budgets are developed but not yet enacted, we will discuss such potential ethical issues as realism in cost estimating and lack of skepticism in reviewing and accepting contractor bids.

In the program management area, there are numerous points involving technology, testing, contracts, and financial rigor, at which ethical decision-making by a program manager may be crucial. Weapon system acquisition professionals generally think about the development and production of a weapon in terms of a so-called acquisition life cycle. Current thinking divides the life cycle into five phases, each separated by a decision milestone. *First*, of course, is the refining of the basic concept: what is it we are trying to accomplish, what problem are we attempting to solve, or need are we trying to address—and how do we propose to meet this need through the design and development of a proposed new system? The *second* phase involves technological development: what new technologies must we develop and deploy to meet the identified need? Thereupon follows the *third* phase of "System Development & Demonstration," in which engineers and defense contractors design, build, and extensively test prototypes of the new system and demonstrate their capacities to address the identified need. Assuming successful design and testing of the prototype, the next (*fourth*) phase of the acquisitions cycle is to gear up for full-scale production and initial deployment of the new system to the client military services. And, assuming the production phase proceeds as planned, the cycle ends with the *fifth* and final phase, in which the new system is put to broad use, maintained, repaired, modified as needed, and otherwise supported in its normal military use. It is important to recognize that there is a detailed ongoing assessment process in each of the phases, determining the degree of progress, cost-effectiveness, and overall satisfaction with the process, which can (in principle) be revised or terminated at the crucial "decision milestone" separating each distinct phase of the acquisitions cycle. Finally, while it is not the goal of this chapter to further explain the details or nuances of the acquisition business in its entirety, it is worthwhile to understand what goes on in the different phases to understand where ethical challenges may arise.

1. Moral Hazards in Concept Development and Refinement

Very early in the life of a weapon system, the developers (systems commands and contractors) begin working closely with users (soldiers, sailors, airmen, or Marines) in an attempt to determine what the warfighter needs to be successful in his mission. Decisions made during this phase determine the basic type and functionality of a system and have a very big influence on its ultimate cost and schedule. While on the surface concept development sounds innocuous enough, there are, in fact, many opportunities in the formative life of a weapon system for ethical challenges and questionable behavior.

A question that needs to be asked early in, and even before, the concept development phase is: why are we considering the system in the first place? In most cases, the answers are clear and the systems are justified. Nonetheless, we must ask. Can the mission not be accomplished without the system, or is mission performance of our current system or systems in the face of new threats merely degraded? Would a change in operational concepts or tactics, techniques, and procedures preclude the need to buy an entire new system? Is the threat real, or is it only estimated, and, if real, is it a case of increased adversary capability along with stated intent, or only increased adversary capability?

Since a company's existence may depend on winning or re-winning a contract, the contractor may actually try to convince the user they need a new system. One only has to attend one of the many military-themed conferences or symposia to find legions of contractors exhibiting their systems and proposed systems to understand the relationship between the military and the defense industry in the military decision process. And we not only need to be concerned about the military, but Congress as well. Congressional influence, and the influence of corporations on Congress, is well known.[11] To continue to employ people in a particular State or Congressional District, a contractor needs to stay in business. To stay in business, contractors need to make a profit. To make a profit, they have to sell things, and defense contractors sell weapons. So we might be led to wonder: are the weapons we buy a result of contractors pushing them, or warfighters demanding them, or, more likely, some of both? Are the contractors exaggerating the threat? Are the government program managers doing likewise?

At the present moment, for example, military planners in the U.S. are attempting to assess prospects for cyber warfare and cyber weapons. Thomas Rid, writing in *Foreign Policy* on the topic, contends that cyberwar is "still more hype than hazard."[12] In many respects, rhetoric about cyber catastrophe resembles the threat inflation we saw before the Iraq War. Deliberately overstating (or understating) the threat—even for the well-intentioned reasons of advocacy—can raise questions of ethics and professionalism. As Brito and Watkins suggest,[13] the run-up to the war with Iraq in 2003 makes clear what can happen when a threat is misconstrued. In short, candor and tempered rhetoric are called for. They also point out that Washington teems with people who have a vested interest in conflating and inflating threats to our security.

A good example of a program in which the need was questionable, but the service demanded a new system, is the new Air Force tanker aircraft. In the late 1990s, the market was declining for commercial airliners, and in the early 2000s Boeing had lost the competition for the next-generation fighter. The commercial airlines were in distress due to the attack on 9/11, and the Air Force was in the midst of buying and funding the C-17 transport plane, the F-35 fighter and the F-22 fighter. The Air Force had never indicated in any requirements process that they needed a new tanker, but then they tried to make the case that the current tanker was insufficient—and that a sole source contract to Boeing was the only alternative. Numerous studies, to include those from the RAND Corporation and the Defense Science Board, however, indicated otherwise. The Air Force's appeal stalled until 2008, when Congress finally approved a competitive acquisition. This case was fraught with attempts to circumvent appropriations

law, violations of procurement integrity laws, and improper competitive contract design and administration. Ultimately, both government and contractor executives served prison sentences as a result.

In addition to all of these corporate, political, and institutional issues, we find moral hazards on the level of personal and professional interests of those involved in acquisitions. Becoming an experienced and successful first-rate program manager is a difficult and career-long process. Promotion opportunities to senior ranks are far more limited than they are in the combat sectors of the military. A government program manager may be deeply invested in a particular program and view the success of that program as important to his or her promotion. Deliberate or not, this might influence the government manager's belief that a program is desirable or needed, and thus cloud what might otherwise be good judgment. While this is not the same as blatantly "unethical" behavior, it demands, at the very least, mature ethical judgment.

In sum, the ethical caveats at the concept development stage of acquisitions are these. Before we commit to hugely expensive new systems, we should be certain that there is a real threat and that the motivations of both warfighters and their supporting industry are understood. There is a real possibility in this phase that insufficient skepticism by the government and excessive salesmanship by industry may lead to the procurement of unnecessary systems. Warfighter senior leaders should be sensitive to this classic "guns and butter" question: before we commit treasure to weapons, we should be absolutely sure of their need, lest other important priorities go unfunded. This is the perennial ethical dilemma at the core of defense acquisitions.

2. Moral Hazards in Technology Development

Once a decision has been made that a new weapons or defense system is needed and a determination is made of what types of system and technology are called for, that technology is to be matured to the point that a system prototype can actually be built and demonstrated. It is in the assessment of technology maturity that both government and contractor program managers must maintain objectivity and not allow extraneous pressures to drive poor judgment. Very often, contractors and their government counterparts will try to push a program into the next system development phase before the technology is ready. Sometimes this is based on a legitimate, but poor, assessment of technology readiness, but is often driven by schedule (and budget) pressure.

Entering the next phase of weapons procurement before the requisite technology has been adequately developed is known as "concurrence." Concurrence is almost always a bad and expensive decision. Why, then, do program managers frequently engage in it? Perhaps they truly believe the technology's success is just around the corner, perhaps the contractor assures them technology success is just around the corner, perhaps it is a desire not to delay the schedule the program manager originally agreed to, as that could be taken as a sign of failure. Improperly motivated decisions at this point could be construed as unethical.

An excellent example of a program attempting to exceed the limits of technology—and failing at great cost—is the Advanced Medium Range Air-to-Air Missile (AMRAAM). This was a case in which there was a well-documented need based on improvements in enemy air-to-air missile technology. However, the service (Air Force) and its contractors chose to implement a technology known to be immature (in this case, advance integrated circuits) too early into a production system. This program was also marked by excessive optimism on the part of industry and government program managers in regard to schedule, plus highly unrealistic contractor budget estimates—in the face of independent estimates to the contrary. Was all of this merely technological hubris, or was it motivated by other crass, and perhaps unethical, instincts?

Similar problems of concurrency occurred in both the F-22 and F-35 fighters, for which technologies such as advanced flight software and unique propulsion systems were designed into production systems, and production contracts were signed before demonstrating sufficient technological maturity—with resulting dramatic cost overruns. The Spaced Based Infrared (SBIRS) satellite system is another good example of the service prematurely committing to a production system: in this case, true advanced infrared detector technology maturity was wrongly assessed. More importantly, in this case, the program managers demonstrated excessive optimism by allowing somewhat unchecked growth to requirements for the system, which could not be met by the technology.

These very expensive mistakes can occur legitimately, simply for reasons of misunderstanding the complexity and uncertainty of the required technology. It is just as, or even more, likely, however, that the frequent occurrence of mistakes such as this should be attributed to hubris, or else to an unwillingness to consider reality in the face of budgetary, and perhaps leadership, pressures. In either case, the examples above resulted in staggering costs to the taxpayers and lengthy delays in delivery of the systems to the warfighters. While not the flagrant ethical scandals discussed earlier, the avoidable outcomes in these cases render them scandalous in their own right.

3. Moral Hazards in System Development and Demonstration

This is the phase of a new system's development during which, after the required technology development has been completed, major acquisition contracts are signed and the contractors are busily completing design and testing of their systems. It is at this phase where a program is actually designated as a program, and where, as a result, the largest sums of money begin to flow.

If there is a competition, government managers must be extra scrupulous in designing the terms of the competition, and exceptionally diligent in watching for attempts by contractors to influence the outcome. It is here that lobbyists and contractor representatives have often resorted to bribery and other patently illegal and unethical behavior. During an arms-contract bidding competition, alternatively, contractors often provide bids—hoping to win—that are exceedingly optimistic and assume perfect success. Perfect success, however, is never a realistic assumption, especially if there are lingering questions of technical maturity from the previous phase.

Government program managers need to treat optimistic bids with healthy skepticism. Unfortunately, even when presented with credible cost estimates by seasoned government estimators, government program managers too often opt to believe the contractor. While the managers are doing nothing overtly "wrong," this is perhaps an ethical error of omission. Once awarded, a contractor must successfully complete this phase and the successful bidder must convince the government that they indeed have a good system before a production decision is approved.

At the end of this phase, the all-important test phase begins. First, developmental testing is conducted to insure the contractor has met contract requirements, and then operational testing is done to insure that a system, even if it meets contract requirements, is suitable for use in the field. This is an extremely important time in the life of a system, and contractor payment is on the line if the system fails to meet contract requirements. A lot of money will have already been spent and government program managers are reluctant to admit if there has been a failure. There are several opportunities here for unethical behavior.

What often happens is that when a program begins running behind schedule or over budget, one of the first things to be cut is testing. While this is purely a management decision, it can have really bad (and, in isolated cases, disastrous or potentially fatal) consequences. It is only

through a thorough program of testing that the government can know if a complex system really works under combat conditions, and whether it is really worth the cost. Undermining that certainty is at least stupid, if not unethical. There have been cases where contractors have been caught (and prosecuted) for actually cheating on these tests. In one instance, a company was fined for falsifying test data on its cruise missiles and fighter jets. In another, a company paid in a civil settlement for false testing, in addition to paying for repairs to the system in question.[14]

After developmental testing is complete, the system is turned over to the war-fighting units for operational testing to determine if the system, regardless of whether it functioned according to contract specifications, can actually be used in combat conditions. Contractors and program managers have little or no involvement in this phase, but the pressure to pass Operational Test and Evaluation and move on to production is enormous.

4. Moral Hazards in Production and Deployment

By the time a program has reached a point where a production decision is required, there is no turning back if the user has a legitimate need for the system. Large sums have already been invested. Presumably, testing has been successful and the decision to proceed is sound. The contractor is then responsible for delivering the system at the cost agreed, often on a fixed price contract. It is a fairly standard practice for a contractor bid to minimize costs on the first items with an eye to making more of their profit in upgrades and engineering changes later on, particularly in programs that are expected to last a long time and where large numbers of systems will be built.

While this is a business decision and it is not inherently unethical, government and military program managers need to understand and perhaps more closely moderate this behavior. Obviously, if the company can cut or reduce costs in production, it is to their profit advantage. But this creates the incentive for contractors to cut corners on quality, to use illegitimate and unapproved material and part substitution, to overcharge, to cross-charge to more expensive contracts, to engage in defective pricing, to excessively reduce the workforce, and so on. Pietragallo gives a concise description of the various ways in which a contractor may attempt to defraud the government in this phase.[15] The number of cases of contractor fraud in this phase of the life cycle is significant, and, indeed, most major defense contractors have at one time or another been caught and prosecuted for engaging in fraudulent behavior at this crucial state. As an example of this, at a jet engine plant, one contractor paid the government millions to settle five civil lawsuits alleging contractor fraud involving the alteration of daily labor vouchers to inflate its billings.[16]

5. Moral Hazards in Operations and Support

In this phase, the weapon system is now finally in the hands of the warfighter and is likely to be in service for many years. The unfortunate problem here is that after a new weapon is designed and fielded, the contractors and acquisition professionals want to move on to the next exciting new thing. This is as it should be, since expensive science and engineering talent is being retained to develop new technologies and design new systems. It is unfortunate, but true, that the business of logistics and maintenance does not pay as well as research, development, and acquisition. For weapons acquisition, contractors make relatively larger sums of money over relatively shorter periods of time. The operations phase and lower-paying logistics and maintenance activities of a system may last several decades.

One way, however, in which contractors can and do make additional profit during the operations phase is through the sale of spare parts and the provision of upgrades to the fielded systems. These can be quite lucrative. The B-52, for example, has been in service since the 1950s and remains a formidable system due to extensive upgrades. It is estimated that the F-35 fighter's total cost, once operations are included with development and production, will approach 1 trillion dollars. Ethical challenges in the operational phase occur in the area of insuring quality of spare and replacement parts and in assessing the need for expensive upgrades.

The corresponding temptations and pitfalls are not qualitatively different from those already discussed for earlier phases in the acquisitions life cycle. However, the soundness, quality, and safety of the final product placed in the hands of the soldier constitute the ultimate test of the ethics of the process. Since the health of the soldier (not to mention the success of the war effort) depend upon the quality and safety of the final product, ethical misconduct that affects operations and support seems most egregious, and should be dealt with most harshly. Indeed, during the American Civil War, Congress considered passing a law that would allow the death penalty in cases where a contractor was found guilty of committing a fraud against the government through which a soldier was bodily injured, as, for instance, in the sale of unsound provisions.[17] This may seem exceedingly harsh in the present-day imagination, but it is an understandable sentiment in wanting to protect our forces from unnecessary harm.

IV. Conclusion

The stakes in defense acquisitions are hard to overstate. Weapons are, and have always been, important both to the provision of military security, and to the economic health of many nations, including the U.S. Defense industries are a major factor in the economy of many nations, and can prove to be a major drain on their resources. Weapons are a type of product whose manufacture, however, does not directly result in improving the lives of the majority of a country's citizens. So it should be with great care that the decision to purchase weapons is made, and it should be with great care that the process of building and delivering a weapons system is accomplished.

Cases of illegal or unethical behavior directly involving the production and sale of arms are numerous. They have occurred throughout history, and infect not only the United States, but all countries where weapons are bought or sold, and where there are fortunes to be made as a result. Companies that make weapons, especially those companies for which weapons are the only product or are the main products, sometimes owe their very existence to the continued sale of arms and the resulting flow of funds. Where weapons are developed and sold, money—and lots of it—becomes a driving force behind unethical behavior. It was so in the past, and it continues to be so in the present. I have tried to show the nodes in the weapons acquisition process where there are opportunities for ethical misconduct. Some of these are quite subtle, including threat inflation in requirements development, and ill-informed or deliberately overoptimistic cost estimating. Others are more obvious: impropriety in contracting, bribery and influence peddling, contract fraud, the falsification of crucial test results, and so forth.

We can also conclude from this chapter that two distinct categories of ethical lapse lurk within the defense industry itself. First are acts of commission: the "scandals" enumerated in Section III exemplify deliberate acts of such illegal or unethical behavior. A second category contains acts of omission. In much the same way that negligence, while not an act of commission, can nonetheless be considered criminal behavior, acts of omission in the weapon procurement business could be considered unethical. These may not involve any direct transgression, but they can be just as significant. There may be a lack of due diligence or an imperceptible slackening of

supervision. Furthermore, I have described several junctures in the acquisition process where financial gain itself is not the driving issue, but the desire for success, reputation, or promotion yields an ethical omission. These can be especially hard to identify, since their cause seems benign. There may be a fervent, vested, and enthusiastic hope for a project's success. There might just be a tiny bit more optimism than is warranted. But in the acquisitions process, and particularly for the project manager, these have ethical weight.

The weapons acquisition process is well designed and clearly understood, albeit enormously, and perhaps necessarily, bureaucratic. There are many opportunities in this sometimes lengthy and often contentious process for ethical lapses, but also opportunities for good ethical judgment. From rational, well-supported decisions to buy weapons, to truthful assessments of technological maturity, to realism in cost estimating, to adequate testing, proper construction, and billing practices, all the way to continued support of the warfighter in the field, there are numerous points in the life of a weapon system where both contractor and government managers must be vigilant about ethics.

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21

THE REVOLT OF THE GENERALS

Colonel Jeffrey D. McCausland

Many Americans share an implicit but erroneous assumption that our system of civil–military relations is, in fact, representative of the norm around the globe. There is also a widespread but mistaken impression that, in accordance with this system, the American military has not at times been involved in politics. Finally, whatever the accuracy of our beliefs about it, there exists a great danger that we in the United States may take our unique civil–military relationship—admittedly, one of the cornerstones of our democracy—too much for granted. These unfortunate assumptions, coupled with the nature of our political system, current and ongoing changes in warfare, and the impact of new and largely unmanageable modes of information dissemination may together place new and unique pressures on the American system of civil–military relations in the future. I wish to example the impact of all three factors on civil–military relations in this chapter.

I. Civil–Military Relations in American History

First, it is important to clarify the role that military personnel have in fact played in American politics, in part to dispel the myth that the military in the U.S. is not supposed, or even permitted, to get involved in politics.

The historical facts are quite the contrary. George Washington became America's first President, largely due to his perceived success as the nation's military commander during the Revolutionary War. At one point, he was even asked by his officers if he would permit them to make him king, an offer that he declined. Several of the early Presidents—William Henry Harrison and Zachary Taylor, for example—used their popularity as successful military commanders during wartime to propel them to the White House. In 1852, the Whig Party selected General Winfield Scott as its candidate for President. While presidential candidates did not campaign actively in the nineteenth century, Whig Party posters throughout the country depicted Scott in his uniform as a general.[1]

On June 28, 1863, General George Gordon Meade was a corps commander in the Army of the Potomac, and leading his men toward Gettysburg, Pennsylvania. Early that morning, he was wakened in his tent by a courier arriving from the nation's capital. Meade later wrote in his diary that he actually thought he was being arrested by the President, but reportedly the

courier replied: "No, it's worse than that. You're not being arrested. You're being promoted. They are making you the commander of the Army of the Potomac." Three days before the Battle of Gettysburg, Meade was promoted because Abraham Lincoln had dismissed the previous commander, General "Fighting Joe" Hooker.[2]

Many people at the time, and some historians since, believe Lincoln picked Meade in part because he was born in Spain. Why would that matter? As most historians now acknowledge, Abraham Lincoln was a very savvy politician. He realized that even if Meade was successful in the coming conflict, he would pose no future political threat to the re-election of the sitting President, since, as foreign-born, Meade himself would be ineligible under terms of the U.S. Constitution from ever running for election to the presidency. While this was true of Meade, Lincoln was still obliged to face another general (George McClelland) as an opponent during the subsequent presidential election in 1864.

Furthermore, Meade knew another corps commander, General John Reynolds, had actually been offered the job prior to the arrival of the courier. Reynolds turned the job down because he is alleged to have told Lincoln in an interview, "Mr. President, I'll take the job if you and General Halleck (Lincoln's primary military adviser) back in Washington agree not to interfere in any of my decisions as the commander of the Army of the Potomac." The President replied, "I don't think I can do that." General Reynolds responded, "I don't think I want the job," and turned it down.

Following Lincoln's assassination in April 1865, newspapers in the United States carried stories that claimed General William Tecumseh Sherman was preparing to march on the capital to take over the government and declare himself a military dictator. While this was clearly untrue, Sherman's close friend and commander, General Ulysses S. Grant, would be elected President in the aftermath of the Civil War and serve two terms. National politicians would frequently flaunt their service during the war for the remainder of the nineteenth century in an effort to burnish their credentials and bolster their election chances.

II. The Professional Norm of Civil–Military Relations

Despite this history, however, the practice of military leaders aspiring for and not infrequently holding political office does not fully define or characterize the broader, unique tradition of civil–military relations in America. Our political history tells a second, and quite different, story about our wider background assumptions. General Douglas MacArthur's speech to the 1952 Republican National Convention, for example, is viewed by many historians as not only a classic example of the tensions in American civil–military relations, but also an attempt by MacArthur to secure the Republican nomination for President. In that sense, it might seem to continue the narrative in the preceding section, of successful and admired military leaders desiring and running for election to high office.

But that speech also conveys a very different narrative. Congressional supporters of MacArthur had ordered hearings after he was relieved of his command during the Korean War by President Truman. Clearly, they sought to embarrass the President and requested Chief of Staff of the Army General Omar Bradley to appear before a senate committee. A senior senator, who was an obvious supporter of MacArthur, asked Bradley if he did not agree that the firing of General MacArthur by Truman was irresponsible.

Bradley's reply is basically a tutorial on American civil–military relations. He pointed out that the military is a servant of the American democracy and must accept the basic principle of civil control of the military. Bradley continued that the President, as the elected leader of the nation and Commander in Chief, was fully within his authority to relieve a commander who

did not follow orders and pursue the policies of his administration. Ironically, a former MacArthur military aide, Dwight D. Eisenhower, would subsequently be elected President in 1952 in a landslide.

In 1977, the Carter administration was considering a significant reduction if not the full removal of American forces from South Korea. Major General John Singlaub was a highly decorated officer who was serving as Chief of Staff of U.S. forces in Korea at the time. He very publicly criticized the President for even considering this policy. On March 21, 1977, Carter relieved Singlaub of his duties for overstepping his authority and failing to respect the President's responsibilities as Commander in Chief.[3]

Similar instances of tensions over military leaders who seemed to interfere too visibility in the political process emerged during the controversial wars in Iraq and Afghanistan. Many pundits reported that Roger Ailes, longtime Republican media guru and founder of Fox News, urged General David Petraeus to consider a run for the White House as a Republican to counter the power of the Democratic Party administration under the leadership of President Barack Obama.[4] In the meantime, to my personal regret, General Stanley McChrystal was relieved of his position as U.S. and NATO commander of ISAF forces in Afghanistan in 2012, due to comments ascribed to him and his immediate staff in *Rolling Stone* magazine about members of that same Obama administration, including specific derogatory remarks about Vice President Joseph Biden.[5]

On the other hand, former Secretary of Defense Robert Gates recounted in his autobiography, *Duty*, that he believed President Obama, for his part, did not trust some of his generals.[6] Many have found this to be a damming critique of Obama, but it is actually appropriate. Presidents should not simply reflect the advice and policy recommendations of their generals. The Chief Executive's job, in keeping with the actions of Presidents Truman and Carter, is to be the final point where the various elements of power (political, economic, diplomatic, informational, *and* military) are considered and fused into hopefully effective policy and national security strategy. Any President should carefully question the generals and keep in mind at all times that military leaders will almost without exception recommend military solutions to international challenges facing the nation.

This supposed firewall between military and civilian jurisdictions (and the subordination of the former to the authority of the latter) is simply not reflected in the histories and practices, even of our closest allies. There are very few countries where it is clearly acknowledged, or even believed in the body politic, that uniformed military personnel will at all times defer to civilian authority. When I lived in Great Britain, for example, British colleagues of mine repeatedly reminded me that British people referred to the Royal Navy, the Royal Air Force, but the *British* Army. This was because during the time of the English Civil War, elements of the British Army revolted against the Crown, and may have even assisted the king in losing his head.

Several years ago, I was at a conference in Berlin at the invitation of the German Foreign Ministry. The conference participants (over 100) included all the countries in the Organization for Security and Cooperation in Europe (OSCE). I was seated at a beautiful dais in a lovely, ornate ballroom in the Foreign Ministry, and a German one-star general sat to my right. Halfway through the opening remarks, it occurred to me that he and I had gone to the American Command and General Staff College together as Young Army Majors at Fort Leavenworth. On a break, I asked, "General, did you by chance go to the American Command and General Staff College?" He said he had. I reintroduced myself, and he remembered me. We had lunch together and reflected on this chance encounter, some 20 years after our graduation.

That evening, after we had a couple of drinks, he related to me his deep frustration and chagrin that he was not going to be promoted beyond the rank of one-star general in the German Army. He was a German general staff officer, and he was firmly convinced that he had not

been promoted further purely as a result of political rather than professional military mistakes. He had had a political patron, a mentor that he, in turn, had assisted throughout his career. This particular politician had endorsed him for promotion to brigadier general, but had subsequently been involved in a scandal and thrown out of office. As a consequence, this general's future in the military was largely over. In my experience, this is very much the norm in continental European militaries. As my informal recounting of American history has demonstrated, however, this is not the norm in the United States.

III. Public Ignorance and the Role of News Media in Civil–Military Relations

To summarize to this point: although it is widely believed by many in our body politic that the military has little interest in politics, we have had numerous instances of tension over the exact meaning and significance of this principle that continue even today to exist between the military and civil authority. These historical tensions, however, are becoming somewhat different in the present century. 21st century warfare means that information about the *conduct* of the wars in Afghanistan and Iraq, for example, has become every bit as important as actual bullets on the battlefield.

It is perhaps trite but still no less true that we live in a 24-hour news cycle. We have seen a dramatic expansion in news coverage that includes not only increased television coverage, but also expanded talk radio, coverage by the international press, the role of the Internet, and social media. The "news" as an industry is a voracious consumer. I have reflected on this media transformation a great deal over the past decade while serving as a national security consultant and analyst for CBS radio and television. I firmly believe that after more than 30 years of active-duty military service, it is my unique responsibility to try to provide some expertise and explain the complexities of the wars we have been waging to the American people.

I realized from the onset of both wars more than a decade ago that most Americans had little understanding of military affairs. Furthermore, due in some measure to the elimination of the draft in 1973, the majority of this generation of Americans has no direct connection to the military. The average American citizen at present probably knows of no one among his or her immediate friends, family, and acquaintances who are serving in the military. They themselves have not served, and are very likely aware that there is little chance that they or their children will be called upon to do so. For the first time in our history, the nation fought wars and never really consulted the American people directly, or even asked them to pay additional taxes to support the war effort. These two wars have ironically lasted longer than any others in our history and cost the nation well in excess of 1 trillion dollars, as well as the lives of over 7,000 young Americans. This has caused me both anxiety and frustration.

In many ways, "we" were at war in Iraq and Afghanistan, but again maybe "*we*" were not at war after all. I was invited to have lunch with Secretary Rumsfeld a few days before he resigned (or, if one prefers, was fired) in 2007. During the meal, I said to Rumsfeld, "Mr. Secretary, it seems to me the Pentagon is at war, but I'm not sure the federal government is at war, and I damn sure know the American people are not at war." He totally agreed. Consequently, one of the problems we must confront as we wrestle with these issues in future is: If our nation should become involved in waging a war in the future, will "we" collectively be going to war in the minds of the broadest part of the American public? If not, what are the implications for American civil–military relations?[7]

At one point, I was criticized publicly on radio by Rush Limbaugh for my comments about what I considered to be inappropriate actions by a senior military commander. I was a bit offended

by this, so I called Limbaugh's staff, and got an assistant on the phone. I offered to present Rush with a bargain on live radio. I would pledge publicly that I would never agree to do an interview about the misuse of prescription medications, because he was an expert on that. In return, I would ask Limbaugh to pledge never again to discuss the military affairs, because he, in turn, did not know anything about *that*. Needless to say, his staff declined the opportunity to broadcast such a discussion. Had we done so, however, I am confident many of Limbaugh's listeners would have been offended, had I publicly criticized Limbaugh himself for his lack of military expertise.

Even as the wars in Iraq and Afghanistan come to an end, our public's lack of understanding of military affairs, the impact of information on military affairs in the modern age, and our collective public failure to appreciate the inherent tensions that occur in the otherwise routine and ongoing management of civil–military relations will remain critical. In fact, I am convinced that these challenges will intensify.

During some of the worst fighting in Iraq, I was asked to be a speaker at an Army worldwide media conference. I posed the following question to the several hundred people in the audience: could they identify which single soldier, sailor, airman, or Marine had had the greatest impact on the war on terrorism since 9/11? I am sure some in the audience immediately thought of General Dave Petraeus, Marine General Jim Mattis, General George Casey, Admiral Fox Fallon, and military leaders of that caliber. For my part, I believe that the correct answer at the time, however, would have been PFC Lynndie England.

For readers who do not recall Lynndie England, she was the young female soldier in a green T-shirt with a cigarette dangling out of her mouth with a naked Iraqi detainee on the end of a dog leash at the Abu Ghraib prison. I am told that one could still see her picture on billboards or websites in several Middle Eastern countries for a number of years after the scandal at Abu Ghraib was first revealed in the press. Lynndie England's story and photos only underscore how war in the twenty-first century is different because of the impact of information. This fact serves to place additional pressure on American civil–military relations, and increases the demand for future military officers to better understand the interrelationship of the media, information, policy, and politics.

Retired British General Rupert Smith, former deputy Supreme Allied Commander Europe (SACEUR), discusses this phenomenon in his book on the future of armed conflict, *The Utility of Force*.[8] Smith argues that, historically, military commanders would never go into battle without analyzing certain key factors, such as weather, terrain, and troops available. He argued that today "information" has risen to the same level of importance as these other factors in terms of what must be analyzed. I firmly believe this became even more important as both the wars in Iraq and Afghanistan became increasingly unpopular to the American public. Today, there are some suggestions that 80 percent of the population of the United States believe in retrospect that the war in Iraq was ill advised.

In some ways, these challenges predate 9/11 or at a minimum there were already suggestions of the problems that might lay ahead. I was in the Pentagon when the Bush administration's new team first arrived in 2000. There was a sense in the minds of Secretary Rumsfeld and some members of the new Pentagon civilian leadership (further emphasized by outside experts) that the "adults" had returned. They believed that the uniformed military had had too much leeway during the Clinton administration, and that the new administration was going to reassert full civilian control. Several committees were established in the Pentagon shortly after Inauguration Day to examine key aspects of American strategy. This included nuclear forces, conventional forces, maritime forces, and matters of strategy, budget, and acquisition.

But what has been forgotten by most was that no uniformed officer was allowed to serve on any of those committees. There was no participation by the military Joint Staff. The professional

military was basically frozen out of the process to determine the size, organization, and strategy for the forces they were charged to lead. Consequently, renewed pressure was building in American civil–military relations, even prior to the attack on the World Trade Center or the Pentagon. Soon after assuming office, Secretary of Defense Rumsfeld had begun encroaching on what had largely been considered the military's jurisdictions. For example, he required a personal interview for any officer who had been selected for promotion to three-star flag rank before that officer would be approved or promoted.[9]

This illustrates a central problem for American civil–military relations. All military officers take an oath to support the Constitution of the United States. They do not take an oath to support any political party or any particular political figure. At the same time, the Constitution sets the stage for a historic tension in American civil–military relations. The tension arises because the President is both a political leader and the Commander in Chief. He (or someday, she) must consider both policy and politics. Furthermore, the President is the ultimate arbiter of policy, and expects the military either to carry out his or her orders, or else to quietly resign.

When I was Dean of the U.S. Army War College, I frequently pointed out this tension to younger officers. It struck me that their presence at the War College suggested that they aspired to be promoted. But, if in fact they were promoted to colonel, or eventually made general officer, they were then going to be more and more drawn into this tension, as they would be called upon to provide military advice on the measured application of violence to the nation's political leadership. Clearly, the wars in Iraq and Afghanistan have made that even more obvious. Senior military officers have been, and will continue to be, brought into committee hearings to testify, and the party that is not in power is going to constantly try to get them implicitly or explicitly to criticize whatever administration is in power for their handling of military affairs. Their responses will be closely watched by the media for any hint of criticism.

These observations raise a number of additional questions about the role of information and its impact on civil–military relations particularly during crises or wars. What is "news?" What actually is criticism *and* dissent by military members? Do "military members" include retired officers as well as those still serving? In my experience with the press, I am convinced that any news story seen on television, heard on radio, or read online has only two things that are totally factual: the sports scores from the previous night, and the previous day's weather. Everything else is interpretation and analysis.

If all "news" has some element of interpretation, when does that interpretation become criticism and eventually dissent? Furthermore, I believe there is a question about how far any prohibition on dissent or criticism goes. As suggested in the earlier example of General Singlaub, there are laws and regulations that prohibit uniformed officers from directly criticizing the Commander in Chief. But do such prohibitions extend to criticisms of all cabinet secretaries, all undersecretaries, assistant secretaries, deputy assistant secretaries, and office directors? If we can even define criticism or dissent with any precision, then how far down the civilian chain should such prohibitions against it be enforced if we even wish to attempt to maintain our traditional beliefs in civil–military relations?

IV. Conclusion

For most uniformed officers, I believe the case is largely clear regarding what can or cannot be done in uniform. General Colin Powell, when he was Chairman of the Joint Chiefs of Staff, underscored this well during a visit to the Naval Academy. A young midshipman asked the General Powell about the "Don't Ask, Don't Tell" policy that had been enacted by the Clinton administration. The midshipman wanted to know what was the responsibility of a senior military

officer when providing advice to the President about the feasibility or wisdom of such a policy, if his advice was then not heeded. Powell quickly replied that military officers have two responsibilities. Responsibility number one is to provide the best possible advice to civilian authorities in order for them to make the best decision possible. But once the President makes a decision, the officer must either embrace it and carry it out to the best of his or her abilities, or simply resign. There is no other option as long as a person wears the military uniform of this nation.

While I agree with the essence of General Powell's response, I believe this topic deserves greater analysis in the present era, particularly in light of our recent experience with the public, the press, and the military. This is particularly urgent in light of the fact that we may in future place greater emphasis on use of our reserve forces. Prior to 9/11, our National Guard and Reserves were "reserve forces." They were designed for two things. First, they were to be prepared to manage local emergencies in their state or their communities—hurricanes, forest fires, riots, and so forth. Second, the National Guard and Reserves were to prepare to be called upon for mobilization in case the nation was once again thrust into a global conflict. They were truly "reserve" forces and, for example, were not mobilized for the war in Vietnam. In a post-9/11 world, they have been truly transformed into "rotational" forces. If an individual was serving in the National Guard or Reserves during the wars in Iraq or Afghanistan, that person needed to calculate into his or her lifestyle that, every two to three years, he or she would be called to federal service. Someone who is wearing a uniform today might tomorrow be a congressman or a senator or a member of their particular state's legislature. Should such officers be prohibited from public criticism of a future President because they are active members of the National Guard or Reserve?

Some have argued that the restrictions on military officers providing public criticism also apply to officers even after they have retired. I totally disagree, though some experts have told me that a strict interpretation of laws and military regulation might lead to this conclusion. If so, it has become a law or professional principle that is violated almost on a daily basis. In recent years, we have seen recently retired officers elected to Congress. And, as demonstrated above, we have had a history of recently retired officers running for President. If this is correct, then the principle is violated far more often than it is adhered to.

Finally, I note that many critics have taken what I would call a Clausewitzian approach to officer responsibility. Clausewitz talked about that so-called remarkable trinity: the government, the army, and the people. Many of my colleagues talk about the development of trust and loyalty from the officer to those three very distinct parts: the government or civilian authority, the people of the nation to whom one swears an oath, and, lastly, the soldiers, sailors, airmen, and Marines that you may have to lead into battle. These conflicting loyalties may at times compel an officer to action.

This is best illustrated in Major General H. R. McMaster's book *Dereliction of Duty*.[10] I know the author well, and know for a fact he did not select that title casually. In his book, McMaster suggests that the Chiefs of Service were derelict in executing their responsibilities the moment they did not live up to the trust provided them by the people, by the nation, and by the soldiers they had legal responsibility to train and lead. If General McMaster is correct, as I believe he is in this observation, then how can it possibly represent an erosion of trust for retired officers to speak out publicly when they believe unwise policies are being pursued? Are they not, instead, actually fulfilling the responsibilities Clausewitz described?

Civil–military relations are the bedrock of our democracy. As a nation, we assume its natural permanence at our own peril. Furthermore, there are forces at work in our nation and around the globe that are placing, and will continue to place, enormous pressure on this critical aspect

of our democracy. This is demonstrated by the question of if and when an officer should actually dissent or criticize the civilian chain of command.

Notes

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3. See the unclassified official report written by Lt. Col. John Andrew Valersky, U.S. Army, "The Singlaub Affair: Major General John K. Singlaub and the Carter administration" (Army War College, 1991): www.dtic.mil/dtic/tr/fulltext/u2/a237770.pdf.
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6. Robert M. Gates, *Duty: Memoirs of a Secretary at War* (New York: Alfred A. Knopf, 2014).
7. I commend highly the discussion of the erosion of civil–military relations in the U.S. by the eminent military historian, Richard H. Kohn: see "The erosion of civilian control of the military in the United States today," *Naval War College Review* 55 (Summer 2002): 8–59.
8. Rupert Smith, *The Utility of Force: The Art of War in the Modern World* (New York: Vintage, 2008).
9. These various details are documented in the four-part article by Errol Morris, "The certainty of Donald Rumsfeld," *New York Times* (March 25–28, 2014): http://opinionator.blogs.nytimes.com/2014/03/25/the-certainty-of-donald-rumsfeld-part-1/.
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ETHICAL ASSESSMENT UP AND DOWN THE CIVILIAN–MILITARY CHAIN OF COMMAND

Major General Paul D. Eaton

Many members of the U.S. Army were extremely unhappy with Secretary of Defense Donald Rumsfeld's treatment of General John Shinseki.[1] I was not among those critics, at first. When Mr. Rumsfeld first took office, I was a fan. I liked what he was trying to do. I liked the idea of the lean infantryman, equipped with technology, going forward to fight the American war. I thought the poster child for this idea—a man from the Army Reserves unit from Parksdale, Louisiana, on horseback in Afghanistan calling in airstrikes from B-52s—was a pretty good idea, worth exploring.[2] That honeymoon phase eroded over time, as we saw a failure on the part of the Secretary to adapt to the environment we were in. What happened next began in the middle of March 2006.

I. My Own Background

Let me first explain that I lost my own father during a war in Vietnam that, at the time and ever since, has been a subject of enormous debate. I did not lose him right away. All I got in January of 1969 was the news of that aircraft lost in a tearful phone call from my mom. I was 18 and a plebe at West Point, and we just did not know what was going on. Ten years later, we got the death certificate, and we had a little ceremony, got his awards, and that was it.

Roll forward a little bit in time: about three days prior to the Christmas, 2006: I had my own kids in the car, two sons (by now, both soldiers) and my daughter. We were gathering for Christmas. I got a tearful phone call from my mom again, telling me that they found my dad's body. We had been tracking this at the Joint Task Force Full Accounting, so we knew. We finally had the funeral that dad deserved, with full military honors and a B-52 flyby. It was a great reunion of friends and family. A small piece of bone was in the coffin. That's it. But this country, because of Joint Task Force for Full Accounting and the work of some pretty darn brave people, put that together.

I have two sons. One served as a Special Forces captain in Afghanistan, and the other is a sergeant who served with the 82nd Airborne in Afghanistan. Both sons re-enlisted when the

time came in 2006. In addition, my wife is a veteran, and my father-in-law is a Naval Academy graduate, class of 1945. So that is the family context. I have a brother-in-law who is a Marine pilot, a second brother-in-law who is an Army pilot, and a former brother-in-law who is an Air Force enlisted, so you might say that a tradition of military service is kind of "in the family."

That was the personal context. Let me add a professional context. In 2002, I was sitting in the bleachers at West Point at the football stadium watching my son graduate, and President Bush took the podium and delivered the speech that laid out the preemptive strike on Iraq.[3] I was sitting up there with my wife, looking down at the West Point graduates. I have got the parents of my future daughter-in-law sitting next to me.

I said, "This is a meaningful speech, and we have an interesting road in front of us." Like most people, I thought this was a reasonable idea, and I am not now, nor have I ever, debated the decision to go to war. My recent trip to Vietnam to receive my father's remains has added emphasis to my position. I cannot, of course, be certain, but I firmly believe that history will reveal the wisdom of what we did and what we are doing in both Afghanistan and Iraq at some point. We have a lot of politicians who declare going into Iraq the greatest foreign policy disaster that has befallen us. I am not sure if they are referring to the decision to go to war or just the sheer incompetence of the prosecution of the initial phases of the war, which are two quite different issues.

What I am very certain of, however, is that on July 1, 1968, I took an oath to support and defend the Constitution of the United States against all enemies foreign and domestic. I took that oath if memory serves at about 1700 hours, after a brutal day of reception at the military academy. It did not dawn on me at that time that I was giving up my rights to dissent, that I was giving up my rights to challenge the nature of government.

As time went by, I was a good soldier. I did all those things that we are expected to do and to the best of my ability fulfilled my requirements for the military profession, its ethics, and ethos.

II. Iraq: The Military Backlash Begins

So what triggered my writing the op-ed piece that started all this business about the so-called "revolt of the generals?"[4] Actually, I do not think I deserve credit for having started it. General Anthony C. Zinni, U.S. Marine Corps (retired), had already been very active in his discussions and his critique of what was going on in Iraq. I was not the first guy out there. I was a two-star general. He was a retired four-star.

During the third month of my retirement, I was at a Starbucks near where I live, getting out of the house while it was remodeled. I called my wife and said, "I just read a disturbing document." I had been grouching about Mr. Rumsfeld for some time, and my wife is my sounding board, and a lot smarter than I am. She said, "Well, what are you going to do about it?" And what she meant was, "OK, big boy, I've heard you talking about it, so what are you going to do?"

I said, "I've just read this document that calls for the reduction in size of the Army, but we continue to build Virginia class submarines at the rate of one a year. We are going to maintain 10 or 11 aircraft carrier strike forces, pretty close to what we had during the Cold War, and we're going to maintain the joint strike fighter and the F-22 programs. Yet we're going to reduce the size of the Army."

This was February of 2006. The Chairman of the Joint Chiefs of Staff in Congressional testimony had stated we were at a spike in demand for ground forces, but somehow we did not need to grow the Army.

There was a modest reduction in the size of the Army in the Quadrennial Defense Review (QDR) and a very modest 15 percent increase in the Special Forces of the United States. So then I started Googling "QDR reaction" and "QDR and Congress" and found nothing. No discussion. So I was reviewing a flawed document, a document that did not reveal the reality of what was happening in Afghanistan and Iraq. My son had just completed a 15-month tour in Iraq and was already getting ready to go to Afghanistan. He had spent 15 months as a rifle platoon leader for the 25th Infantry in the Fourth Division, First Division Area Officer, in firefight after firefight, and now he was going to be a Special Forces captain leading an operational detachment alpha (ODA) in Afghanistan. My other son was getting ready for a 15-month tour with the 82nd in Afghanistan. What I was reading was therefore wrong, and yet there was no commentary about it.

Who was defending the Army? Congress was not. Congress was asleep. It was Republican-dominated. What I did not know was that the minority party cannot trigger an investigation. The minority party cannot subpoena. The Democrats whom I criticized proceeded to inform me about that little bit of civics.

What really offended a lot of people about my editorial, however, was that I asked for Secretary Rumsfeld to step down after I declared him "incompetent strategically, operationally, and tactically." I made the case for each of those, and then at the end of my editorial, I gave recommendations, one of which was for Congress to become much more actively engaged in oversight.

Army Ranger regiments periodically go through an analysis of their leaders. They call it "a 360," by which they mean "360° feedback," a full evaluation of their capabilities and performance by subordinates, as well as by peers and superiors. Well, I did not quite realize the full extent of what I was doing when I wrote that op-ed piece, but as it happens, I had just given Secretary Rumsfeld his first "360," and it was pretty inflammatory. We evaluate our peers, we evaluate our subordinates, and you can evaluate one level up. A major general will evaluate all the major generals he knows, all the brigadiers he knows, and all the lieutenant generals he knows. I figured I was just giving my assessment of the Secretary of Defense. Now in this case, the evaluation was a bit more than "one level up," but at the time, nobody was saying anything about the conduct of the war or about the long-term well-being of the armed forces of the United States. That QDR was the trigger point for me finally to do just that.

III. The Fallout

My younger son taught me about a website known as "Strat Four." Strat Four offers a graphic on influencing and changing public policy. One example is the recent change finally effected in the military's "Don't Ask, Don't Tell" policy. In the very beginning, there were a few outliers, objecting and demanding change. Perhaps they themselves are gay, and former military personnel, who were harmed by the existing policy. They start talking about it. They band together and become little groups, and then they become bigger groups, all voicing their opinion. Next, they approach mainstream organizations—VFW, AMVETS, and politicians—and they are en route to a policy change. That process with "Don't Ask, Don't Tell" went on for many years. General Wesley Clark, when running for President in 2004, came out in favor of changing the policy. General Shalikashvili, former Chairman of the Joint Chiefs, then came out in favor of changing the policy. The rest is history, and the policy was finally changed with overwhelming support. In the "Strat Four" graphic, the "knee" or sharp inflection in the curve, when things start to accelerate, is a measure of the credibility of the proposed policy change, and a reliable predictor of its eventual success.

So, by analogy, what happened when these various generals decided to do what they did, going public with their dissatisfaction with the management of the Iraq War by a sitting Secretary of Defense? Their public objections gave credibility to what a lot of people were already thinking. A lot of people were thinking, "Iraq is not going well, and this Secretary of Defense is not adapting to the reality of the fight there."

The military could not even use the word "insurgency" to describe that conflict for months, when simply having acknowledged that we were in the middle of an insurgency would have triggered a change in our prosecution of that war. The Secretary of Defense kept pushing back, and he kept stubbornly to his agenda, in the way that some Army captains do.

Typically at the rank of captain in the Army, we discover whether a given individual is going to become an adaptive leader. If a captain is not adaptive and responsive, then he will make the mistake of just laboring over a "great plan" that he has created. He will not adapt the plan, or his behavior, to changing conditions. His original plan will collide with bad weather, or the enemy will not cooperate, or something else happens. No plan survives first contact with the enemy, as the saying goes, but the non-adaptive leader is nevertheless going to take that great plan and drive it to fruition—except it does not work.

This, in my estimation, is the kind of futile leadership that the Secretary of Defense exhibited. So, in the spring of 2006, while the conflict floundered, we had silence upon the land. We had a bad policy in Iraq, and we had an Army under tremendous stress, and nobody was speaking up for the Army. That is why I wrote that op-ed piece.

After I wrote it, I sent it to a close friend of mine at the *New York Times*, who sent it over to the editorial board. That board called me the next morning and said the newspaper would publish it on Sunday, March 19, on the third anniversary of the attack into Iraq. I did not time it for that, but that is what happened. They put it in the Sunday op-ed section, and it hit the fan. At 5 o'clock that morning, Wolf Blitzer's guys from CNN News telephoned me. I was trying to leave for a scuba trip in Hawaii. Every news organization you can imagine called—Al Jazeera, Australia, New Zealand—I mean everybody. They just loved the idea of a retired general attacking Secretary Rumsfeld. The press, the liberal media in particular, just loved it. The Democrats loved it.

So they went after other generals, including John Batiste, who was actually a far more credible actor in all this. John chose to retire instead of doing what they were asking him to do. That was a tough call on his part, to turn down a third star. Others stepped forward, and then came a *Vanity Fair* article called "The Night of the Generals."[5] The original action was not coordinated. The various senior military officers, including myself, were independent in our actions. There was never, in retrospect, any kind of covert agreement, such as: "Hey, let's get after the Secretary of Defense."

That is why I chose to do it, and I heard from my sons, as you might imagine. My sergeant son, who was then a specialist, came into the orderly room and was asked, "Any relation?"

"That would be my dad," he answered.

My captain son asked, "Dad, where are you going with this?" It was not universally popular in his group. He had guys who supported me and guys who did not know me. It looked anti-Republican, anti-President, but none of us attacked the President or the Vice President. Rumsfeld was a political appointee.

So I asked a few things in return. Why is my opinion, declaring Mr. Rumsfeld incompetent, any worse an action than an active-duty, three-star general in uniform on "Fox and Friends" lavishing praise all over Mr. Rumsfeld, and then getting an assignment to command ground forces in Iraq? Is it appropriate that we have the Chairman of the Joint Chiefs of Staff in uniform in public, on TV, defending and praising his boss? Is it appropriate that the former Chairman of the Joint Chiefs of Staff, General Richard Myers, "explain" to the public that General Eric

Shinseki "was kind of pushed" into a corner by Senator Levin, and that his response had not been vetted through either General Myers himself, or through the Secretary of Defense?[6]

Let us remember the provisions of the Goldwater-Nichols legislation.[7] In this instance, in direct violation of its provisions, we had the Chairman of the Joint Chiefs of Staff wishing away and pushing away General Shinseki's remarks in the latter's sworn Congressional testimony. Senator Levin did not want the opinion of the Chairman of the Joint Chiefs. He did not want the opinion of the Secretary of Defense. He wanted the opinion of the soldier who was testifying. I find the whole environment of attempting to discredit such an individual's sworn Congressional testimony to be toxic to the profession of arms.

IV. The Aftermath, and Lessons Learned

I am not going to go through the litany of failures that could be directly pinned upon the breast of former Secretary of Defense Rumsfeld, but we were in a position to know. There were a lot of people who were uncomfortable with the Secretary of Defense. I had subordinates who approached me and said, "You're not going to believe who I just got a call from!" The White House and the National Security Council and the Secretary of Defense office immediately went into spin control and attack, attempting to discredit the people like myself who were talking. All those people who felt that something was wrong concluded: "These military protestors seem to know what they're doing."

I viewed this situation as an extraordinary circumstance, one in which Congress had "fallen asleep at the switch," and an Executive Branch had consolidated or just plain collapsed power into the hands of only three people: the President, the Vice President, and the Secretary of Defense. The rest of the President's cabinet and the rest of government had been isolated and marginalized. I did not yet think myself that we had a genuine Constitutional crisis, but I seem to recall that someone else called it just that in another article written at the time. I was not smart enough to say, "I'm responding to a Constitutional crisis. By golly, I'm going to go after the Executive Branch," but that was in fact my own assessment, because nobody else had taken action. Nobody else was controlling an executive that had run amuck and collapsed power in the hands of three people and was making very serious decisions on behalf of 300 million Americans and the rest of the planet.

But another friend who disagreed with my position observed: "Suppose you're the President of the United States, and you look out at that long table, and there are all your generals. Do I want the President wondering, 'which one of those guys is going to stab me in the back'?" That is a valid question. Can the President finally trust his generals? Should he trust his admirals? To my mind, I was working to re-establish that trust, not to undermine it.

I subsequently wrote another article that did not get a whole lot of traction. It was called "The Rise of the Admiralty."[8] This was after Admiral Mike Mullen was appointed to succeed General Peter Pace as Chairman of the Joint Chiefs. I have never met Admiral Mullen, but I worked for his predecessor as Chief of Naval Operations, Admiral Vernon Clark, for seven months after I had been General Pace's executive officer. Admiral Clark was a pretty serious guy, I was his "exec," so I was the "running dog" outside his office. He had been there about a week when he said, "Hey, Colonel, you come in here."

I came in, and there was a chair sitting right in front of his desk. Not good. I sat down, and he proceeded to rip my tail. I said, "Admiral, we're on it." We treated him exactly the way we had General Pace, who has a far more easygoing personality.

The next guy to get summoned into Admiral Clark's office was Tim Keating, who was a rear admiral (lower echelon) at the time, assigned to J-33. When he came out afterwards, he

said words to the effect, "That's one of the better wire brushings I've ever had." Later, all of these admirals had virtually taken over the Defense Department: PACOM, Admiral Keating; SOUTHCOM, Admiral Stavridis; CENTCOM, formerly Admiral Fallon; and Admiral Olson appointed CO of SOCOM. At the height of this transformation, Admiral Mullen was Chairman of the Joint Chiefs, and Marine General James Cartwright was Vice Chairman. Why? What happened to the Army personnel?

I learned something about them all from watching Admiral Clark. He just did not care a whole lot what people thought. In the book that Bob Woodward wrote, *State of Denial*,[9] Admiral Clark gets a very strong vote, because he was not picked to be the parrot on Rumsfeld's shoulder, in contrast to the warning that General Jim Jones gave to General Pace before General Pace accepted the job. General Jones at that time was SACEUR (Supreme Allied Commander in Europe), and he and General Pace were friends and colleagues from way back. Jones advised Pace not to take the job. But General Pace did, and it did not go well.

In the aftermath of the "Revolt of the Generals," suddenly we had all these admirals who were in positions of authority. I believe that admirals were being picked because the new Secretary of Defense, Robert Gates, was a wonderful person and did a great job. I do not take personal credit for him going in there and pushing Donald Rumsfeld out, but I do believe that I helped that "knee of the curve" appear that stimulated an eventual change in the office of the Secretary of Defense. It stimulated debate.

Afterwards, I believed that the new Secretary of Defense liked debate. I believe that he wanted the his military officers to walk into his office and say, "Boss, you're not wearing any clothes today, and I recommend thus and such." I am convinced that the naval service has fostered just this attitude in their leadership. Admittedly, I have studied only a very small sample—Admiral Clark—but looking at a few other Navy guys that I worked with over time, I think there is an attitudinal difference. You put that guy in command of a ship in his early forties, and he is God on that ship. I watched Admiral Willard, who was in my CAPSTONE class. We went aboard the Aircraft Carrier *Lincoln*, and it was like I was with a rock star. This guy was loved by the crew of that ship.

I think these subsequent appointments were part of an effort to undo the damage that Secretary of Defense Rumsfeld did to the general officer and admiral corps. During his tenure, every flag nominated to three or four stars went into his office, and there was a discussion, and it was just that officer and Rumsfeld. I have talked to a few of those guys, and it is an interesting discussion, and there are things agreed upon. Every three- and four-star flag officer promoted at the time was forced to go through that process. Hence, when the new Secretary of Defense, Robert Gates, was installed, if you studied what he then did, I believe you would have noticed an effort being made to correct the damage done earlier to the trustworthiness of the military command structure by Secretary Rumsfeld.

Here is a dramatic example: in 2008, General Petraeus was brought out of theater and home from Iraq by Secretary Gates, in order to chair the brigadier board that was about to take place at that time. What does that signify? The Secretary had plenty of people on his staff who should have been generals a long time ago, but failed to get promoted in the toxic environment that Donald Rumsfeld generated. General Petraeus, at this time, was far from being the most popular four-star general in the United States Army among his peers. But he was the only one the new Secretary thought he could trust to evaluate the qualifications of the younger candidates. The fact that H. R. McMaster had not been promoted to major general by that time was not right. Only during this new period was that oversight corrected, and we saw a rapid ascent of the guy who dared to write the book *Dereliction of Duty*.[10]

My brother is a lawyer, and, after my editorial appeared, he sent me an article written by Fred Kaplan: "Can Rumsfeld court-martial the Generals?"[11] I read that, and recall thinking, "That didn't occur to me." I did not take that into consideration, so I contacted the staff judge advocate at Fort Lewis. I got this young major, and she said, "Well, sir, let me take a look at that."

She called back and said, "You can be court-martialed under Articles 10 and 98 of the 'Uniform Code of Military Justice' (UCMJ), but the offended party is the Secretary of Defense, so he can't proffer charges. It's got to be his boss, and so that would be maybe the Vice President and the appellate authority, and then it's the President. So you're probably pretty safe, but you are subject to UCMJ." The audience may find that amusing, but I found it an unpleasant surprise. It appeared then, and it still appears now, that moral objections, public whistle-blowing, and dissent in the military are not either encouraged or protected.

Notes

1. For an account of these events, see Tom Defrank, "How Donald Rumsfeld complicated Erik Shinseki's last administration exit," *The National Journal* (May 31, 2014): www.nationaljournal.com/white-house/how-donald-rumsfeld-complicated-eric-shinseki-s-last-administration-exit-20140531.
2. This image of U.S. Army Reserve troops on horseback in Afghanistan, calling in B-52 air strikes, is mentioned as a favorite image of Secretary Rumsfeld by Deputy Defense Secretary Paul Wolfowitz at the end of a speech to the Adjutants General Association of the U.S. (Washington, DC: March 1, 2004): www.defense.gov/speeches/speech.aspx?speechid=102.
3. For a text of President George W. Bush's "West Point Address" (June 1, 2002), see: http://georgewbush-whitehouse.archives.gov/news/releases/2002/06/images/20020601-3_westpointgradp18166-515h.html.
4. See Paul D. Eaton, "A top-down review for the Pentagon," *New York Times Op-Ed* (March 19, 2006): www.nytimes.com/2006/03/19/opinion/19eaton.html?pagewanted=print&_r=0.
5. See David Margolick, "The night of the generals," *Vanity Fair* (April 2007): www.vanityfair.com/politics/features/2007/04/iraqgenerals200704.
6. See Nicholas Mills, "Punished for telling the truth about Iraq," *CNN Opinion* (March 20, 2013): www.cnn.com/2013/03/20/opinion/mills-truth-teller-iraq/.
7. *Editor's note*: The "Goldwater-Nichols Department of Defense Reorganization Act of 1986" (*Pub.L.* 99–433), reorganized the Department of Defense chain of command precisely to empower field commanders such as General Shinseki to tell their versions of military events directly to Congress when so requested, bypassing both the Service Chiefs and the Chairman of the Joint Chiefs of Staff.
8. McClatchy Newspapers (September 21, 2007): 5. www.taiwannews.com.tw/etn/news_content.php?id=525664.
9. Bob Woodward, *State of Denial* (New York: Simon & Schuster, 2007).
10. H. R. McMaster, *Dereliction of Duty: Johnson, McNamara, the Joint Chiefs of Staff, and the Lies That Led to Vietnam* (New York: Harper Perennial, 1998).
11. Fred Kaplan, "Can Rumsfeld court martial the retired generals?" *Slate Magazine* (April 26, 2006): www.slate.com/id/2140616/.

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23

THE MILITARY SCIENTIST

Deconflicting Moral Responsibilities

Thierry Pichevin

For many years, I have served as a scientist in a military institution. During this period, I occasionally met with circumstances that presented moral problems, but I did not pay special attention to them, Often, I did not perceive the issues at stake, and I generally, as a scientist, had no idea that there existed specific tools or procedures to address such moral questions.

My research area, moreover, was physical oceanography, which is the study of the physics of the oceans: their movements (currents, tides, swell), their temperature, their salinity, and so forth. At first sight, my scientific discipline might seem relatively safe from the kinds of moral controversies that accompany research in other scientific domains, such as genetics (genetic manipulations) or physics (nuclear physics, nanotechnologies), or systems engineering (robotics and drones). However, the very fact that physical oceanography seems at first sight safe from controversies could make it useful as a field from which to examine other questions of a moral nature worth exploring, especially in a military context.

Since this term "ethics" can have various meanings, I specify here that, to me, ethics encompasses the methodologies used to identify moral dilemmas raised by a specific situation, analyze them, and determine the best course of action in response. Specific decisions always take into account their specific contexts, however, and therefore may appear rather limited in scope. And yet, a rigorous ethical approach provides a methodology to formulate arguments and reasons for the justification of specific decisions, reasons that are general enough to be relevant to many similar situations. As a result, the ethical analysis of my particular dilemmas encountered in practicing the science of oceanography in a military setting is not only interesting for myself, but will likely prove useful to many other researchers.

There are many works addressing the ethics of science and research in general. Some adopt a broad point of view, and consider scientific research in general: for example, its achievements and failures,[1] or the relations between research and society.[2] Among the works often consulted by researchers, several adopt a normative perspective: for example, they think of sets of rules that researchers should follow in order to perform their work properly,[3] or collect and analyze existing ethical standards or scientific codes.[4] Closer to my own areas of research, some works

raise the questions that researchers could be faced with,[5] or analyze specific ethical issues, such as the responsibility of scientists[6] or the technical applications of research,[7] but this is most often done in very general terms.

All of these works are useful, and I myself have relied on them. But my perspective in this chapter is somewhat different, considering these issues from the viewpoint of the researcher I used to be. This perspective of analysis in hindsight sheds light on how ethical problems concretely arise in research, which questions or problems they tend to present to researchers—and, incidentally, to other participants involved in the research process—and which forms of general reasoning can be used to answer them. My goal in this chapter is thus to illustrate *how* a researcher can be unexpectedly confronted with ethical questions. Although my starting point of view is that of a military researcher, I think that this work can easily be transposed to many other contexts.

In order to collect the ethical questions researchers might encounter as thoroughly as possible, to have a better understanding of the context in which they arise, and to provide benchmarks to other similar situations, I have adopted a specific methodology. First, I shall briefly discuss problems that somehow arise even before the research activity itself commences, such as the very choice of a research institution in which to work. Then, I present and discuss a research project that I conducted some years ago, in which I can now distinguish three distinct moral dimensions: the choice of the topic of research, the research itself, and the aftermath of the results I obtained. Finally, using the appropriate methods of historical, sociological, or philosophical analyses, I discuss the specific moral questions that arise in each of these distinct dimensions of research, concluding with reflections on the moral and professional conflicts faced by a military scientist.

I. Working Within a Military Institution

During my studies in physical oceanography, I was first (like most aspiring scientists) obliged to search for a suitable post in some sort of research institution. There were several possibilities in France, including well-known research institutions such as Ifremer[8] or Cnrs.[9] I finally settled, however, on a position in a French Navy research department.

At the time, the French Navy wanted to develop greater capacities for research in physical oceanography. The general objectives were to improve the sailors' control over their oceanic environment, and, more specifically, to help improve the acoustic discretion of nuclear submarines involved in nuclear deterrence. Naval research was therefore primarily focused on all oceanic processes influencing the propagation of acoustic waves primarily occurring in the Northeastern Atlantic Ocean.

For many reasons, choosing a position in the Navy department seemed to be a good opportunity to me as an oceanographer. The Navy's concerns offered a wide range of research topics in which I was interested. The position itself was available to me immediately after I had obtained my master's degree, which would remove the difficulties and uncertainties of first finding for doctoral studies, with a position to follow. Finally, since the Navy was beginning to develop its research activity, there were a lot of funds and resources allocated for work in my field of expertise. The opportunity seemed an ideal one.

At the time, I do not recall that the "military" nature of the institution played a role of any kind in my choice: that fact was neither a motivation nor an impediment to my decision. Admittedly, I was not particularly motivated by defense problems, but I was not reluctant either. Basically, I thought that our world was so unstable, so violent, that we needed an army. Therefore, contributing to the defense of my country looked reasonable, and deterrence seemed a good way to ensure it, because it was aimed at preventing war. I did not anticipate that I would have

gone beyond and, for example, worked to develop weapons. Finally, and maybe most importantly, I thought that, as a researcher working on rather fundamental topics, I would in any case not be much responsible of anything, my only production being knowledge. In this, I believe I share the innocence and perhaps the naiveté of a great many young scientists, looking for a way to pursue their life interests.

I now realize that my reflections were a bit simplistic. In fact, my decision-making lacked ethical guidance of any sophisticated kind at the time. Nuclear deterrence, for example, is not morally so unambiguous or obvious a strategy to pursue in the interest of peace, as I had uncritically supposed. On the one hand, it may look like ensuring a defense without harming anyone. But, on the other hand, it raises profound questions. The development of nuclear weapons, for one obvious thing, leads to the risk of nuclear proliferation, which threatens the whole planet. Another moral question is whether it is fair to threaten cities with annihilation through the threat of nuclear missiles. As I now know, deliberately killing, or even threatening to kill (through targeting) noncombatant civilians is contrary to one of the most basic rules of war—the discrimination principle. As a last example, I now consider that a researcher, even when engaged in the most fundamental and abstract research, bears a responsibility for the results he reaches. I shall come back to this point later. At the minimum, as a member of an institution or organization, I now realize that I shared a responsibility for what that institution worked for or represented. Moreover, I think that the questions raised by a young researcher's choice of an institution are not *specific* to researchers alone. Every employee of any institution is connected with the goals, purposes, or the objectives of that institution, by virtue of the fact that he or she contributes to realizing those objectives. I simply ignored, or failed to realize, those moral implications of employment choice when I began my career. But they are fully apparent to me now.

II. Choice of a Topic of Research

I now would like to begin to assemble a list of the ethical questions a researcher will likely meet by further exploring the first aspect of research I have identified: namely, the choice of a topic of research. In order to examine the ethical issues that choice raises, it is useful to consider the following sequence I myself went through some years ago as I was a researcher in the French Navy research department. Together with the head of the department, I chose to work on eddy[10] formation from a current flowing from the Strait of Gibraltar along the Iberian peninsula, rounding Cape Saint-Vincent, passing by the southwest corner of Portugal, and then traveling northward along the Portuguese coast. These eddies are of interest for the Navy because they disturb the propagation of sonar rays.

I quickly concentrated on the important turn made by this current around Cape Saint-Vincent. In order to simplify the problem, I built a model in which a homogeneous current flew above an ocean at rest along a rectilinear coast making a 90° turn. I then realized that replacing the turn around the Cape by an exit from a westward strait simplified the problem, and that, in turn, that simplified model could be interesting for studying current exiting from straits oriented toward other directions: northward, southward, eastward. I eventually began to study the northward strait, partly because it was simpler, but also because an American colleague with whom part of this work was done had obtained grants from offshore oil companies for this particular study, which could be applied to the Yucatan Strait in the Gulf of Mexico.

In this research sequence, it is useful to distinguish several phases. During the first one, I planned to study eddy formation at Cape Saint-Vincent. The objective was clearly identified, the available fundamental knowledge was expected to be sufficient, and, according to Stokes's classification,[11] it could be considered as pure-applied research (what is commonly designated

as in "Edison's quadrant"). Later, since it turned out that the fundamental knowledge of the processes involved was actually not entirely self-sufficient, I decided to develop it further, venturing into what is known as "use-inspired basic research" (commonly designated as "Pasteur's quadrant" in Stokes's classification): namely, in this instance, fundamental research still focused upon an application to eddy generation at Cape Saint-Vincent. After that, when I discovered the series of fundamental problems obtained by changing the orientation of the strait, I began a pure basic research phase (what is termed "Bohr's quadrant"), in which my research results might hold implications for a wide range of problems and contexts far beyond the specific problems I had initially begun to investigate.

Here, I am compelled to observe that the choice of a topic or topics of research does not only rely on scientific or technical criteria. It also involves moral criteria. To develop this, I think it is useful to distinguish two kinds of situations. In the first kind (Edison's or Pasteur's quadrant), research is clearly orientated toward an application. In my case, the application was the formation of eddies at Cape Saint-Vincent and their impact on sonar signals. Similarly, in the framework of the Manhattan Project during World War II, the clear and well-defined application was in developing an atomic bomb. In such cases, researchers know in advance in which direction they are going to progress, and to which applications they are going to contribute. The decision to work on—or to abandon—such a topic of applied research is a fully informed decision.

In the second situation, the research has no immediate application in sight. Instead, it is purely fundamental research (Bohr's quadrant), aimed only at discovery or developing new knowledge. This was the case of my study of eddy formation at the mouth of an eastward-oriented strait. Like Einstein's development of the theory of relativity, though obviously not of that level of generality or sophistication, the results of research could have implications and applications far beyond any envisaged by the researcher. When research is no longer focused on specific objectives, it begins to function autonomously, answering or addressing some questions, while raising others. Researchers do not knowingly contribute to any specific applications. This leads to other moral questions: for example, can all topics of fundamental research be explored? Are their implications or eventual applications clear to the researcher? Can the researcher knowingly consent to participating in these explorations?

Apart from myself, several people took part in the choice of my topics of research. My institution participated in the initial choice of the eddy generation off Portugal. Later, together with my American colleague, I chose to work on the northward strait, and this choice was finally orientated by oil companies working in the Gulf of Mexico.

The role of each of these participants is important. The researcher has a key role. From a scientific point of view, he is aware of the current state of the art on the topic, both what can be done and what is out of reach. The researcher also makes his choices according to his own tastes: when I chose to work on the northern strait, I followed my inclination and personal research interests. One of the main qualities of a researcher is his creativity, which is favored when the researcher is deeply involved in his topic, which in turn requires that he have a certain degree of freedom in his choice.[12] On the other hand, too much passion can lead to disasters. There are many stories of researchers who, carried away by their enthusiasm to explore new domains of knowledge and to solve difficult problems, forgot to wonder if they were behaving correctly. This is what Sakharov explains in his memoirs when he describes his work on the Soviet nuclear bomb:[13] the human and moral aspects of the work were hidden by the "superb physics" he was doing. Later, Sakharov proposed to develop a huge torpedo able to carry his nuclear warhead design and destroy American harbors. He reported Admiral Tomine's reaction when he raised this prospect: the Admiral, a member of the profession of arms, was disgusted by the idea of such a massacre, and remarked that he and his soldiers were trained to fight

against armed adversaries, not to slaughter helpless innocents. Sakharov felt so deeply disturbed and morally rebuked that he never mentioned his project again.

It seems clear that the institution or organization within which the researcher works may also have something to say about the choice of research topics. While my initial topic was chosen together with the head of my department, difficulties arose when my work conducted me to new areas of research, not necessarily of direct interest for my institution. How to handle such situations is an important question that should be addressed by research institutions: what latitude can they grant their scientific personnel to follow lines of inquiry that might not seem to bear directly on the specific problem that institution itself intended to address?

Another kind of problem can arise when an institution asks its researchers to address brand new problems. This happened to me as well: after five years working on eddy generation, I was asked to work on coastal oceanography. In such a situation, several parameters must be taken into account, such as the needs of the institution, the goals of the research department, the management of the researchers, which includes their motivation, and the time it takes to change one's field of research. On the researcher's side, this involves his loyalty: his loyalty toward his employer, his needs, his requests, or his loyalty toward the funding institution that provided the resources to undertake research on a specific topic.

Funding institutions indeed also have a role in the choice of topics of research. Their situation is probably simpler than that of employers: they have objectives, they communicate them, they receive proposals by researchers, and they grant the proposals that fulfill these objectives. They do not have to worry about how to manage the researchers. The limits of such a funding process are that it requires proposals, which in essence are only feasible for relatively well-defined projects—not for fundamental or basic research.

In the end, the choice of a research topic is at the crossroads of several issues, such as the personal preferences and creativity of the researchers, their loyalty toward their employer and funding institutions, the needs of the employers, and the unexpected vistas or prospects that invariably arise in the conduct of the specified, funded research project.

Freedom of choice, or autonomy, emerges as a key theme in these observations. It is paramount to researchers, but their individual autonomy may encounter limits imposed by employers, constraints imposed by funding institutions, and even their own self-imposed constraints (when they recognize that further exploration in some fields of knowledge should be prohibited). Researchers need clear guidance in advance about such matters. They must clearly be aware of the constraints they will have to face, so that their creativity will be more easily exercised.

Finally, participating in the choice of a topic of research involves bearing a responsibility that is obviously shared among the various people and organizations involved (including colleagues, employers, and funding institutions). This can pose a difficulty, since personal awareness and individual responsibility may be diluted and diffused in such collective settings. Each participating individual may think that others, or their organization as a whole, "has that question covered." Such diffusion of personal responsibility within an organization can, as we recognize, lead to all kinds of inappropriate behaviors.

III. Elaboration of Knowledge

The second aspect of the work of researchers I have identified constitutes the heart of research: it is the discovery of new knowledge, the elaboration of that knowledge, the attempt to understand the processes at stake.

To shed light on the ethical questions such discovery raises, let us again start from the specific research I conducted on the generation of eddies at Cape Saint-Vincent. I began with collecting

the already existing knowledge on the topic. I then tried to simplify the problem as explained above, and eventually adopted the configuration with the homogeneous current exiting a strait oriented westward into an ocean at rest. I then manipulated the equations and was able to show that the current could not flow like this without producing westward moving patterns. Several assumptions were checked using lab experiments and numerical experiments, and particularly the fact that the patterns could not be anything but eddies. New manipulations of the equations led me to calculate the size and periodicity of these eddies, in close agreement with the observations made by other oceanographers. This work was eventually published in a specialized journal, so that everybody could possibly criticize and/or use it.

As opposed to the first aspect of the research work, this second aspect only involves researchers. Nobody else can participate in, or influence, this dimension of scientific inquiry. Some critics of the presumed impartiality of scientific method argue, however, that when it comes to results, researchers have no choice but to uphold, or conform to, preexisting fundamental laws of nature.[14] Still others argue that science, in its impartiality and quest for objectivity, has no place for the introduction or influence of values, whether prevailing moral values or strong personal beliefs of the researcher. None of these considerations should influence scientific discovery.[15,16]

To address the responsibility of the scientists in this second area or aspect of research, I distinguish several components in which moral dilemmas may unexpectedly arise: (1) in the precise formulation of the research problem; (2) in the theoretical constructs chosen to interpret it and to guide research; and (3) in the comparison of data with previous observations. There is a fourth component: namely, the prior assembling existing knowledge concerning the research problem. I ignore this, however, simply because I do not think serious ethical questions in that activity.

To return to my own specific military research: the problem I eventually solved was that of a simplified current flowing along a simplified rectilinear coast and then turning at a 90° angle. In short, I have not addressed a problem in the real ocean, but instead, a problem I have *created*, particularly by simplifying the natural situation.

Once this schematic problem was adopted, one could say that its solution was unique, and that the researcher would inevitably reach it. This is only partly true. First, researchers work within a theoretical context—a paradigm, as Thomas Kuhn[17] would say. This theoretical context was constructed by scientists and relies on hidden assumptions and on presuppositions pertaining to a given way of viewing the world. The researcher, when working within a theoretical context, is not fully impartial, but labors under the influence of that theoretical context with its set of hidden presuppositions. Sociological studies of scientific inquiry also reveal that researchers are subject to many nonscientific influences that may also affect the results of his work: these include the influences of the political context (for example, is my military research carried out during a time of war, or of peace?), and even of relations with colleagues (jealousies, rivalries, controversies), and so forth. The image of the scientist as a dispassionate observer and automaton is far from the reality.

How do the foregoing factors come into play in the last component (that is, when comparing my own results with previous observations)? In order to apply my results to the Portugal current, I had to inject the characteristics (density, salinity, and so forth) of the latter into my model and see what it would then predict in terms of eddies. The first difficulty was to define the boundaries of the real current itself, which are not circumscribed by precise mathematical lines in the ocean. The second difficulty was to choose the characteristics themselves: as opposed to my model's density, the density of the real current, for example, is constant neither in space, nor in time. There are no criteria to make such choices—and, of course, this leaves open a number of possible poor choices. Another difficulty arose when the results of my mathematical

model did not exactly fit the observations, and there were no criteria to decide that they were in a sufficiently good agreement to validate the theory I had been testing.

According to Agnieszka Lekka-Kowalik,[18] researchers have to *choose* when their hypothesis can be validated, and this choice is, ultimately, a *moral* choice. Lekka-Kowalik writes:

> a hypothesis that a certain substance is not a lethal poison for human organisms requires stronger evidence than a hypothesis that a certain kind of flower grows only in the Alps, precisely because the moral weight of consequences of making a cognitive error in the first case . . . is greater.

In other words, one attaches various degrees of importance or gravity to decisions involving verification, based not so much upon the scientific importance of the discovery, but on the consequences for others, the impact that verification might have upon human well-being.

Finally, studies of epistemology reveal other kinds of difficulties. Popper,[19] for example, has shown that, in essence, a theory cannot be validated by observations, because a valid theory must work on *all* cases, and checking it on *all* cases is obviously impossible. Also, Duhem[20] has shown that a discrepancy between theory and observations does not necessarily invalidate the theory, because the observations can also be wrong. He thus suggests a dialectical relation between theory and data, checking the data and the theory back and forth until a point of convergence is reached. These analyses show that the task of objectification cannot easily dispense with subjectivity, and that scientists as living individuals have an impact on the knowledge they elaborate. This entails that they bear a degree of moral responsibility for their research, and for their discoveries. Despite the authorities I have cited, I do not believe these features of science and scientific research are well understood by the rank and file scientist such as myself, insofar as these have an impact, and impose some additional responsibilities upon each of us engaged in undertaking supposedly objective and impartial (or "value-free") scientific research—particularly in a military setting.

These responsibilities fall on top of the more customary expectations for undertaking one's research work correctly (which scientists, like all professionals, should constantly bear in mind). It is worth noting here that, in light of the accounts above, it proves very difficult to define just how a "good" scientist should work correctly: there is no one definite or precise approach to "scientific method." Scientists use imagination and rigor, theory and observations, always in new and creative ways to adapt to each situation. Undertaking scientific work obviously requires qualities such as honesty, carefulness, accuracy, and devotion to the truth, as described in Resnik,[21] for example. One of the fundamental qualities required is probably patience, which unfortunately conflicts with many other contextual aspects of research: the desire of the researcher to find solutions; the way his work is assessed by his research institution (often relying on the number of papers published, for example); the need to attract further research funding; and so forth. These conflicts sometimes lead to misconduct—whether intentional or not. I strongly suspect that deliberate and intentional misconduct cannot be eradicated through "ethics education." A cheater knows that he cheats, and is unlikely to take any classroom exhortations to do otherwise very seriously. But *unintentional* misconduct, such as a too-rapid rejection of abnormal data, can be affected by educating for greater awareness of the subjective influences and tendencies within research that I have recounted above.

The freedom of scientists in the elaboration of knowledge is an important dimension to safeguard. Freedom or autonomy is necessary in order to have access to the most current knowledge: to deliver scientific papers, for example, or to attend scientific congresses. Freedom is also necessary to criticize elements of current knowledge, and to elaborate new knowledge.

If knowledge is "imposed" from the outside, it is obviously not reliable. Freedom is also necessary because it contributes to creativity, which is essential to scientific activity.[22] And freedom is necessary to publish the results and submit them to the scientific community.

Such autonomy, requisite to the scientific enterprise, however, may be seriously restricted in various settings. In totalitarian regimes, of course, there can be interdictions to criticize or to publish. But even within democratic regimes, some institutions, and particularly military institutions, may want to inhibit their researchers from publishing. To be certain, this restriction of freedom may often be justified by, for example, withholding corporate proprietary discoveries, or protecting classified information regarding new weapons. But such restrictions also have drawbacks. Publishing scientific results is quite obviously important for assessing their accuracy and validity. The publication process enables the scientific community to verify the results of each scientist. It therefore contributes to reducing or eliminating the harmful impact of some of the subjective biases cited above.

Restrictions on the scientist's autonomy take other forms in institutional settings. Dangerous experiments can be forbidden, for one thing. In the military field, the Comprehensive Nuclear-Test-Ban Treaty (1996) is an international treaty that bans all nuclear explosions, including underground. Designed to protect the wider public, and to promote nuclear disarmament, the ban also inhibits further research into weapons design, and spin-offs that might have productive civilian uses. Freedom can also be restricted in institutions having defined specific research objectives, toward which researchers have to work. Finally, the major restriction on scientific freedom is likely the limitation of funds, which may restrict travel, prohibit the purchase of necessary scientific instruments or computers, and inhibit the conduct of experiments.

IV. Aftermath of the Results

The last research dimension I would like to consider is the aftermath, or the eventual use or application, of research results outside the strict scientific arena. How will one's results finally be used (by the scientist's own institution, or by anyone else)? What moral or ethical questions will such applications raise, and who is responsible for addressing them? In this final discussion, I shall make a distinction between the straightforward technical applications of the results, and what I shall call implications of the results, namely the modification of our perception of the world that new knowledge causes.

Obviously, research leads to applications that often raise moral questions (genetically modified organisms, nanotechnologies, new weapons, and so forth). The French Navy research department in which I worked also contributed applications of our research that proved useful to sailors. Two main applications are worth mentioning.

Our research, when exploring maritime areas of greatest interest to the French Navy (such as the ocean currents affecting the Northeastern Atlantic region) promised to be directly useful, because sailors would likely be able to use this information to improve their navigation and military operations in these areas. The scientific knowledge I accumulated as a researcher, however, was very specialized, and had to be adapted for application and use by sailors. This application was carried out within another department of my institution. We also used my results to develop an ocean forecasting system, comparable to a weather forecasting system: a computer systems model to describe and forecast the state of the ocean, including tides, currents, eddies, relative salinity, and so forth. This promised to be extremely useful, for example, in enabling submarine commanding officers to know in advance what the structure of the ocean would be, and where they might best operate underwater in a manner that would prove to be most acoustically discreet. My own contribution to that eventual forecasting system was indirect, in

that my research provided an improved understanding of how eddies form, and how and where they travel, all of which contributed to an enhanced representation of sea states in these forecasting models.

Do such applications of one's individual research raise specific ethical questions? Does a better knowledge of the ocean, or a better oceanic forecasting system, *as such* bear any ethical weight?

At first glance, I do not think so. In themselves, these applications do not threaten anyone with harm, they do not raise environmental problems, or anything else. Therefore, I do not think that my research raised any ethical questions in terms of applications. In sum, I came to believe from my foregoing account that any ethical pitfalls lurking in oceanographic research undertaken within a military setting did not lie in the immediate application of such research, but resided instead wholly within the context in which research was carried out.

Of course, other areas of scientific inquiry within a military setting raise obvious ethical questions for individual researchers, especially in the eventual applications or uses made of their work. In nuclear weapons already mentioned, in the more recent development of unmanned vessels and military robotics; in physics, more recently, the rise of nanotechnology; in biology, cloning or genetically modified organisms, and prospects for warrior enhancement. In such cases, to what extent are researchers concerned by these questions? Do they bear some responsibility in these applications?

On the one hand, some say that since researchers have developed the requisite knowledge, they also bear a responsibility for its use and its consequences.[23] On the other hand, many—and particularly many scientists—claim that knowledge is value-free, and that only those who go on to put that knowledge to use in developing potentially harmful applications bear a responsibility.[24]

I have, however, reviewed several arguments in the course of this chapter suggesting that researchers should face their responsibility regarding the applications of their result. Since they have participated in the choice of the topic, and they have sought or constructed the relevant new knowledge itself, they are, finally, also at least partly responsible for the consequences of its use and application. We could view the problem from another point of view, in that individual researchers might, in principle, decide to *stop* a research project that could predictably come to pose grave moral problems.

How does the individual prepare to assume that responsibility? Here again I believe we must carefully distinguish applied research from fundamental research. Responsibility in applied research seems relatively more straightforward to consider, for, in this case, researchers basically know which applications they are working on, and what their results are likely to be. Hence, their responsibility for those results and applications seems relatively clear. This entails nothing more than a conventional understanding of the concept of moral responsibility: an agent is morally responsible for, or accountable for, the actions he or she knowingly and intentionally performs.

In basic or fundamental research, however, researchers often cannot know in advance what sorts of applications will be developed from their results, and it is not always possible for them to be held accountable for such actions. In such instances, we encounter what I shall call a "duty-responsibility." Given his position, knowledge, and subject expertise, a scientific researcher as moral agent must be required to attempt, in good faith, to anticipate the most likely consequences of his research activities, and make an effort to prevent their misuse or misappropriation. Scientists within any institutional context have a central position at the heart of the developing knowledge, and, accordingly, they have a duty to *try* to anticipate its possible consequences and harmful applications. Of course, this is not always feasible, but scientists occupy the best position to assume such responsibility, and I believe we have an obligation to take on this responsibility more effectively and seriously than we have in the past. At the same time,

scientists are not the only ones to have such a responsibility. Employers, funding institutions, applied engineers, and policymakers also contribute to the development of applications of basic scientific research, and should also share a part of that responsibility.

Finally, alongside their various applications, the results of scientific research may also have yet further implications, which may pose additional ethical questions. The goal of science, after all, is to produce new knowledge on how the world works, which, in turn, modifies the way in which we come to view the world. Following the Copernican revolution, for example, the English poet John Donne captured the resulting confusion and anxiety over the altered worldview when he wrote:

> And new philosophy calls all in doubt
> The element of fire is quite put out
> The sun is lost, and th'earth, and no man's wit
> Can well direct him where to look for it.[25]

Researchers who elaborate new knowledge bear at least some moral responsibility for the implications, and the impact, of those implications on others. I believe the conception of "duty-responsibility" is a good way of capturing this unusual obligation: once again, due to their central position as discoverers, scientific researchers can usefully contribute to a deeper and more profound understanding of the implications of their research.[26]

The aftermath of scientific results also constitutes a setting that poses moral questions regarding the dissemination of results to the general public. This dissemination is necessary because everyone should be informed of the possible applications and implications of research, and it is also a normal counterpart to the existence of fundamental researchers working to satisfy human curiosity. It seems inevitable that scientists should contribute to this dissemination: who else has the requisite knowledge or expertise? Many scholars examining the status of researchers seem to concur about this,[27] even while acknowledging that this is an important task shared with others (including journalists, writers, and museum directors, for example).

V. Conclusion

This chapter has examined how researchers are confronted with a range of ethical dilemmas, starting almost from the very beginning of their careers, when choosing a research institution, and continuing within all subsequent aspects of their research program: from the choice of a topic of research, through the conduct of their research, and culminating finally in the aftermath of their research results, including applications, uses, and wider philosophical implications. All these aspects pose important challenges for individual researchers. Unfortunately, we scientists and engineers are often not well educated or prepared either to recognize those questions, or to effectively address them.

This seems an especially important discussion to have with respect to scientists working for their government, or within their nation's military institutions, because it is precisely here that some of the most significant, and occasionally troubling, applications of basic research are to be encountered. This is not only a problem for esteemed and powerful scientists, such as Sakharov or Robert Oppenheimer,[28] working on major defense and weapons programs. This is a duty that befalls all of us, ordinary scientists and engineers, accepting jobs, funding, careers, and projects that (often unbeknown to us) are tied to political or military objectives with significant moral dimensions. Drones, or nuclear weapons, are only the most obvious of these.

In her chapter in this volume, Professor Cook writes about military pilots who entered upon their careers with little thought that, in exchange for learning to fly state-of-the-art jet aircraft, they would be expected to drop explosives that might accidentally hit hospitals or schools. It no more occurred to them that these were among the implications of their choices, than it occurred to me and my colleagues that similar implications attended upon our research, and our choice of careers, institutions, and even funding streams.

The resulting moral dilemmas and responsibilities are not simply a matter of the clash of individual with institutional values and commitments, about which Dr. Johnson writes in her chapter. They also encompass more fundamental and wide-ranging tensions: ones that might be characterized as a clash of professional duties. What are those professional duties for a scientist (or for a physician or a social scientist)? Dr. Gross and Dr. Zupan, respectively, study such conflicts in their chapters for this handbook, while I have endeavored to address the plight of the scientist in choosing a position, deciding upon a research program, and carrying it out under auspices and sponsorship that might entail applications and implications with which he or she might prove very uncomfortable. As a young oceanographer, setting out upon my career, I confess I did not give much thought to those wider aspects of my work. I wish then that I had. And I believe now and henceforth that we must.

Notes

1. Edgar Morin, *Science avec conscience* (Paris: Points-Seuil, 1990); *La Méthode: Idées. Leur habitat, leur vie, leurs moeurs, leur organization* (Paris: Points-Seuil, 2004).
2. David B. Resnik, *Playing Politics with Science* (Oxford: Oxford University Press, 2009).
3. David B. Resnik, *The Ethics of Science: an Introduction* (London: Routledge, 1998).
4. Kathinka Evers, *Standards for Ethics and Responsibility in Science: An Analysis and Evaluation of Their Content, Background and Function* (Paris: International Council for Science/Standing Committee on Responsibility and Ethics in Science, 2001): www.icsu.org/publications/reports-and-reviews/standards-responsibility-science/SCRES-Background.pdf. K. Evers, *Codes of Conduct: Standards for Ethics in Research* (Brussels: European Commission, 2003): http://ec.europa.eu/research/science-society/pdf/codes_conduct_en.pdf.
5. Brigitte Debuire and Emmanuel Hirsch, Eds., *La recherche peut-elle se passer d'éthique?* (Paris: Editions Vuibert, 2004).
6. See, for example: Allea (All European Academies), proceedings of the conference, Amsterdam (December 2–3, 1997): *European Science and Scientists Between Freedom and Responsibility*, Eds. P. Drenth, J. Fenstad, and J. Schiereck (Luxembourg: Office for Official Publications of the European Communities, 1999); Agnieszka Lekka-Kowalik, "Why science cannot be value-free. Understanding the rationality and responsibility in science," *Science and Engineering Ethics* 16, no. 1 (2010): 33–41; Carl Mitcham and Rene von Schomberg, "The ethics of scientists and engineers: From occupational role responsibility to public co-responsibility," in P. Kroes and A. Meijers, Eds., *The Empirical Turn in the Philosophy of Technology*. [*Research in Philosophy and Technology*, 20] (London: Elsevier/JAI Press, 2000).
7. A good overview can be found in Jean-Jacques Salomon, *Les scientifiques, entre pouvoir et savoir* (Paris: Albin Michel, 2006).
8. French Institute for Research and Exploitation of the Sea (Institut français de recherche pour l'exploitation de la mer).
9. National Center for Scientific Research (Centre national de la recherche scientifique).
10. The eddies in question are several hundred kilometers in diameter, a few hundred meters thick, have a rotation periodicity of several days, and travel eastward a few kilometers a day.
11. Donald Stokes, "Completing the Bush model: Pasteur's quadrant," *Science: The Endless Frontier 1945–1995* (CSPO, 1994–1996): http://teamcore.usc.edu/WeeklySeminar/Aug31_2.pdf. See also: Stokes, *Pasteur's Quadrant: Basic Science and Technological Innovation* (Washington, DC: Brookings Institution Press, 1997).
12. D. Resnik, *The Ethics of Science: An Introduction*, p. 60.
13. Alexander Sakharov, *Memoirs* (New York: Alfred A. Knopf, 1990).

14. K. M. Meyer-Abich, "Political responsibility of natural science," in P. Drenth, J. Fenstad, and J. Schiereck, *European Science and Scientists Between Freedom and Responsibility* (1999): 61–68.
15. L. Wolpert, "Is science dangerous?" *European Science and Scientists Between Freedom and Responsibility*, Eds. P. Drenth, J. Fenstad, and J. Schiereck (1999): 25–31.
16. Agnieszka Lekka-Kowalik, "Why science cannot be value-free. Understanding rationality and responsibility in science," *Science and Engineering Ethics* 16, no. 1 (2010): 33–41.
17. Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago, IL: University of Chicago Press, 2012).
18. Agnieszka Lekka-Kowalik, "Why science cannot be value-free. Understanding rationality and responsibility in science," pp. 33–41.
19. Sir Karl Popper, *The Logic of Scientific Discovery* (London: Routledge, 2002).
20. Pierre Duhem, *La théorie physique: Son objet, sa structure* (1906): www.ac-nancy-metz.fr/enseign/philo/textesph/Duhem_theorie_physique.pdf.
21. D. Resnik, *The Ethics of Science: An Introduction*.
22. Ibid.: 60.
23. International Council for Science, *Freedom, Responsibility and Universality of Science* (2008): www.icsu.org/publications/cfrs/freedom-responsibility-booklet.
24. This kind of position is reported for example by K. Evers in *Standards for Ethics and Responsibility in Science: An Analysis and Evaluation of Their Content, Background and Function*, ICSU-SCRES, 2001, or in *Codes of Conduct, Standards for Ethics in Research*, European Commission, 2003 (see n. 4 above).
25. John Donne, *An Anatomy of the World—First Anniversary*. http://en.wikisource.org/wiki/An_Anatomy_of_the_World%E2%80%94The_First_Anniversery.
26. This point of view is also defended by Richard Ernst: "The responsibility of scientists: A European view," *Angew. Chem. Int. Ed*, 42 (2003): 4434–4439.
27. See, for example: www.europa.eu.int/eracareers/europeancharter.
28. For the latter, see Richard Mason, *Oppenheimer's Choice: Reflections from Moral Philosophy* (Albany, NY: State University of New York Press, 2006).

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24

MILITARY MEDICAL ETHICS IN WAR AND PEACE

Michael L. Gross

Readers of a volume on military ethics are likely to be less familiar with medical than military ethics so it is useful to begin there. Medical ethics governs the practice of medicine by protecting the rights of patients. While legal rights sometimes come into play (as in abortion, for example), moral rights generally dominate discussions of medical ethics. When these rights become pressing, some nations may legislate or regulate certain practices (such as euthanasia). Patient rights include a person's right to medical care, autonomous decision-making and informed consent, confidentiality, and privacy. These rights impose duties on nations and on caregivers. In most of the world, developed nations provide a level of medical care to allow individuals to maintain a dignified life while enjoining physicians to act with beneficence.

Until the middle of the last century, the practice of medicine elicited little in the way of moral concern. This changed radically with the introduction of kidney dialysis, assisted ventilation (breathing machines), and organ transplantation. For the first time, the medical profession required guidelines to distribute a scarce and very expensive life-saving technology (dialysis machines) and to know exactly when death occured so doctors could harvest organs. While death was once determined by the cessation of cardiac and pulmonary functioning, ventilators now allowed patients to breath even after they seemed to have died. This "seemed to have died" soon translated into the idea of brain death, which would allow physicians to extract the organs of a still-breathing patient without committing murder. Evolving definitions of death also opened the door to the right to die.[1]

On the heels of rapid technological development, the 1960s also brought great strides in individual self-determination. Civil rights were, of course, the most contentious issue, and among the rights that people demanded were patient rights. These rights built upon the right of individual autonomy and the right of every individual to legislate and determine his or her own life. This included medical decisions from the most mundane (taking medication or accepting surgery) to questions of life and death. To respect autonomy, medical ethics enshrined the idea of informed consent, privacy, and confidentiality. Doctors no longer acted paternalistically and in their patients' interest as caregivers saw it, but were now morally, and later legally, obligated to provide patients with all the information necessary to make an informed decision. Decision-making not only entailed consenting to treatment, but also allowed patients to refuse treatment. As medicine "medicalized" death and kept patients alive but sometimes debilitated, patients demanded, and

soon received, the right to die. This included the right to refuse antibiotics, to turn off ventilators, and, in some cases, to request assistance to commit suicide when medical conditions made life unbearable.

Military medical ethics addresses these concerns but adds many players and conflicting interests. For most civilian medical practitioners, an individual patient's health and welfare are of paramount concern. When doctors are administrators or when they work for a large health maintenance organization, they may also have the interests of a particular population at heart. Rather than focus on the interests of a single patient, the physicians must instead worry about the common good and distribute medical resources so that the most patients (or citizens) derive the most benefit. This may require rationing or may limit expensive care to populations that may best utilize it (for example, the young) at the expense of those who might not (for example, the elderly). In military medicine, however, a number of conflicting interests enter the fray. During peacetime, a nation may discriminate between veterans and ordinary citizens and offer the former superior healthcare (as was the case in the U.S. before Affordable Health Care). During wartime, competing interests multiply as military medical organizations must deliver care to compatriots, allies, enemy soldiers, and civilians of all stripes.[2] While all are entitled to medical care, not all are entitled to the same level of care, particularly when resources are scarce, as they have been during operations in Iraq and Afghanistan.

Lurking in the background of military medicine is military necessity. Military necessity points to the means required to prevail upon an enemy and ensure victory. Many modern definitions also tack on "and that are not unlawful under international law." I say "tack on" because once a legal constraint is added, some dilemmas posed by military necessity disappear. However, the legal norms that constrain military necessity are not a forgone conclusion, and real problems arise when the means needed to prevail in war conflict with established law or ethics. It is precisely this tension that gives substance to the principle of proportionality that permits harming noncombatants (albeit collaterally) and to such policies as terror bombing (to prosecute World War II against Germany and Japan, for example), nuclear deterrence (to deter the Soviet Union by threatening civilians with annihilation), torture (to gain actionable intelligence from terrorists), and targeted killing (to prevent harm to innocents). Military necessity reaches very far. War takes innocent lives and only some goal of greater value can ever justify this. Along the way, compelling norms that ordinarily protect life and dignity may fall.

Military necessity also exerts its force upon medical ethics in times of war and peace. In times of peace, the needs of the military significantly affect patient rights. In general, the military shows far less patience for privacy, confidentiality, and informed consent than civilian medicine. Soldiers often have the feeling that they are military property and, as a result, often find that they must accept certain kinds of treatment or face disciplinary action. Inductees require vaccinations, routine medical tests, and, indeed, must generally accept treatments necessary to keep them fit so they may perform their assigned duties. Deference to their military duties may sometimes require military doctors to disclose medical information without their patient's consent. On the other hand, there is growing recognition that enlisted personnel are a particularly vulnerable population that requires special protection. In the past, enlisted personnel were often prime subjects for medical experiments (for example, testing new vaccines). They were fit, disciplined, accessible, and readily available for follow-up and evaluation. Spurred on by their peers and commanders, they also showed particular readiness to volunteer. But "volunteer" was something of an illusion when it became clear that young recruits did not always know what they were doing.

Nor were live soldiers the only concern of medical ethicists. Until recently, it was common practice in many places to allow medical students and medics to practice life-saving techniques

such as tracheotomies (inserting a breathing tube in the windpipe) on the newly dead. In military organizations, this included the bodies of soldiers killed in training. The tension here is palpable. On the one hand, a person's right to control one's body (dead or alive) and their right to informed consent (which was not obtained for the purpose of operating on the dead) run headlong into necessity of training military medical personnel to save lives on the battlefield. In time, military and civilian hospitals abandoned these practices when alternative forms of training became available (for example, practicing on mannequins).[3]

I. The Ethical Principles of Military Medical Ethics

Both military and medical ethics are principle-driven. Underlying each is the right to life and the imperative to protect life and provide security at almost any cost. However, the scope and the implications of this central right are very different in each discipline. Military ethics offers the normative framework to protect collective and individual lives. At the collective level, military ethics safeguards the life and security of the nation-state, as well as the military organization that protects it. At the individual level, military ethics looks at all the participants and asks "whose life is at stake?" and then distinguishes between combatants and noncombatants. The former forfeit their right to life and become legitimate targets; the latter do not. As a result, military ethics focuses intently upon the principle of discrimination, the duty to distinguish between those liable to harm and those not, and the principle of proportionality, the extent to which those not liable to harm may nonetheless suffer injury, loss of life, and destruction of property. To navigate these waters, military necessity remains the overarching guiding principle. Military necessity, the right to take the means necessary to subdue an enemy in pursuit of just cause, permits the taking of combatant and noncombatant lives. The only restraint is a modest one. Combatants and noncombatants may not suffer cruelty, inhuman treatment, superfluous injury, unnecessary suffering, humiliation, or grave indignations. In addition, noncombatants enjoy protection against "excessive" or "disproportionate" harm.

Since war is about taking lives and medicine about saving lives, it might seem odd that medical ethics shares much of anything with military ethics. While war is about taking individual lives to save a collective life, medicine foregoes the collective and speaks directly to the individual. Medical ethics provide the principles to protect individuals from injury, disease, contagion, the forces of nature, and the forces of man. *Medical need* is its driving principle and hence any principle of discrimination is anathema, a gross violation of fairness and equity because all individuals merit treatment based solely their medical requirements independent of their identity as a soldier or civilian. Nevertheless, the individual in modern medicine is only part of a vast constellation of conflicting interests. As medical costs soar and easily outdistance military costs as the single largest budget item in industrialized nations, questions about the collective good surface. How much money should be allocated to medical care at the expense of education, welfare, defense, and the environment? Who deserves what, when, where, and how? Is quality of life more important than extending life? Do the elderly deserve more medical care because they have paid dues all their lives or less medical care because much of it is wasted on futile, minimally life-extending care in the last months of life? These questions are no less pressing than informed consent, privacy, and confidentiality, and are quickly proving divisive if not intractable.[4] They also impinge on military medical ethics.

Elucidating the principles of military medical ethics is not a simple matter of merely merging the principles of military ethics and those of medical ethics. Until recently, the mission statement of the U.S. Army Medical Department, for example, read:

> The mission of the Army Medical Department is to conserve the fighting strength . . . Combat health support maximizes the system's ability to maintain presence with the supported soldier, to return injured, sick, and wounded soldiers to duty, and to clear the battlefield of soldiers who cannot return to duty.[5]

Instructively, this mission statement emphasizes collective needs first. Military medicine serves the needs of the military whose overriding goal is to provide national security. In this way, the individualistic principles of medical ethics—the right to medical care, non-discrimination, privacy, and confidentiality—remain subordinate to military necessity. Military necessity, however, is not omnipotent, but is itself restrained by respect for dignity and fundamental human rights that protect individuals from torture, humiliation, cruelty and ill treatment. The weight of military necessity is a constant presence in the examples that follow.

Alternatively, newer mission statements from the U.S. Army Health Services (AHS) strike a balance between "sustaining and protecting warfighting functions," and patient care.[6] Other mission statements are more expansive. The mission statement of the medical corps of the Israel Defense Force, for example, emphasizes patient rights and dignity. One reason for this emphasis is institutional. Israeli conscripts leave the national healthcare system when they enter the military and join the military's healthcare system. The military system is their principle provider and conscripts are its "clients." Nevertheless, the moral weight of private interests and individual autonomy can be no more ignored than that of military necessity. Both play out in the dilemmas that pervade military medical ethics.

II. Pressing Issues in Military Medical Ethics

Among the persistent issues of military medical ethics are patient rights for soldiers. These include quotidian questions of medical care for veterans, as well as in service dilemmas of informed consent, confidentiality, privacy, and truth telling. How we answer these questions impacts on issues such as vaccinations, experimentation, and operating on the newly dead. On the battlefield, scarce resources force questions about triage and the order of treatment. Adjacent to the battlefield, medical personnel find themselves caught up in the care of detainees. Here, hard ethical problems arise when doctors, nurses, and medics are called upon to assist in interrogation or force-feed hunger-striking inmates. Off the battlefield, the specter of weapons developments, particularly those that utilize biological and chemical agents, occupy no few medical practitioners. Finally, military medical personnel face a host of ethical challenges as they administer care during and after humanitarian intervention in conflict-ridden nations.

1. Patient Rights in the Military

When, for any reason, a civilian patient refuses treatment, there are no consequences for anyone other than himself. Nor are the consequences anything but health-related. The situation is much different for service personnel. Service personnel only have the right to refuse treatment "to the extent permitted by law and existing government regulations and to be informed of the medical and administrative consequences of his/her refusal."[7] Administrative consequences can include disciplinary action or a reduction of a serviceperson's "compensable disability" if personnel refuse medical treatment that will keep them fit for duty.[8]

"Fit for duty" speaks to an overriding concern of military necessity in times of war and peace. Military necessity reaches far into the interests of the nation, the interests of military as an organization, and the welfare of individual soldiers. A patient's interests alone are not determinative

of medical care or of patient rights such as privacy, confidentially, and truth telling. Service personnel can and do find these rights restricted to protect the common good. In this way, non-medical interests supplement, if not supplant, medical grounds for providing care. Thus, the U.S. Army's textbook of *Military Medical Ethics* explains how it may be ethically permissible to disclose confidential information to commanders if necessary to protect a mission or shade the truth about the effects of investigational drugs if the truth might undermine morale or otherwise impair military interests.[9]

Among the most interesting and recent cases are those surrounding the threat of biological warfare. Although most nations have forsworn biological and chemical weapons, many nations in the Middle East have not. To protect soldiers against botulism during the First Gulf War, the U.S. Department of Defense (DOD) requested and received a waiver to give troops an investigational drug, botulinum toxoid (BT), without their consent. This caused an uproar that led to guidelines that only allowed the President to approve waivers of informed consent. The issue flared again in 1998, when the U.S. Army wanted to inoculate troops against airborne anthrax using a vaccine that had only been approved for subcutaneous anthrax. Critics maintained that the DOD required a waiver; the DOD argued that the vaccine was standard treatment. The DOD prevailed, leaving dissenting soldiers to resign from the service if they decline treatment.[10] Otherwise, their inability to fight under adverse biological conditions might put their entire fighting unit at risk. In this case, military medical ethics strives to protect the health of individuals *and* military capabilities more generally. In extreme situations, military necessity may trump individual rights.

Medical experimentation poses similar dilemmas. Although the term "medical experimentation" conjures up horrific images of Josef Mengele and vivisection, most experimentation is far less insidious. The military routinely tests new equipment—from clothes, boots, and helmets, to non-lethal weapons—to assess their effects on the health of soldiers in the field. Researchers look at such variables as dehydration rates, effectiveness of protective clothing, and comfort.[11] Although these experiments demand subjects' informed consent, they only become controversial when testing drugs or chemical agents. Thus, the British and U.S. military faced severe criticism for conducting tests using nerve gas and LSD on soldiers without their express consent in the 1950s.[12] More recently, the Israel Medical Association excoriated the military for recruiting hundreds of newly conscripted soldiers to test vaccines for anthrax.[13] Cognizant of the vulnerability of low-ranking recruits, the U.S. Department of Defense now forbids the presence of a soldier's superior during the solicitation of research subjects, requires an independent ombudsman to monitor recruitment, and takes pains to confirm voluntary, informed consent.[14]

When soldiers become the subject of experiments that offer them no therapeutic benefit and may cause harm, the standards of consent are very high. In general, experimenting on such soldiers should remain forbidden, thereby forcing the military and/or drug manufacturers to find voluntary civilian subjects. When soldiers are offered an investigational drug, that is, a drug whose effects are largely understood but insufficiently researched for release to the general public, and when that drug is administered to protect warfighters from harm on the battlefield, then military necessity may prevail. Much depends on the likelihood that a drug offers a therapeutic benefit coupled with the magnitude of the threat a nation faces. If military action is necessary to forestall a significant threat and the risk of inoculating soldiers is less than the risk of sending them to fight unprotected, then it may be permissible to waive informed consent. An investigational drug, for example, that carries a 25 percent risk of death is preferable to an unprotected military operation that carries a higher risk of death from exposure to chemical or biological agents. Under these conditions, the right of informed consent falls to military necessity.

Nevertheless, military necessity is not always overriding. While military officials may sometimes have the right to shade the truth, they do not have the right to conceal information that does not affect operations. Similar caveats guide violations of confidentiality and privacy. Commanding officers no longer have ready access to confidential medical information, but are, instead, entitled to no more information than they need to conduct their mission.[15] And while the slippery slope is ever-present, it falls to the medical staff to navigate between protecting their patients' rights and conserving their fighting force. These dual obligations force many of the dilemmas that characterize military medical ethics.

2. Battlefield Bioethics and the Distribution of Scarce Medical Resources

"Penicillin triage" afforded one of the first dilemmas of modern battlefield medicine:

> When the wonders of penicillin were new, but recognized, and the supply heartbreakingly meagre, a small shipment finally arrived in North Africa during World War II. The hospital beds were overflowing with wounded men. Many had been wounded in battles; many had also been wounded in brothels. Which group would get the penicillin? By all that is just, it would go to the heroes who had risked their lives, who were still in jeopardy and some of whom were dying. They did not receive it, nor should they have; it was given to those infected in brothels. Before indignation takes over, let us examine the situation. First there were desperate shortages of manpower at the front. Second those with broken bodies and broken bones would not be swiftly restored to the battle line even with penicillin, whereas those with venereal disease, on being treated with penicillin, would in a matter of days free the beds they were occupying and return to the front.[16]

This dilemma is compelling. When supplies are short, who is first in line? As this example shows, it is not always the most medically needy. Doctors may permissibly treat fewer soldiers to return them to duty than greater numbers of soldiers to save their lives. Further dilemmas arise when compatriots, allies, and enemies all need care.

As U.S., Coalition and NATO soldiers fought in Iraq and Afghanistan, medical personnel provided care for Western forces, "host nation" allies, local civilians caught in the crossfire, and prisoners. To support its soldiers, the U.S. Army provided medical care at several levels: first aid and evacuation at the Battalion Aid Station, immediate treatment and surgery from a 20-person Forward Surgical Team, and resuscitation, reconstructive surgery, intensive care, and psychiatry at a Combat Support Hospital. In-theater medical care was short-term. Warfighters who could not return to duty received long-term and/or sophisticated treatment in trauma centers in Germany or the U.S.[17]

While Coalition soldiers receive the best possible care, local casualties must turn to the local healthcare system. Although the Geneva Conventions stipulate a minimal level of healthcare that occupying forces must provide, the result is a two-tiered system. Coalition forces receive superior care while those who fight at their side do not. This two-tiered system limits care for host country allies who, without access to sophisticated prosthetic devices or good follow-up care, for example, will not receive the same reparative surgery U.S. soldiers receive in the field. Enemy detainees, on the other hand, enjoy special protection under the Geneva Conventions and the same care as Coalition forces. This creates an ethically dubious outcome that, at present, is only resolved when the U.S. transfers care of detainees to the host nation.[18]

As these descriptions suggest, it is not always possible to treat the wounded strictly on the basis of medical need. Availability of follow-up resources and obligations under international law dictate different levels of care for the various actors that populate the battlefield. Similar cases may not be, and perhaps should not be, treated similarly. On the one hand, this is a prima facie violation of the neutrality provision of the Geneva Conventions, which prioritize care solely on the basis of medical need. On the other, it recognizes the imperatives of military necessity. Although some commentators view the obligation to preserve neutrality and treat indiscriminately as absolute, situations arise in wartime that temper this assessment. First, the obligation to treat those who can best contribute to the war effort may override the duty to save lives when resources are scarce.[19] This is the lesson of penicillin triage. Second, medical personnel may appeal to "associative" obligations or an ethic of comradery to treat their own soldiers first regardless of the severity of their wounds. Just as a parent need not rescue other children when her own are endangered, medics ministering to the needs of unit members may treat their comrades first. Morally, this is acceptable for two reasons. First, priority treatment for compatriots maintains a unit's fitness to fight. Second, it recognizes the paramount place of primary ties and the special obligations people owe friends, family, and, no less, comrades-in-arms. Indeed, when asked, soldiers often expect their medics to treat their comrades first in spite of any legal obligation to treat the wounded irrespective of nationality.[20]

Questions about treating terrorists are also part of battlefield bioethics. Fighting terrorism may dictate military protocols that cause harm by delaying patients, ambulances, or medical workers suspected of aiding terrorists. Medical staff may face significant emotional hurdles when asked to treat terrorists. Some may be reluctant to endanger themselves at the site of an attack; others will find it difficult to treat terrorists at all or while their victims still require care. Here, psychological and emotional support may be necessary.[21] The order of treatment remains an open question. While the Geneva Conventions continue to trumpet medical need, others argue that terrorists are unlawful combatants and only merit care after compatriot soldiers, prisoners of war, and civilians have been treated.[22] Even accepting this view, much depends upon how one defines the rights of "unlawful combatants," an issue that military law and ethics has yet to resolve.

3. Interrogation, Torture, Force-Feeding

Since disclosures of torture and ill treatment at Abu Ghraib, Iraq (2004), students of military ethics and law have weighed in for what has become a vociferous and contentious debate. In light of rampant terrorism, no few scholars and public figures have supported aggressive or "enhanced" interrogation when "ticking bombs" threaten the lives of innocent civilians. In response, equally vocal opponents decry the use of torture while suggesting that it is, at best, ineffective and, at worst, a cancer that will eat away at any democracy.[23] In light of these debates, policy has changed since 2001. Following 9/11, and during the Bush administration, enhanced interrogation techniques, rendition, and long-term incarceration at Guantanamo Bay were the fate of many terror suspects. President Obama, on the other hand, ended renditions and prohibited the CIA from employing many of its special techniques.

The medical community was not spared this debate, particularly as physicians often cleared suspects for interrogation and saw to their health before, during, and after questioning. In addition, clinical psychologists assisted interrogators by pinpointing detainees' psychological weakness and helping to tailor interrogation regimens to exploit them. More recently, Physicians for Human Rights has documented how healthcare professionals experimented with torture by monitoring interrogations to collect data to improve questioning techniques.[24] These practices elicited

vociferous condemnation from the medical community.[25] In response, the World Medical Association and the American Medical Association allowed physicians to provide medical care to detainees but prohibited participation in interrogation or the presence of medical personnel when torture was used.[26] Faced with unlawful interrogation, military medical personnel were enjoined to report abuses and act as "human rights monitors."[27]

In contrast to a lively but balanced debate about torture outside the medical community, the debate among medical practitioners was conducted along much narrower lines. As American authorities approved such interrogation techniques as hooding, stress positions, loud music, and sleep deprivation for high-value detainees, the bioethics community responded with near unanimous condemnation. Detractors were disparaged as anti-abolitionists or rogue bioethicists.[28] Moreover, the debate rarely distinguished between the legitimacy of enhanced interrogation and that of physician participation. These are two separate questions. The first asks: Is enhanced interrogation permissible? The second asks: Is it permissible for healthcare professionals to participate in or facilitate interrogation?

If enhanced interrogation is not permissible, then physician participation is impermissible. But if a nation permits enhanced interrogation, one must ask: "How should physicians and nurses behave?" Here, the debate gets interesting, and it is one that will resonate as we consider force-feeding and weapons development. On one hand, medical ethics enjoin physicians "to do no harm." Torture and force-feeding certainly cause their subjects harm. On the other hand, the imperatives of military necessity may override an individual's rights when the rights of others are threatened. This is the ticking bomb argument. If a democratic nation accepts the need for enhanced interrogation to insure national security and save innocent lives, then physicians whose presence may be necessary to facilitate effective interrogations have a duty to contribute their expertise to the war effort. Such a duty is certainly no more unsettling than that of a fellow citizen called upon to kill. There are no grounds for any medical personnel to appeal to a higher calling and reject the duties incumbent upon their fellow citizens. A similar appeal to military necessity and professional obligation also animates the debate over force-feeding.

Hunger striking is a political act of protest but one with distinct medical undertones. When prisoners refuse to eat until some political demand is met, authorities have three options: accommodate detainees, let them die, or feed them by force. Nations govern themselves differently. In recent years, U.S. officials have force-fed hunger-striking detainees within days of their decision to refuse food. The result has been grotesque images of conscious prisoners strapped to a chair and force fed by a feeding tube inserted into their gut through their mouth or nose. In contrast, countries such as Israel and Turkey have negotiated with strikers and have reached agreement before either force-feeding prisoners or allowing them to die. Prisoner demands have been modest, and all sides emerged from the ordeal with their interests largely intact. It is quite likely that Israel and Turkey learned important lessons from Great Britain's debacle with hunger striking in I.R.A. prisoners in 1981.

While I.R.A. strikers did not demand the British evacuate Northern Ireland, the inmates' plea for political recognition demanded the right to wear civilian clothing instead of prison uniforms and to conduct educational sessions among their members. Understanding that extending political recognition to prisoners was to recognize the I.R.A., the British refused unequivocally to negotiate with hunger strikers. In the aftermath, 10 inmates starved to death. The results for Britain were politically catastrophic. Over 100,000 residents of Northern Ireland took to the streets, the world community excoriated Great Britain, the I.R.A.'s political wing, the Sinn Fein, successfully campaigned for the British Parliament, while the military wing escalated and intensified its terrorist and military activities.[29] The hunger strike, in short, revitalized the Irish Republican Army and set the stage for another two decades of violence.

To avoid such outcomes, policymakers are left with accommodating or force-feeding detainees. These options go hand in hand. While accommodation is preferable, force-feeding should not be ruled out absolutely. Most medical organizations, on the other hand, including the World Medical Association (WMA) and the International Committee of the Red Cross (ICRC), will not countenance force-feeding of any sort. "Forcible feeding even if intended to benefit," declared the WMA, "is never ethically acceptable."[30] Physicians in the field, however, cannot be so dogmatic and are sometimes willing to force feed or revive hunger strikers when their lives are in danger. This accords with the maxim to save lives, and, although it runs headlong in to a patient's right to refuse treatment, some doctors and bioethicists consider saving lives the stronger imperative. Nevertheless, military necessity looms large. Sometimes accommodation is not possible and allowing hunger strikers to die is not politically prudent. Such situations, though perhaps rare, are nonetheless imaginable. American officials certainly assume that they can neither meet detainee demands nor let then die. Thus, the question for military medical ethics should not be whether force-feeding is permissible, but when and how it may be implemented.

To this end, it is important to know how hunger striking affects a striker's health. Evidence is sketchy, and more data are required to know how long a hunger strike can continue before causing irreversible harm. There is certainly no medical need to force-feed a hunger striker within days of beginning a strike. Hunger strikers take their drastic actions to give weight to their grievances and state authorities should allot sufficient time to address these complaints. How much time they allot depends upon the nature of the strike. Hunger strikers who refuse only food last longer than those refusing food and water. In either case, strikes may continue safely for weeks or months, allowing ample time for negotiation. At one point, however, the authorities will decide to intervene if negotiations break down and if hunger strikers face imminent harm. Physicians, in turn, must tell the authorities when strikers' lives are in danger and provide the means to treat strikers once the hunger strike has failed. Treating by force is not without costs of its own. Medical organizations continue to condemn the practice, even to save a patient's life, physicians are often repulsed by force-feeding, and there is always the danger that a hunger striker may die or fall seriously ill. Force-feeding is only a last resort when other avenues of resolution fail. There are no grounds for categorically prohibiting force-feeding unless it is inhumane, violent, and degrading.

4. Medical Humanitarianism

As humanitarian intervention strengthens under the international community's responsibility to protect fundamental human rights, military medical ethics confronts novel and challenging questions. Before, during, and after armed conflict, medical teams from state armies and nongovernmental organizations (NGOs) provide medical care, water and sanitation services, and facilities for medical education. Their goals are both medical and political. In the Vietnam War, for example, the U.S. Army Medical Department undertook "medical stability operations" to help support the local government. Care was sporadic, short-term, ill-distributed, underfunded, inattentive to local needs, and often put military requirements above medical concerns. Learning from these mistakes, American military "Medical Civic Action Programs" (MEDCAP) in Cambodia, Thailand, and elsewhere pursued more modest and less political aims. Most recently, MEDCAP operations in Iraq and Afghanistan provide "much needed or absent services to the people in the hopes of 'winning the hearts and minds' of the local populace and undermining ideological support for the insurgency, while gaining support for the legitimate Afghan government." Wary of Vietnam-era errors, new programs emphasize sustainable care through partnerships with local NGOs, "collaborative medical engagements" to "enhance host-

nation medical infrastructure . . . and instill confidence within the population." More ambitious programs try to use medical care to mediate between warring parties, lay the foundations for good governance, and protect human rights.[31]

These endeavors are fraught with ethical minefields. "We must not naively assume," write Anthony Zwi and his colleagues, "that because we are dealing with 'health' that this is neutral, that it is not contested, that it cannot create conflict."[32] Medical care introduces a scarce and valuable commodity into a violent and fiercely competitive environment, and raises a host of questions: Should healthcare workers be impartial and neutral? Should they work with despotic regimes? Should NGOs bribe the local militia to ensure delivery of medical supplies and equipment? Should they respect the wishes of local institutions knowing these may discriminate against women or members of weaker groups?

Beyond providing care, many medical organizations (state or NGO) facilitate postwar reconstruction and pursue "peace-building through health" as they foster medical projects to sustain and empower the local population, bring warring sides together in joint projects, and create safe havens where medical personnel can mediate conflict. In doing so, advocates strive to improve conditions necessary for social justice and equality, preserve cultural norms, and see to the special needs of women and girls, child soldiers, the elderly, the poor, and disenfranchised. Joint medical education projects, mobile clinics, and pediatric health cross ethnic and national lines and can facilitate reconciliation and reduce tensions when, for example, warring parties accept ceasefires to care for ailing children.[33]

Peace-building through health faces practical and normative challenges. Practically, organizations must measure their projects' effectiveness. Collecting epidemiological data while ensuring informed consent, dignity, and confidentiality is confounded by "disrupted social networks, limited resources, multiple public health risks, extensive abuses of human rights and intense competition for aid resources."[34] Assessing their efforts to alleviate social and political ills is harder still. Aid workers face constant threats and often lack the tools to effectively evaluate programs that strive for equality, empowerment, reconciliation, and, ultimately, peace. [35]

Under these difficult circumstances, critics also raise a normative challenge to peace-building through health: Is peace (any more than war) the business of medicine? Once medical workers abandon neutrality to pursue peace, they must ask about the unintended and unforeseen consequences of favoring one side or another, of placing themselves in danger to secure non-medical benefits, and of risking exploitation if a regime seizes on their efforts as signs of reconciliation while ignoring real steps toward peace.[36] There are no simple answers to these questions, and pursuing peace through health may only detract practitioners from their job of caring for the sick and injured. Contributing to war, no less than peace, may also distance medical workers from their primary obligations.

III. Medicine in War: Enhancement, Dual-Use Technologies, and Weapons Development

Until recently, medical science and medical practitioners had little to say about the weapons of war. No one needed doctors to help build bombs. But this has changed in two dramatic ways. First, advocates of *non-lethal* warfare turn to medical experts to determine how chemical agents, pathogens, and sound, light, and electromagnetic waves can efficiently incapacitate a human being. Second, medical science now commands the means to enhance or improve human capabilities to make better soldiers. Each poses unusual dilemmas for military medical ethics.

Weapons development is a new venture for military medicine. Prior to the twentieth century, the only important questions about a weapon were its accuracy, range, and payload. When

attention turned to chemical and biological weapons, questions arose about potency (how much of a chemical or pathogen is necessary to kill or disable a human being) and delivery (how to introduce a chemical or pathogen into the human body). Only medical science could provide these answers. While the Biological Weapons Convention and Chemical Weapons Convention largely prohibit the development of weapons of mass destruction, non-lethal weapons research remains contentious. Non-lethal weapons include calmative agents that depress the central nervous system, electromagnetic or acoustic technologies that cause pain without tissue damage, and neurological interventions that map or alter brain states.[37]

Designed to cause harm, non-lethal weapons present military medicine with unique ethical challenges as weapon's designers hope to maximize transient pain and discomfort without causing permanent injury or death. Non-lethal weapons systems affect human physiology in different ways. The U.S. military's Active Denial System (ADS) emits low-energy electromagnetic waves that create an intense but transient burning sensation useful for dispersing crowds that threaten military installations. In contrast, calmative chemical agents depress the central nervous system so that affected targets fall unconscious. Neurological interventions to detect lying, for example, raise dangers of dehumanization and infringements of "cognitive liberty."[38] Nor are non-lethal weapons entirely harmless. U.S. guidelines make room for non-lethal weapons that kill or injure up to 1 percent of those affected. At least 129 people died in 2002 when the Russians pumped in a calmative agent before they stormed a Moscow theater to rescue hostages from terrorists. Most of these casualties occurred because medical crews did not have the antidote on hand.[39]

As a result, many legal and ethical questions swirl around non-lethal weapons. On the one hand, non-lethal weapons offer a useful tool to prevent noncombatant deaths in theaters where militants fight without uniforms. On the other hand, non-lethal weapons target and harm noncombatants directly, a grave violation of noncombatant immunity. As the international community wrestles with these issues, physicians who participate in weapons development face problems of their own. Dedicated to doing no harm, the very idea of weapons development remains anathema to many medical organizations. The WMA and British Medical Association (BMA), for example, prohibit physicians from any involvement in weapons development. They cite not only a physician's duty to do no harm, but other contingent fears: loss of respect, concerns that non-lethal weapons may fall into enemy hands, and fears that non-lethal chemical weapons may upend the international consensus that bans chemical and biological weapons of mass destruction.[40] One solution is to remove medical personnel from direct involvement with weapons development. Placing them in defensive research, as was common during and after WWII, is one answer.[41] Another suggestion replaces physicians with technicians to administer and interpret brain scans of detainees, for example.[42]

Many of these solutions, however, are neither practical nor compelling. Removing clinical practitioners is not always practical when experimental protocols require medical supervision. Moreover, medical *technology* remains in the service of the military regardless of who does the day-to-day work. More persuasive, however, is the claim that physicians *should* lend their expertise to weapons development because security interests sometimes override their professional obligations.[43] Non-lethal weapons are designed to save noncombatant lives when it is impossible to distinguish between combatants and noncombatants. Moreover, the potential harms of physician involvement are overstated: physician integrity is not impaired, government regulation of non-lethal technologies is relatively tight, while evolving norms draw a sharp distinction between non-lethal weapons and weapons of mass destruction. As a result, physicians do no harm on balance when they help develop non-lethal weapons, an argument that also resonates as we consider enhancement.

Enhancement technologies—drugs, brain-machine interfaces, neural prostheses, genetic engineering, and mechanical cybernetic improvements—improve the fighting capability of soldiers, keep them alert, alleviate pain, and sharpen and strengthen their cognitive and physical capabilities.[44] Enhancements are not necessarily therapeutic: soldiers designated for enhancement are not sick. Rather, commanders seek to improve soldiers' performance, reduce risk to life and limb, and enhance a nation's war-fighting capabilities. Enhancement technologies raise questions about patient and soldiers' rights and the role of medical science in the military. Soldiers have no right to refuse standard or investigational treatments that keep them fit for duty. But must soldiers consent to enhancement? Modafinal, for example, reduces fatigue and improves performance but pilots who take it are healthy and fit. Enhancement technologies, then, either make warfighters more fit or, in the very least, prevent or reverse performance degradation. Regardless, the pilots are not ill. Enhancement therefore requires consent together with medical supervision to oversee safety and guarantee that "non-pharmacologic alternatives" have been fully utilized.[45]

Meeting these conditions is problematic. Informed consent is difficult to attain in a military hierarchy. The long-term effects of memory-enhancing or fatigue-reducing drugs remain unknown. As a result, there are legitimate concerns about personality change, lack of moral responsibility, and misplaced visions of power if soldiers use enhancing agents to maximize cognitive prowess by reducing anxiety, eliminating fear, or blocking memories of battlefield events.[46] These uncertainties weigh heavily upon those who prescribe the drugs and those who must take them. Nevertheless, these concerns must be weighed against their military benefits, a consideration necessarily absent from the ongoing civilian debate over enhancements. Military service imposes high costs upon soldiers that are acceptable if proportionate to anticipated military benefits. Any technology that increases military efficiency and protects soldiers will probably carry the day insofar as warfighters do not use their enhancement to violate humanitarian law. Assessing military necessity is a constant and vexing feature of military medical ethics and highlights the "dual-loyalty" dilemma.

IV. Dual Loyalty and Military Medical Ethics

"Working to enhance national security," writes the BMA, "may not always be compatible with the fundamental tenets of medical ethics."[47] This is one of the central dilemmas of military medical ethics: To whom do medical practitioners—doctors, nurses, and medics—owe their loyalty? Are they caregivers or soldiers first?

The preceding sections raise this question in the starkest form. To what extent should military medical workers protect their patients' rights and welfare when military necessity is at stake? This question arises during war and peace. While interrogation and force-feeding present the dual-loyalty dilemma in a most extreme form, combat operations in foreign theaters show how difficult it can be to treat compatriots, enemies, soldiers, and civilians equally. Even among compatriots whose access to superlative medical care is unquestioned, military physicians sometimes find it necessary to shade the truth, withhold information about medications, or otherwise manipulate patients to return them to active duty. Away from the battlefield, weapons development demands that some physicians and medical scientists lend their expertise to the improvement of non-lethal weapons or enhancement techniques. Each has unique military advantages that only medical science can provide. Nor is the dual-loyalty dilemma confined to wartime. Consider medical malingering. Soldiers often find it easy to fake symptoms to gain a day or two of extra leave. Solutions are not always patient-friendly. Anecdotal reports describe how physicians may skirt the common guidelines for using placebos and give them to suspected

malingers to return them to duty.[48] Here is a dual-loyalty dilemma in the most quotidian terms: the patient's interests or those of the military?

There are no easy solutions to these dilemmas. One solution asserts the primacy of medical ethics at all times "by adopting a clear doctrine stating that the ethical obligation of the military physician is always to act in the best interests of the patient (with the patient's consent)—military, civilian, and captured enemy alike."[49] Concerned that military physicians subordinate patient interests to military necessity, fail to fully respect informed consent, or refuse to treat all patients equally, some observers call on physicians to avoid military service altogether and contract their services to the army as part of nonmilitary national service.[50] Extreme as this argument might sound, it might be perfectly logical if military physicians cannot assign ethical priority to their professional obligations when they enlist.

While one might certainly solve the dual-loyalty dilemma by deferring to patient interests, one can just as easily defer to national security. Utilitarianism alone can provide sufficient grounds to prefer collective over individual interests during war. Neither solution, however, resolves the conflict that medical practitioners face. To defuse the dual-loyalty dilemma, alternative models embrace the idea of a single actor: the "physician-soldier." Rather than clash, doctoring and soldiering share a similar "collective ethic." Physicians care for individuals with an ultimate concern for society, while military officers safeguard society to create a secure environment for the individual. Both professions share a concern for autonomy, dignity, and life that is mutually reinforcing.[51] Nonetheless, some circumstances force physicians to carefully evaluate the demands of medical ethics and military necessity. When treating sexual abuse or misbehavior, suicidal tendencies, eating disorders, or drug use, for example, patient rights prevail because national interests are not at stake. In other instances, it may be necessary to circumscribe patient rights or withhold information to conserve manpower or preserve a mission.[52] If national security sometimes overrides medical ethics, it is also important to remember that military necessity remains subject to fundamental human rights that protect soldiers and civilians from abuse and indignity. In this regard, military medical ethics is little different from the larger context of military ethics within which physician-soldiers must care for the sick and injured.

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25

SERVING TWO MASTERS

When Professional Ethics Collide with Personal Morality

Rebecca J. Johnson

A platoon leader is approached by an enlisted female in her unit. The enlisted Marine is pregnant and has approached the lieutenant for advice. The platoon leader is a devout Christian who believes abortion to be murder. She knows that Marine Corps policy requires her to counsel the pregnant Marine on *all* her options, including termination. She stays up at night sick with the thought that she might be responsible for enabling her Marine to kill her unborn child.

A battalion commander arrives to his new assignment just as the repeal of "Don't Ask, Don't Tell" is being implemented. He is responsible for decisions concerning billeting, awareness training, and establishing a command climate that promotes good order and discipline along with the effective integration of openly homosexual Marines into his units. The Lieutenant Colonel believes homosexuality to be a subversion of God's intended order, and is concerned that carrying out his duties would be tantamount to saying that homosexuality is acceptable.

I. The Problematic Status of Personal and Professional Values

This chapter explores the tension that arises when personal morality collides with the professional ethical responsibility of military personnel, as in the two foregoing scenarios. My particular focus will be upon the U.S. Marine Corps as the military service community with which I am most closely tied. I intend my specific examples and analysis, however, to be generalizable across service communities and the variety of cultures and beliefs that individual soldiers, sailors, or Marines from any national military service bring to bear on this very familiar conflict.

As members of the profession of arms, Marines are both individuals (with individual consciences and moral convictions) *and* agents of the state (with professional ethical obligations to act on behalf of the state). In their capacity as agents of the state, there is a long tradition of appropriate dissent within the military as their loyal effort to maintain the profession of arms. In other words, appropriate dissent is an essential part of the military professional's ethical responsibility. What is lacking is a similar tradition of the military professional voicing his personal moral convictions when they conflict with the demands of the state. Service members have an obligation to disobey an *unlawful* order, but lack the right of selective conscientious objection,

which means they may not disobey lawful orders or policies they consider to be personally immoral.

On the one hand, this seems appropriate—service members are trusted in the expert, disciplined application of lethal force in defense of the Constitution.[1] Their expertise as military professionals does not derive from their moral superiority (though most may be morally exceptional). On the other hand, Marines sacrifice their physical, emotional, and families' well-being routinely for the state. It seems too much to ask them to lay down their moral commitments as well in order to support and defend the Constitution.

The journalist and author Rushworth Kidder often speaks of attempting to find a "pathway" through what we tend to see as "polarized options," as a means to find a constructive way through moral-ethical tensions.[2] I propose here to offer my own resolution of this familiar but incorrigible problem, begining with a review of how the profession of arms currently views the professional military ethic, setting forth first the expectations customarily placed on service members, as well as the parameters within which military professionals may express disagreement and utilize discretion. The chapter then builds out a process by which individuals can engage their moral-ethical tensions with an eye to honoring both their personal and their professional commitments. In essence, it recommends a sort of moral problem-framing that seeks to open, rather than close, courses of action. While it will not work in every circumstance, it intends to open a space for Marines (and, by extension, any serving military personnel) to be able to find new ways through what appear to be intractable dilemmas. The conclusion will frame this approach in terms of providing Marines with an opportunity for moral growth and improved leadership—in other words, for viewing moral-ethical dilemmas as challenges to be embraced rather than threats to be avoided.

II. The Professional Military Ethic

Since the ethical-moral tension explored in this chapter occurs in the context of the profession of arms, this section lays out the contours of the professional military ethic and the expectations placed on the military professional. The textbook articulation of the military profession comes from Samuel Huntington's *The Soldier and the State*:

> The military profession exists to serve the state. To render the highest possible service the entire profession and the military force which it leads must be constituted as an effective instrument of state policy. Since the political direction comes from the top, this means that the profession has to be organized into a hierarchy of obedience. For the profession to perform its function, each level within it must be able to command the instantaneous and loyal obedience of subordinate levels. Without these relationships, military professionalism is impossible. Consequently, loyalty and obedience are the highest military virtues.[3]

For Huntington, the professional military ethic resides in loyal, obedient service to the state and one's superiors. Contemporary conflict's requirement for increasingly distributed operations and independent small unit decision-making have challenged this traditional construct to a degree, but the belief that the military professional follows his political and military leadership is fundamental to the American understanding of civil–military relations. Building from this foundation, the Army has undertaken a service-wide exploration of what it means to be a military professional in a period of protracted conflict. The white paper that resulted, *The Profession of Arms*, identifies five key attributes or "guideposts" of the military profession: expertise, trust,

development, values, and service.[4] These attributes derive from the military's constitutionally grounded purpose and composition as articulated in Title 10 of the U.S. Code, Section 3062(a):

> It is the intent of Congress to provide an Army that is capable, in conjunction with the other armed forces, of:
>
> (1) preserving the peace and security, and providing for the defense, of the United States, the Commonwealths and possessions, and any areas occupied by the United States;
> (2) supporting the national policies;
> (3) implementing the national objectives; and
> (4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

In order to execute Congress's intent for the services, military professionals must demonstrate expertise not only in the disciplined application of lethal force, but also the entire range of skills required to secure the United States and its interests. This expertise is gained through an unwavering commitment to professional development of self and subordinates and is manifest in the professional's commitment to core values and service to the nation.

The combination of continually improving expertise, values, and subordinated service provide the bedrock for the American people to trust the military profession to possess and wield an overwhelming capacity for violence on its behalf. When any of these attributes waver—service members lack essential proficiency, engage in unethical or immoral behavior, or undermine their civilian leadership—the public loses trust in the profession and takes steps to limit the wide discretion provided the military to execute its responsibilities.

Retired Colonel and former West Point and Army War College professor Don Snider articulates three trust relationships the service member must maintain in order to support the profession of arms: "those with the American people, those with civilian and military leaders at the highest levels of decision-making, and those with the junior corps of officers and noncommissioned officers of our armed forces."[5] Building expertise, submitting to civilian authority, and maintaining a commitment to developing subordinates are ways by which these trust relationships are maintained.

It is not enough that the military professional demonstrates expertise in the application of lethal force. He must also honor his oath to support and defend the Constitution, the same oath that is administered to civilian officials.[6] According to Richard Swain, "The Constitution is a compact of divided government . . ."[7] Power is divided between the states and federal government, and among the executive, legislative, and judicial branches. The founders placed the military under the President's command and Congress's regulative powers. As one who swears an oath to support and defend the Constitution, a Marine "accepts and promises to sustain this division and establishment of authority, the principles enshrined in the Bill of Rights, and subsequent amendments that are the nation's warrant of justice and fairness. The Constitution requires obedience to treaties on the law of war, which the President has submitted and to which the Senate has given assent."[8]

Swain continues, "An oath is an individual moral commitment made publicly. Its implications are worthy of serious consideration, especially by those who are prepared to die in their fulfillment."[9] In taking the oath, a Marine makes a personal moral commitment to uphold specific, prescribed ethical obligations both as an individual and as a member of his various units. This means two things. First, it is not enough for the Marine to uphold his professional responsibilities

alone; he must ensure that his fellow Marines uphold their responsibilities as well. Second, when a service member confronts a conflict between his personal moral convictions and his professional ethical responsibilities, he must consider the moral weight of his public commitment to support and defend the Constitution, not simply as a professional obligation, but as an equally weighty moral one. In this sense, his professional ethical obligation to subordinate his individual beliefs to the state becomes his personal moral responsibility. In the oath of commission, what is ethical and what is moral are the same.

The specific obligations found in Title 10's "Requirements for Exemplary Conduct" develop the Marine's obligations further by establishing service members' legal responsibility for the moral and ethical discipline of their units:

> All commanding officers and others in authority in the [Army/Air Force, naval service] are required:
>
> (1) to show themselves as a good example of virtue, honor, patriotism, and subordination;
> (2) to be vigilant in inspecting the conduct of all persons who are placed under their command;
> (3) to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them; and
> (4) to take all proper and necessary measures, under laws, regulations, and customs of the Army, to promote and safeguard the moral, the physical well-being, and the general welfare of the officers and the enlisted persons under their command or charge.[10]

It is here that the individual Marine may feel the sort of tension illustrated in the introduction. Title 10 requires Marines to "guard against and suppress all dissolute and immoral practices." While the oath of commissioning makes professional ethical responsibilities moral obligations, this section of Title 10 seemingly turns personal moral convictions into professional ethical obligations. It would seem to suggest that the pro-life Marine is obligated to counsel against abortion and the Marine who rejects homosexuality is obligated to oppose the repeal of "Don't Ask, Don't Tell."

Since a Marine cannot separate his responsibility to support and defend the Constitution from his Title 10 responsibility to maintain exemplary conduct, it is not so black and white. A traditional reading of these two obligations suggests that "the laws, regulations, and customs" of the service identify certain behavior as dissolute or immoral by penalizing that behavior. To the extent that abortion or homosexuality is not penalized under the UCMJ, it is not defined under Title 10 as dissolute or immoral, and therefore is outside the Marine's responsibility to correct.

The "values" attribute is equally as important as the "expertise" attribute in maintaining a service member's professional obligations. Both are necessary for maintaining the trust relationships with the American people, senior leadership, and subordinates. The reason for this is obvious—the American people do not simply trust the military to levy an unparalleled capacity for violence on their behalf; they trust the military to do so with discretion, in a manner that strengthens, not weakens, the country. What is more, the American people trust the military with their sons and daughters, husbands and wives, moms and dads. The military cannot promise to bring them back, but they can and do promise to return those they can better for their service. The attribute of "development" must include both technical and moral excellence.

This understanding of the military profession relies on a sustained individual and collective commitment to both technical and ethical expertise. It embraces broad discretion on matters of expertise provided that discretion remains subordinate to civilian control. The following section explores what subordination to civilian authority looks like with respect to professional disagreements. While the military profession has carved out and sustains an important role for appropriate dissent for matters related to professionals' technical expertise, no similar space exists for matters related to professionals' moral expertise.

II. When Individual Judgment and Professional Guidance Diverge

The acceptance of expertise and discretion opens a space for professional disagreement. The military embraces dissent in its appropriate context as a means to maintain the health and integrity of the profession. It is part of the self-regulation of expertise that dissent is not only accepted, but also even required by the profession itself and its client, the American people. This section explains the importance of dissent and lays out the accepted standards for when and how dissent may be appropriate, as well as a recent challenge for officers to assume broader authority to dissent.

Traditionally, the military profession has carved an important space for dissent. As Chairman of the Joint Chiefs of Staff, Admiral Michael Mullen counseled the 2008 graduating class from the Naval Academy on their responsibility to maintain their professional integrity. He stated, "few things are more vital to an organization than someone who has the moral courage to question the direction in which the organization is headed and then the strength of character to support whatever final decisions are made. That's real loyalty and it only gets more important the higher you rise in the ranks."[11]

To use Hirschman's language, "dissent" is an expression of "loyalty" for the military professional, not "voice."[12] The dissenter is not merely disagreeing with a decision; he is working to uphold the standards of the profession and his obligation to the American people and its elected representatives. A service member "voicing" opposition to a policy or order is much closer to an act of dissension—that is, trying to undermine, rather than correct, a policy. One need only compare the testimony of then Army Chief of Staff General Eric Shinseki in front of the Senate Armed Services Committee in February 2003 with the August 2010 op-ed written by a Colonel in Special Forces (Colonel Lawrence Sellin) assigned to the International Joint Command in Afghanistan to see the difference.[13] General Shinseki honored his obligation to provide his honest, professional judgment to his constitutionally designated civilian leadership in Congress on the matter of troop requirements for Iraq. Colonel Sellin blew off steam at his military's expense. An act of dissent may be constructive; an act of dissention is always corrosive.

Swain couches the importance of appropriate dissent in terms of the military professional's constitutional responsibilities. "A desirable pattern of U.S. civil–military relations—including legitimate military dissent—would therefore enhance democratic political control while also facilitating sound strategic decision-making and the creation of effective military institutions."[14]

Snider provides five criteria to evaluate when dissent might be appropriate. The criteria identify "the gravity of the issue; the relevance of the professional's expert knowledge and expertise to the issue in question; and the three indicators of the dissenter's motive: the personal sacrifice to be incurred in dissenting; the timing of the act of dissent; and the congruence of such an act with the previous career of service and leadership within the military profession."[15] While dissent must be kept to a minimum for the purpose of maintaining a healthy civil–military relationship and good order and discipline, on those matters of grave importance a service member with crucial, expert knowledge of a subject may be justified in expressing his opposition to a

policy if his action comes in time to change the outcome, will not benefit him personally, and is in keeping his tradition of faithful service.

Both Swain and Snider offer guidance for how to articulate their professional expertise in the context of subordination to civilian authority in such a way as to support, rather than undermine, the three trust relationships and Title 10 responsibilities. According to Swain, "The best rule is that issues of policy should be parsed according to the locus of authority to decide. For the most part, disagreement with the responsible decision-maker should focus on professional military assessments of feasibility, costs, risks, and outcomes."[16] In addition, "Military officers have useful advice to give on the consequences of changes in public policy, but not, as military leaders, on their social or political desirability or appropriateness."[17]

Swain's advice reflects the dominant position within the profession—given the apolitical nature of the military and areligious nature of the government, service members are charged to comment only on those matters that fall within their technical expertise. That expertise has been developed and evaluated by the profession to meet a particular standard of proficiency; an individual's rank reflects his level of technical achievement and expertise. Anything outside of the expert knowledge that has been cultivated and validated by the profession is seen as being outside of the profession. It is personal opinion rather than professional judgment. As such, it lies outside the boundaries of the profession and the service member becomes "unprofessional" when he comments on them in uniform. For civilians, it is important to remember that officers never "take their uniforms off"; they are always officers and are always on duty. This has significant implications for the ability of service members to express opposition to policies.

It is important to note here that both Swain and Snider (and most students of civil–military relations and the professional military ethic) intentionally restrict the space for dissent to the area of the military professional's technical, not moral, expertise. "The simple rule is that matters of personal *value* are personal, and for the most part, ought to be kept that way or labeled as such."[18] Swain pushes the point further when he writes, "The military are held to high ethical standards by the requirements of service and the expectations of the public, but claiming the role of acting as the moral compass of the nation is nothing but arrogant conceit."[19] The nation's elected representatives are the ones vested with the constitutional authority to safeguard the social mores of the republic, not the military.[20]

At the same time, this traditional understanding of civil–military relations cannot account for the very real nontechnical areas of disagreement service members may face. Andrew Milburn has offered an extreme articulation of the civil–military relationship that allows a far larger area of legitimate dissent than accepted currently. Milburn states starkly, "There are circumstances under which a military officer is not only justified but also obligated to disobey a legal order."[21] According to Milburn, the traditional approach denies the military professional's moral autonomy. Milburn rejects the notion that a service member might simultaneously be trusted by the American people with complex decisions that require a level of moral expertise in the pursuit of defending the nation, but not trusted with being an agent of the state with the moral expertise necessary to render sound moral judgment on matters related to his profession.[22] For Milburn, a more useful understanding of a service member's moral autonomy extends to refusing to implement executive policies that have not been sufficiently challenged by Congress or the courts, as well as "to challenge orders whose consequences threaten either [the Constitution or the welfare of his subordinates] without apparent good reason."[23]

When faced with an "unconscionable" order, the service member must dissent in the manner most likely to avert the consequences the service member seeks to avoid. Like Snider, Milburn is clear that the officer (Milburn constrains his view of military professionals to the officer corps) must weigh the effect of his dissent on the policy and his subordinates. He overlooks the question

of the effect the decision to dissent would have on the profession and the trust relationship he holds with the American people, who are the officer's true client.[24] If the act of dissent would be more damaging than supportive of the civil–military relationship established in the Constitution, it would be wrong, even if the officer were correct that the specific policy being adopted is wrong-headed. The tradition of civilian control of the military is more important to the republic than the republic adopting the best policy at any one moment in time. While a military professional may hold moral expertise, he may not dissent professionally on moral grounds.

That is to say that while Milburn's effort to carve a space to justify the military professional's expression of his moral expertise is laudable, his guidance concerning when and how to dissent on moral grounds is overly permissive and places the individual ahead of the profession. This move undermines the dual nature of the military professional as both a human being and an agent of state. In doing so, it threatens the moral obligation found in the oath of commissioning, the trust the American people place in the military to execute on behalf of civilian leadership, and the strength of the profession as a whole. This author cannot deny the importance of Marines honoring their moral convictions, but cannot endorse their doing so at the expense of their professional responsibility. Milburn seeks to equate the two in a manner that undermines both.

III. From Policy to Moral Disagreements

How do these parameters on dissent track when the disagreement stems from a moral—rather than policy or political—disagreement? Marines clearly have responsibilities to their profession; how can they simultaneously honor their responsibilities to their personal convictions? While this chapter cannot provide specific recommendations for how to reconcile every moral dilemma Marines from every background might face, it attempts to provide an approach to frame moral dilemmas in a way that opens up new opportunities to serve without disavowing one's personal or professional convictions.

At the end of the day, however, specific individuals might still find themselves confronted with circumstances where meeting their professional obligation would result in a renunciation of their moral commitments. Dissent is not an option in this circumstance; the responsibility and right to dissent is grounded in the professional's military expertise that has been acknowledged by the profession and the American public. While individual Marines may be unfailingly moral, they are not vested with a public responsibility to maintain or develop the nation's morality. Their dissent on moral issues falls outside the bounds of what may be reasonably allowed or expected in their role as an agent of the state. Unfortunately, that does not absolve the Marine of his personal moral commitments.

If a Marine cannot find a way through the impasse, his only options are to exit the profession or compromise his integrity; if he uses dissension as a means to honor his moral commitment while evading his military responsibility, he is professionally derelict. If his efforts to meet his professional obligations require him to disavow his personal convictions, he is morally bankrupt.

Is there a defensible way through impasses of the sort outlined in the introduction? I think there are. While this approach may not work in every case for every person, it is often possible to find a third road through this seemingly impossible dilemma. Two beliefs lie at the core of this position. First, life presents challenges as opportunities for our growth, not failure. The implication is that the moral-ethical dilemmas Marines face are embedded with the seeds of their own resolution. Grappling with these dilemmas, rather than avoiding them through dissension or lip service, is the road to growth.

Second, life is complex enough to provide multiple roads to faithful and loyal service.[25] This means that any adult's moral convictions have enough substance to them to allow for multiple

avenues of approaching any one problem. Just like military problems often have multiple solutions, so do moral quandaries. The challenge is to engage in the moral equivalent of "problem-framing" in order to see the complexities of the moral-ethical dilemma. As Rushworth Kidder explains in his work on resolving moral dilemmas, it is often the case that we identify these dilemmas in terms of two stark alternatives, while an indirect approach often allows us a road around the either/or choice we identify initially.[26] This section attempts to model what this third way looks like.

The first step is to *clarify the various moral and ethical actors and issues involved* in the situation: who are the morally relevant individuals involved, and what are their moral and ethical responsibilities in this instance? The purpose of this step is to refine the service member's moral sensitivity, or ability to see the moral dimensions to an issue, by identifying the extent to and ways in which he is *responsible* in the situation (as opposed to simply being involved).[27] The span of responsibility includes both professional and personal obligations. By acknowledging both the Marine's Title 10 obligations to his unit's moral stewardship and his oath of commissioning as morally significant, it becomes impossible to subvert either his individual moral compass or his nation's ethic of civilian control of the military. He cannot, as Milburn counsels, disobey a legal order that chafes his personal beliefs. That said, his obligation to his troops means he must find a way to foster their moral development in light of what might be concerning guidance from senior leaders.

For example, the pro-life lieutenant responsible for counseling her pregnant Marine cannot easily ignore her religious convictions, which incline her to encourage the woman to have the child. Likewise, she cannot easily ignore her responsibility for the Marine's welfare, which will be affected by either choice. Finally, she cannot ignore her responsibility to her service's policy, which makes clear that she must counsel the Marine on all her options, including abortion. At the same time, while the lieutenant is responsible for the content of her counsel to the pregnant Marine, she is responsible neither for the Marine's predicament nor for her ultimate decision.

The recognition of the actual limits of the lieutenant's responsibility opens the possibility for the second step in this process: *identify different options that meet her various moral and ethical responsibilities*. Counseling the pregnant Marine to have the baby might satisfy her religious obligation, but clearly violates her professional obligation. What is more, it has profound implications for the Marine's ability to remain in the service (especially if she would be a single mother). Counseling the pregnant Marine to abort would both violate her religious obligation as well as her professional obligation to provide her with the full range of options. Counseling the pregnant Marine on all of her options, including both having—and potentially keeping—the baby, as well as termination, satisfies her professional obligation, but does it meet her responsibility to her Marine and her faith?

It would seem that since the lieutenant is responsible for her counsel and not the pregnant Marine's ultimate decision, her informing the Marine that abortion is one of the options available to her is simply a statement of fact, as true as the fact that the Marine could carry the pregnancy to term and put the baby up for adoption or carry the pregnancy to term and keep the baby.

This leads to the third step in the process of reconciling moral-ethical dilemmas: *weigh the real, not perceived, implications of potential options*. At first blush, the imperative to protect the life of the unborn seems the dominant consideration on the part of the platoon leader. In her personal capacity, it may easily be; however, the platoon leader lacks a solely personal capacity in her counsel to a subordinate. Her personal convictions are always tied to her professional ethic. In this instance, both point in the same direction—she is not responsible for the pregnant Marine's choices, but is responsible for providing the pregnant Marine with her full range of options. To assume responsibility for the pregnant Marine's choice would be to distort the real extent

of her moral responsibility in this case. To place her religious beliefs ahead of her professional obligation would demonstrate a lack of discipline and subordination, undermining her ability to serve "as a good example of virtue, honor, patriotism, and subordination" to those she leads.[28] That is to say that while the platoon leader is not responsible for her pregnant Marine's decisions, she is responsible to model virtue, patriotism, and subordination to the pregnant Marine. Likewise, she is responsible for modeling the same to the rest of her platoon and for upholding the same on behalf of the Corps. Subjugating her professional responsibility to her personal beliefs overstates her personal locus of responsibility while understating her professional responsibility.

One way to check whether the service member is caught in an "either/or" approach to reconciling a moral-ethical dilemma is the fourth step: *to evaluate which of the options identified open up new ground for moral and ethical service*. While true moral dilemmas certainly exist, often we frame situations as false dichotomies rather than explore all of the options we really possess. Many times, a way forward exists that fulfills the service member's true locus of responsibility and allows him to deepen his personal and professional commitments. This is what is meant by challenges providing the opportunity for growth—the greater the challenge, the greater the opportunity for growth. Likewise, the greater one's capacity for moral sensitivity—that is, the more adept a service member is at identifying the moral and ethical issues and his areas of moral and ethical responsibility—the greater his ability to discern a way forward through seeming moral-ethical conflicts.

One way to determine the way forward is by looking for those opportunities that open new avenues for service. It would be undeniably difficult for a pro-life platoon leader to counsel her pregnant Marine that abortion is one of her options. At the same time, counseling the pregnant Marine on her full range of options is not only the platoon leader's professional obligation, but it creates the conditions in which the lieutenant may continue to lead and mentor her Marine. If she had counseled the Marine to carry the pregnancy to term and the Marine had decided to terminate the pregnancy anyway, the platoon leader would have created conditions that make it harder for her to lead and mentor the Marine. While leadership includes making hard choices that may alienate others, an option that allows the platoon leader to meet her actual personal and professional responsibilities in a way that strengthens her capacity to lead and mentor not just the pregnant Marine, but the entire platoon, seems preferable to one that skews her moral and professional responsibilities while potentially weakening her capacity to lead and mentor her subordinates.

IV. Conclusion

At the end of the day, a Marine must neither walk away from his calling or his conscience. He should neither quit, nor simply "shut up and color." Rather, moral-ethical dilemmas provide the opportunity to struggle with the seeming contradiction of one's personal and professional obligations in a way that strengthens not only the individual Marine's moral and ethical core, but those under his leadership as well. It is true that this struggle will likely change the way the Marine thinks about his personal and professional commitments. This change need not be avoided as corruption, but embraced as growth. If no fruits are to be found through this struggle, only then is the Marine faced with the choice to either exit his profession to preserve his moral integrity or demonstrate true loyalty to his profession at the expense of his personal beliefs.

Notes

1. Richard Swain, *The Obligations of Military Professionalism: Service Unsullied by Partisanship* (Washington, DC: Institute for National Security Ethics and Leadership, 2010): 3.

2. Rushworth Kidder, *How Good People Make Tough Choices* (New York: Harper Paperbacks, 2009): 174–176.
3. Samuel Huntington, *The Soldier and the State: Theory and Politics of Civil–Military Relations* (Cambridge, MA: Belknap Press, 1985): 73.
4. Center for the Army Profession and Ethic, *White Paper: The Profession of Arms* (Fort Eustis, VA: U.S. Army Training and Doctrine Command, December 2010): 5–6.
5. Don Snider, *Dissent and Strategic Leadership of the Military Professions* (Carlisle, PA: Strategic Studies Institute, 2008): vii. Snider does not consider enlisted service members to be "military professionals" because their responsibilities are more technical in nature and do not require the sort of professional judgment (applying expertise to new circumstances to focus action in new ways) that defines the responsibilities of officers and NCOs. I do not necessarily agree with Snider's argument, but it is beyond the scope of this chapter to debate the point here.
6. 5 USC, § 3331.
7. Swain, *The Obligations of Military Professionalism*: 5.
8. Ibid.
9. Ibid.: 6.
10. 10 USC, § 3583, 8583, and 5947.
11. Admiral Michael Mullen, Remarks at the U.S. Naval Academy Commencement Ceremony, Annapolis, MD, May 23, 2008.
12. Albert Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970).
13. General Shinseki's famous response to Senator Levin may be found at: www.youtube.com/watch?v=a_xchyIeCQw. Colonel Sellin's editorial was run by UPI and can be read in its entirety at: www.armytimes.com/news/2010/09/army-colonel-fired-for-powerpoint-rant-090210w/.
14. Snider, *Dissent and Strategic Leadership of the Military Professions*: 6.
15. Ibid.: vii.
16. Swain, *The Obligations of Military Professionalism*: 18.
17. Ibid.
18. Ibid.: 11.
19. Ibid.: 18.
20. A. Hamilton, J. Madison, and J. Jay, *The Federalist Papers* (New York: Signet Classics, 2003).
21. A. Milburn, "Breaking the ranks: Dissent and the military professional," *Joint Forces Quarterly* 59, no. 4 (2010): 101.
22. Ibid.: 103.
23. Ibid.: 103.
24. Snider, *Dissent and Strategic Leadership of the Military Professions*: 5.
25. Kidder, *How Good People Make Tough Choices*: 169–170.
26. Ibid.: Chapter 7.
27. J. Rest, "Background: Theory and research," in J. Rest and D. Narváez, *Moral Development in the Professions: Psychology and Applied Ethics* (Hillsdale, MI: Erlbaum Associates, 1994): 23.
28. 10 USC, § 3583, 8583, 5947.

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26

THE UNLIMITED LIABILITY CONTRACT AND ITS EFFECTS ON SERVING MILITARY PERSONNEL

Reverend Nikki Coleman

In Section I of this chapter, I will be putting forward a brief introduction and traditional understanding of the concept of the unlimited liability contract (ULC) as first proposed by General Sir John Hackett in 1962.[1] In Section II, I will be examining some of the implications of the ULC, particularly as it relates to the ability of military personnel to refuse orders in relation to medical treatment and experimentation—and the duty of care that militaries have toward their personnel. In the final section, I shall consider whether, after all, there are some limits to this notion of "unlimited liability."

I. Current Understanding of the "Unlimited Liability Contract" in Military Service

The so-called "unlimited liability contract" (ULC) is an implied contract thought to impact the lives of military personnel worldwide. The ULC is also referred to as the unlimited liability covenant, the unlimited liability concept, and the unlimited liability commitment in a number of writings on other subjects that mention the ULC in passing. It is not itself a legal concept, but an underlying moral framework that is meant to capture the general framework encompassing both laws and traditions of service generally thought to pertain to military personnel. The ULC was first mentioned (but not explicitly defined) by Australian-born British General Sir John Hackett in 1962 and (apart from specific exceptions discussed below) has been discussed only briefly in passing by military ethicists and strategists ever since.

The concept of the unlimited liability contract holds that when members of the military "sign up" for military duty, they surrender certain rights by the very nature of their military service—they must obey legal orders, are placed at an increased risk of harm, and they surrender basic human rights simply because of their military service, such as their right to safety, to autonomy, to freedom of movement, and so on. Thus, the ULC is invoked as a standard

justification for placing military personnel in morally exceptional situations. My interest is to examine whether the ULC is in fact a valid explanation for placing military personnel in morally exceptional circumstances that would normally prove unacceptable in the wider civilian society.

The main point that Hackett made about the ULC is that it "sets the military apart from most other groups."[2] A number of other writers have commented on this interpretation, most notably Michael Walzer,[3] who spoke of the loss of freedom and responsibility that comes with enlistment in the military. Walzer asserted that when citizens become soldiers, they forfeit certain human rights, particularly the right to life, in exchange for a very unique version of "soldiers rights" that Walzer deemed to be part of "the War Convention" that sets combatants apart from ordinary citizens. Combatants will, among other things, be immune from prosecution for killing enemy combatants on the battlefield, even as they will not be held strictly liable for their political leaders' decisions to wage war.

Dubik, in his critique of Walzer's work, counters that the right to life is an inherent or "natural" right that cannot be lost or exchanged. In particular, it is not a right that "goes with the job."[4] Rather, it is a fundamental human right, whence (Dubik claims) Walzer's argument in regard to the right to life of military personnel is invalid. Walzer does soften his theory slightly by arguing that although it is morally permissible for soldiers to be sacrificed by their commanders and to die in battle, nevertheless it is wrong that their lives be squandered needlessly or carelessly. This caveat is not so much due to their retaining a moral right to life, however, but because they are assets given to their commanders, and no assets should be wasted because it is inefficient.[5]

Dubik goes on to argue that something special happens when you become a soldier—that you retain your natural right to life, and that the government retains its responsibility to ensure that this (and other) rights are protected while you serve as a soldier. Dubik also emphasizes that as a soldier, one accepts an increased risk of injury and death, and that these deaths would be justifiable if they resulted from the soldier's actively defending each and every other community member's individual right to life.[6] Dubik asserts, in contrast to Walzer, that soldiers do not lose or exchange their natural right to life, but rather, as soldiers, have an *increased obligation to protect their fellow citizens*, which in turn places soldiers at an increased risk of injury and death. According to Dubik, soldiers may be put into morally exceptional circumstances, not because they have relinquished their rights simply by enlisting (as Walzer maintains), but because they have *taken on certain extra moral obligations* that do not bind the conduct of ordinary citizens. Finally, Dubik argues that officers, "in addition to being responsible for the control of the means of death and destruction . . . are directly responsible to the state, and to the soldier, to protect the soldier's right to life."[7]

More recently, Martin Cook has discussed the idea that there is an implicit contract between military personnel and their government, which he likewise terms the "unlimited liability contract." The terms of this contract include the proviso that the members of the military shall "follow lawful orders in full recognition that they may die or be severely injured in fulfilment of those orders."[8] Cook argues that this contract is "justified in the mind of the officer because of the moral commitment to the welfare" of the country. However, Cook's main argument in relation to the concept of unlimited liability, drawing on the work of Hackett, is that it is what separates the military from ordinary citizens, in that it is what makes the military as a profession *sui generis* (that is, unique).

This idea that the military is something radically different from a civilian profession, and therefore morally *sui generis*, however, has long been challenged. According to some military sociologists, the contemporary military more closely resembles an ordinary occupation, governed by market principles, where workers exchange their labor for material reward. As early as 1960,

Morris Janowitz[9] observed, "Those who see the military profession as a calling or a unique profession are outnumbered by a greater concentration of individuals for whom the military is just another job . . . for a sizeable majority, no motive for joining the military could be discerned, except that the military was a job."[10] Subsequent empirical work suggests that this trend has continued unabated.

The latter characterization of the military profession, however, seems sharply at odds with the portrait that emerges from conversations with my own officer cadet and midshipmen students in the Australian Defence Force Academy. Something far deeper motivates them than simply securing a job with good pay and perks—although they also seem to be well motivated by the pay and perks. If, as Janowitz asserts, military service has become something akin to an ordinary career, it seems difficult to sustain the argument that it is morally *sui generis*—that the moral norms and principles that apply to ordinary civilians cannot be coherently applied to the military.

The view that the unlimited liability contract constitutes (again, in Hackett's words) "the distinctive feature of the military profession *vis-à-vis* other professions"[11] was again raised in 2011 by Australian Major General C. W. Orme[12] in his review of the Australian profession of arms, and yet again by Stephen Coleman, who argued in 2013 that the nature of the contract also helps to define "what it is to be a member of the military profession."[13] Their affirmation of the ULC's centrality is further reinforced by contemporary military services in many countries, who are now also looking at the concept of unlimited liability in relation to policy surrounding "military culture," and in regard to professional development.

In 2000, for example, the British Army underwent a process of defining the moral component of military effectiveness and fighting power in their publication "Soldiering: The Military Covenant."[14] There, they stated that "all British soldiers share the legal right and duty to fight and if necessary, kill, according to their orders and an unlimited liability to give their lives in so doing. This is the unique nature of soldiering."[15] This claim once again reinforces the idea of the ULC as constituting a fundamental and defining concept at the very core of our understanding of the profession of arms. Similarly, the Canadian Forces Leadership Institute produced a doctrine document in 2009 entitled "Duty with Honour: The Profession of Arms in Canada,"[16] in wich they argued that "[u]nlimited liability is a concept derived strictly from a professional understanding of the miltary function."[17] The Canadian understanding extended yet further, arguing that the ULC is "integral to the military ethos, and lies at the heart of the military professional's understanding of duty."[18]

While using the ULC as a foundation to understand duty and service, however, the Candian and British publications did not define precisely what "unlimited liability" actually is. Instead, the concept appears to have been deliberately left vague or nonexistent. Patrick Mileham,[19] a frequent advisor and consultant to the British Army, provides greater specificity to the debate, holding that even though military leaders are endowed with the powers of coercion, Hackett believed all along that there were, in fact, *limits* to the unlimited liability concept. In the spirit of specifying what these limits of ULC were, Mileham proposed that military officers have to have fiduciary roles over those they command, and that officers have a duty to exhibit what he termed "officership," for which fiduciary trust is the central concept.[20]

There is thus nothing like agreement, clarity, or common consensus on just what the unlimited liability contract (or "commitment," as I prefer to call it) either means, or strictly entails. The proceeding discussion provides sufficient detail, however, to examine the implications of the ULC for serving military personnel, one of the most unusual being the approach (until comparatively recently) of military organizations toward the provision of medical care, and even the conduct of medical experiments.

II. What Unlimited Liability Might Reasonably Entail in Practice

There are many activities that military service personnel reasonably can and should commit to when they decide to join the military. It is not unreasonable to expect that by signing up to join the military, one will be expected to take part in regular military training, field exercises, physical training sessions and endurance sessions (designed to test or further develop one's physical and mental limits), and other routine interventions (such as regular inspection of one's uniform or living quarters). One can also reasonably be expected to be deployed overseas to potentially dangerous situations (thus putting one's life at risk), and, of course, expect to be ordered to attack and kill "the enemy."

Military service personnel are often surprised to discover that there are a number of other activities in which they are compelled to participate. On the whole, ordinary citizens would not be compelled to participate in such activities. For example, members of the Australian Defence Force are not permitted to refuse medical treatment, and on the whole do not get to choose who provides that medical treatment. This lack of choice of healthcare provider is usually not a problem for routine medical treatment. For the treatment of illnesses that are more problematic or controversial (such as mental health issues), however, this means that military personnel cannot choose who provides their medical treatment nor, at times, can they exercise full control over the course of that treatment, even if they object on religious or ideological grounds.

Discovering that they do not have this right to choose medical treatment can come as a shock to serving military personnel. One of the most controversial consequences of not being able to refuse medical treatment is that military personnel may thereby become vulnerable to being used in medical experimentation. During World War II, various military institutions conducted medical experimentation on civilians, captured enemy soldiers, and their own military personnel. The U.S. Senate Committee on Veterans' Affairs found in 1994 that U.S. military personnel were exposed to experimental drugs and vaccines (especially during Gulf War I), and that "Army regulations exempt informed consent for volunteers in some types of military research." [21] The VA report found that military personnel were occasionally subjects of medical experimentation involving the use of medications and vaccines intended to counter the effects of biological or chemical weapons. Quite frequently, this experimentation was done without either requiring or obtaining the consent of the personnel affected. It also appears that this research was done largely without those personnel even knowing that they were the subject of research, to the point where military personnel were often not told what medications they were being ordered to take or to have injected. This means that they were often being experimented upon not only without their consent, but without even their awareness. Furthermore, the senate report found that "participation in military research is rarely included in military medical records, making it impossible to support a veteran's claim for service-connected disabilities from military medical research."[22]

Suppose that military service personnel who are forced to take part in medical experimentation, either against their will or without their knowledge and consent, then suffer injury or illness as a consequence. They might reasonably ask themselves the question, "Did I really sign up for *this*?" Military personnel are often driven by a duty to serve and protect their country. In their mind, this means to protect their fellow citizens from armed attack by some enemy. It seems highly unlikely to suggest that these personnel also imagined being used as "lab rats." It seems difficult to link such experimentation to the defense of their country, especially if they are not given critical information about the experiments and their purpose. Simply using military personnel as subjects for medical experiments, merely because they constitute a healthy, fit, conveniently available, and forcibly compliant young cohort, certainly does not provide adequate moral justification for withholding the customary right of informed consent to such involvement.

To be sure: the members of other professions are sometimes exposed to similar occupational risks, and, like military personnel, may also be asked (and even required) to take part in activities that are not usually imposed upon ordinary citizens. One occupation that closely resembles the military with respect to their "unlimited liability" in this regard is that of the police officer.

Members of police forces are routinely exposed to situations that put them at a dramatically increased risk of injury or death. Quite often (as in South Africa, or in major U.S. cities), the risk imposed upon them is equal to, or even greater than, that imposed upon military personnel. At times, the duties expected of police entail that officers are not only subject to increased risk of harm to themselves, but (unlike ordinary citizens) that they are also authorized to use lethal force, and to kill people. Police are likewise under the command of their superiors, and are expected, like military personnel, to follow orders. Unlike military personnel, however, they are not under any obligation to follow orders without question that might put them in extreme danger. Significantly, if a police officer does not like, let alone sharply disagrees with, the orders that they are being given or the expectations of risk to which they are held, they can simply resign. This is not an option routinely available to serving military personnel, who may only resign prior to the expiration of their period of enlistment under very restricted circumstances, and almost never in the midst of an altercation or armed conflict.

In contrast to police, then, who have the option of refusing orders, military personnel seem to be in a position in which they are unable to refuse any orders, *unless those orders are manifestly illegal*. Thus, even if an order is suicidal, or manifestly unjust, if that order is nonetheless legal, then a military member is normally expected to obey it. This contrast between the two occupations then raises the question of what intrinsically makes a serving military member different not only from an "ordinary citizen," but even from persons otherwise reasonably thought to be serving in a similar "unlimited liability" occupation, such as a police officer. What exactly is it that renders it acceptable for a police officer to refuse an order that might subject that individual to grave risk, but not acceptable for a military member to do likewise? Surely it must seem as if the difference is the nature or the degree of liability to risk that finally characterizes both occupations, and to which the policeman or woman may hypothetically withhold consent, while military personnel apparently may not. If so, this would lend credence to the claim that the nature of "unlimited liability" in this and the earlier instances discussed uniquely defines the military profession, and sets it apart not only from the ordinary citizen, but from other risky and dangerous occupations and professions. But is this difference a reasonable—and, more importantly, a morally justifiable difference? Or, alternatively, does it entail anything like the broadly unlimited exposure to risk of many kinds, which has sometimes been assumed to follow from the ULC (as in the case of medical care and experimentation)?

III. Are There Limits to "Unlimited" Liability?

As indicated above, when military personnel are asked to go above and beyond what they believe to be their duty (in regard to medical experimentation, for example, or when deployed for what passes almost certainly as a "suicide mission"), they might reasonably ask themselves: "Is this what I signed up for?"[23] The actual contract signed by new military recruits is very vague. In the U.S., for example, one finds statements such as: "I will be . . . required upon order to serve in combat or other hazardous situations,"[24] while in Australia, the recruit may note: "I may be required to perform combat or combat related duties or peacekeeping services during my service."[25] These vague definitions of service can have potentially life-threatening or life-altering consequences. The actual contract itself, as a formal, legal document, is unlike any contract signed by a potential civilian employee. Police officers and members of other high-risk

occupations, for example, are not asked to sign a contract that has such sweeping consequences on their lives. In addition, they are generally protected by much more stringent occupational health and safety regulations governing their working environment.[26]

When one signs a contract for an offer of employment, one is normally expected to read the contract carefully, in order to assure that the signer agrees to all the terms and conditions of employment. When military personnel take their oath of office, or formally sign an actual contract signifying an offer of employment with the military, by contrast, they are unable in principle to agree in advance to all the terms and conditions of their employment. The actual terms are vague in nature, impossible in principle to anticipate or state with any kind of clarity, and this very fact of inherent vagueness is cloaked in, or excused by the traditional notion of "unlimited liability" as a fundamental and defining feature of military service itself. This vague and far-reaching understanding of their underlying commitment to national service makes it much easier for the military, as an organization, to make full and indiscriminate use of their workforce in response to changing operational needs, without consideration of, or regard for, any concrete conception of rights and duties that a soldier might properly think himself or herself to have. This renders it impossible in fact for any given individual to know or understand what they are agreeing to, and leads their "employers" to consider each and every conscript or recruit implicitly as a kind of "standing reserve," ready and available for whatever duties the organization may see fit to assign them (often without regard either to inherent risk or basic human rights). At the very least, the traditional conception of unlimited liability raises profound questions about the nature of informed consent in military service, which one might otherwise think to be a fundamental tenant of an "all-volunteer" military force.

In the U.S. at least, one area that stands out as being manifestly unique regarding the terms of employment for military service personnel is that they are unable to sue their "employer" (that is, the U.S. Department of Defense) if they are injured or killed, even if such injury can be attributed to their employer's negligence. This curtailment of a legal right to sue stems from what is known as the "Feres Doctrine."

In 1950, the U.S. Supreme Court issued a combined ruling that resulted from its consideration of three separate but similar cases.[27] In the actual Feres case itself, the estate of 1st Lt. Rudolph J. Feres sued the Department of Defense for negligent death resulting from an army barracks fire. A second suit, labeled the Jefferson suit, alleged grievous medical negligence: a soldier was obliged to have a towel surgically removed from his stomach that had been left there following previous abdominal surgery administered by military surgeons. Finally, the court ruling also encompassed the so-called Griggs case, brought by the estate of Lt. Colonel Dudley R. Griggs, who had also died allegedly as a result of military medical negligence.

The Supreme Court ruling, now known as "the Feres Doctrine," was largely based on an underlying concern, that allowing individual military personnel to sue the government for injury or death, even due to negligence, might "undermine good order and discipline in the military."[28] This curtailment of the right to sue has then and since been taken to apply not only to events that occur during a time of combat (when it might be argued that the threshold for occupational health and safety concerns is much lower), but even during the entire time of a military service member's period of enlistment. This doctrine effectively bans all claims against the U.S. Department of Defense for injury or death, no matter what the cause or origin, for the entire period of service for military personnel.

This ruling effectively relegates members of the military (at least in the U.S.) to the status of "second-class citizens" in the eyes of the law. Alexander Hattimer, reviewing the Feres Doctrine in 2012 in relation to a negligent death suit filed against the Department of Navy, objected that "the United States military can continue to mistreat soldiers and sailors with almost complete

immunity from civil suits."[29] While one might plausibly argue that, at least during times of war or supreme emergency, there are grounds for believing that military service members must sacrifice some of their rights in order to protect their country as a whole, it seems difficult to argue that, in times of peace, the obligations of military service remain just as onerous, especially when the resulting curtailing of the individual rights of military personnel seem suspiciously to have to do more with economic concerns than with "maintaining good order and discipline" in the military. It seems that it is economically much more advantageous to have military members obliged to perform any task (even if that task is not central to the role of the military, such as using military personnel for medical experimentation) and be immune from any consequence (such as being sued for negligent practices or death), and that this is the guiding factor in the curtailment of the rights of military personnel, rather than any valid concerns regarding military necessity.

The situation in the U.S. stands in contrast to that in Britain, where, in 2013, the Supreme Court ruled that families of soldiers killed in Iraq could sue the Ministry of Defence (MoD) for damages, under the European Convention on Human Rights. Article 2 of that convention imposes a duty on authorities (in this case, the Army) to exercise due care to protect the individual's right to life.[30] This landmark British case pertained to military personnel who were killed while driving poorly armored Land Rovers, as well as others who were killed or injured in a "friendly fire" incident. The effect of this case has been that families and military members are now allowed to sue for compensation, and to allow families and military members to lobby for better equipment and training as a part of that compensation. The MoD argued in their defense that there was "combat immunity where troops in action were concerned, and that it was not fair, just or reasonable to impose a duty of care on the MoD when soldiers were on the battlefield."[31] The Supreme Court of Great Britain, however, did not find that this was a compelling argument for absolving the MoD of all consequences stemming from negligence. Family members, and their representing counsel, had argued that it was not appropriate to "treat soldiers as sub-human with no rights."[32] On the one hand, this ruling specifically addresses consequences stemming from negligence, thus limiting its scope. However, this ruling does relate to events that occur even during combat, and not just in training or during ordinary operations in the U.K. Hence, it holds broad significance for protecting the welfare and rights of individual personnel in the U.K. military services.

The effect of this ruling likely will be that the Ministry of Defence will deem itself to have a more wide-ranging duty of care to military members, not just during peacetime, but also during combat operations. This has far-reaching implications for the underlying traditional moral concept of the "unlimited liability contract." This ruling specifically calls into question the reigning traditions that previously permitted the military hierarchy to order military members to take part in any military action, even those deemed tantamount to suicide missions, for example, as well as orders to participate in events such as experimental medical trials. This ruling casts into serious doubt the traditional idea that military members surrender most or even all of their individual rights merely as a consequence of their voluntarily entering military service.

For such reasons, and given that this ruling is only recent, it seems possible that the U.K. Ministry of Defence will challenge it. Current U.K. Defence Secretary Phillip Hammond has stated there are "wider implications of this judgment, which could ultimately make it more difficult for our troops to carry out operations, and potentially throws open a wide range of military decisions to the uncertainty of litigation. We will continue to make this point in future legal proceedings, as it can't be right that troops on operations have to put the European Convention on Human Rights ahead of what is operationally vital to protect our national security."[33]

The underlying legal reasoning in the earlier Feres Doctrine seemed to be that military personnel surrender certain rights merely by virtue of their military service. I have tried to connect such legal reasoning to an underlying moral tradition, that of the implied doctrine of unlimited liability of military service personnel to risk of harm, injury, or death. Obviously, the Feres Doctrine and the recent ruling by the U.K. Supreme Court apply to different legal jurisdictions, so it is unclear how such rulings will affect the vague but widely held moral conception of military service under the ULC. Clearly, however, the recent criticisms of the Feres Doctrine in the U.S., combined with the very different legal findings in the recent U.K. Supreme Court rulings, bear significantly on our general understanding of the moral status of soldiers and their rights. It is difficult to see how the ULC can any longer be unreflectively invoked to override the rights of military service personnel, whether in the U.K. or even in the U.S. Surely there is no obvious or morally discernable difference between the military service personnel of each country, regarding either their activities or their relationship to their governments or to their status otherwise as ordinary citizens. The use of military personnel in medical experimentation, especially outside of framework of war, seems a clear-cut example of an abuse of the ULC, at least unless such experimentation could be directly related to the essential functioning of the military itself, and that genuine and fully voluntary informed consent of military personnel were obtained in advance for participation in such experiments. Rather obviously, in most other respects, the ULC seems to be, finally, a vague and morally inadequate conception to inform military responsibility and institutional accountability even during combat, let alone during normal institutional and organizational functioning in times of peace. In lieu of the traditional unreflective, and somewhat pompous, invocation of this empty doctrine, my argument has been finally that there needs to be more robust and careful attention paid to the individual rights of military personnel, and certainly a more compelling case made than can be found in the ULC for exigencies that might occasionally justify setting those rights aside, let alone exempting military commanders and military organizations themselves from any accountability for doing so.

Notes

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4. James M. Dubik, "Human rights, command responsibility, and Walzer's just war theory," *Philosophy and Public Affairs* 11, no. 4 (1982): 354–371, pp. 361–362.
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7. Ibid.: 366.
8. Martin L. Cook, *The Moral Warrior* (Albany, NY: State University of New York Press, 2004): 74.
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11. John Winthrop Hackett, *The Profession of Arms* (Washington, DC: U.S. Army Center for Military History, 1986).
12. M. C. W. Orme, *Beyond Compliance: Professionalism, Trust and Capability in the Australian Profession of Arms*, Report of the ADF Personal Conduct Review (Canberra: Australian Defence Force, 2011).
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16. "Duty with honour: The profession of arms in Canada" (Chief of Defence Staff, C. D. A., 2009): www.cda-acd.forces.gc.ca/cfli-ilfc.
17. Ibid.: 4.
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19. Patrick Mileham, "Unlimited liability and the military covenant," *Journal of Military Ethics* 9, no. 1 (2010): 23–40.
20. Patrick Mileham, "Risk, liability and fiduciary relationships in the profession of arms," *Fort Leavenworth Ethics Symposium—Applying the Professional Military Ethic Across the Spectrum of Operations*, Eds. M. H. Wiggins & C. M. L. Dabeck (Fort Leavenworth, KS: Command and General Staff College Press, 2011): 145–158.
21. *Is Military Research Hazardous to Veterans' Health?* U.S. Senate Committee on Veteran's Affairs (Washington, DC: United States Senate, 1994).
22. Ibid.
23. This question was often raised in similar forms with respect to armed humanitarian military operations, and is discussed in that context in G. R. Lucas, "Ethical issues in the use of military force for humanitarian intervention," in G. R. Lucas & A. C. Zinni, *Perspectives on Humanitarian Intervention* (Berkeley, CA: Institute for Intergovernmental Studies/Public Policy Press, 2001): Chapter 3.
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THE ETHICS OF THE "DON'T ASK, DON'T TELL" POLICY AND MILITARY READINESS

Aaron Belkin

"Don't Ask, Don't Tell" (DADT) was a controversial policy enacted by the U.S. Congress to apply to U.S. military personnel early in the presidential administration of William J. Clinton (1993). From the beginning, it was a controversial compromise, which proved to have enormous unintended consequences on the lives and morale of those principally affected by it.[1]

On the one hand, DADT ended the outright ban against "homosexuals" serving in the military. That earlier, explicit statutory ban had been in existence since World War II,[2] and had the effect of altogether excluding individuals who were gay or lesbian from enlisting for service in any of the branches of American military forces. On the other hand, however, DADT itself still required that such individuals conceal their identity and sexual orientation. Public disclosure, whether voluntary or inadvertent, would oblige active-duty personnel who were thus publicly disclosed or known to be gay or lesbian to resign from military service, or to be discharged. A policy of outright exclusion had been replaced with a policy of secrecy, stealth, and involuntary deception.

The policy, over time, was found to have deleterious effects on those living under it, ranging from fear of disclosure, to shame and embarrassment for "living a lie," and having to conceal their identities from coworkers. Opponents of the newer policy found it ironic that what had begun as an effort to grant greater rights and latitude to the victims of the old policy of discrimination and exclusion, now demanded instead that these same victims, in effect, engage in professional malfeasance (lying and deliberate deception of superiors and fellow personnel) in order to remain in compliance with the new policy. Throughout its duration, there were, accordingly, numerous calls by senior military leaders to appeal DADT and replace it with a more just and professionally consistent policy.[3]

As a result, in 2010, with the support of the top military leadership, Congress voted to repeal "Don't Ask, Don't Tell" (DADT), and the new policy of open service took effect on September 20, 2011. Since that date, lesbian, gay, and bisexual (LGBT) Americans have been allowed to serve openly in the U.S. military.

I. The "Unit Cohesion" Argument and the Need for Concrete Evidence

The move to repeal the measure faced strong public opposition. Preservation of combat effectiveness and unit cohesion had been chief among the original reasons for enacting DADT itself as a compromise. Thus, prior to its repeal, many observers objected that allowing gays or lesbians to serve openly in the military would harm the services' readiness for combat. In March 2009, for example, 1,167 retired generals and admirals released a statement claiming that the repeal of DADT "would undermine recruiting and retention, impact leadership at all levels, have adverse effects on the willingness of parents who lend their sons and daughters to military service, and eventually break the All-Volunteer Force."[4] Such forecasts, should they come true, would prove devastating to the armed forces. Fear of these negative consequences thus seemed to constitute a valid reason for opposing any further reform.

The moral dilemma generated by the policy seemed quite clear at the time: whether to continue to degrade the dignity and rights of gays and lesbians engaged in the service and defense of their country, or whether (allegedly) to do irreparable damage to the morale and readiness of the combat services themselves through repeal of DADT. The only evidence regarding such impact, one way or another, consisted in reports after the fact by culturally and sociologically similar allied military forces (for example, U.K. Ministry of Defense, Canadian Defence Force, Israeli Defense Force) on the impact (or, in most cases, the decided lack thereof) of their own repeal of similar legislation on their nations' combat readiness and morale. A colleague and I, for example, undertook such a study a decade earlier on the impact of permitting openly gay and lesbian personnel to serve in the IDF.[5] Under the auspices of Peter W. Singer's "21st Century Initiative" at the Brookings Institution, I was further invited to moderate the presentation and discussion of similar studies of the impact of the repeal of the gay ban on other allied forces in May 2010.[6]

Meanwhile, at the behest of the sitting Secretary of Defense, social scientists at the RAND Corporation had undertaken a study of the attitudes of U.S. Veterans of the wars in Iraq and Afghanistan concerning the likely impact of a repeal of DADT on U.S. combat readiness.[7] These various studies uniformly indicated that the fears over morale, unit cohesion, and combat readiness were greatly exaggerated. Critics of the comparative studies of experiences of allied military services nonetheless argued that factors such as size or cultural composition of the U.S. military rendered such comparisons inapt. Hence, what might, in fact, result in the U.S. military services following a repeal of DADT required a scientific study that could only be definitively conducted in the aftermath of such a repeal.

Accordingly, following the official repeal of DADT in the U.S. in September 2011, I convened an interdisciplinary and multi-institutional research team to conduct studies of the impact of DADT repeal during the half-year period starting six months after repeal, and concluding at the one-year mark.[8] That research team sought to maximize the likelihood of identifying evidence of damage caused by repeal by pursuing multiple methodologies, including in-depth interviews of experts, activists, and practitioners ($n = 30$), and of service members ($n = 62$), survey research, on-site field observation of four military units, content analysis of media stories ($n = 462$), pre-test/post-test quasi-experimentation, and longitudinal analysis of secondary data. We made a particularly vigorous effort to solicit the views of opponents of DADT repeal by seeking input from 553 anti-repeal retired generals and admirals and 22 well-known activists and expert opponents of repeal, as well as senior staff members from nine anti-repeal and veterans service organizations. Preliminary results of this study were first reported in the journal *Armed Forces and Society* in 2013, while a more detailed account of the results can be found in the extended online version of that initial study.[9]

Our conclusion after the first year of repeal, based on all of the evidence available to us, was, in sum, that DADT repeal had no overall negative impact on military readiness or its component dimensions, including cohesion, recruitment, retention, assaults, harassment, or morale. Although we identified a few downsides that followed from the policy change, we identified upsides as well, and in no case did negative consequences outweigh benefits. If anything, DADT repeal appeared, then and since, to have had a beneficial impact on the military's ability to pursue its mission.

II. Military Readiness

While the nearly two-decade public dialogue over DADT included debates over a wide variety of issues, military readiness—broadly conceived—was the central, underlying concern of almost every aspect of the discussion. Despite such concerns, the evidence to date suggests that DADT repeal has not undermined readiness. Indeed, none of the individual opponents or watchdog organizations contacted during the study referenced above identified any evidence suggesting that DADT repeal has undermined readiness. None of the heterosexual service members who opposed or who continue to oppose repeal and who were interviewed or surveyed in that study reported any evidence indicating that the new policy has compromised readiness. Even a well-known opponent of DADT repeal acknowledged that the new policy has not compromised military readiness. According to Elaine Donnelly: "No one predicted anything would happen immediately, so that prediction is true."[10]

Among the retired generals and admirals who predicted that repeal would "break the All-Volunteer Force," one told the interviewers that "I believe evidence is growing that substantiates my initial concerns," but he declined to elaborate or provide details. None of the others reported any evidence suggesting that the new policy has compromised readiness. One retired lieutenant general mentioned that he "had not heard anything or received anything from anyone about having any problems." A retired one-star general reported that a friend's son who was a company commander in Afghanistan at the time told him, "I don't pay any attention to it. It's not really an issue." Another said that there was no indication of any major impact as of yet: "The general perception is that it seems to be working." Yet another said that he remained opposed to repeal because "homosexual behavior is abnormal," but he was "not aware of anything positive or negative that has happened."[11]

None of the heterosexual service members interviewed or surveyed in the study offered any evidence suggesting that repeal had undermined military readiness. An Army Ranger reported that repeal "didn't change anything . . . We've got a guy in the unit who is gay. We've been working together for years and everyone knew, but no one ever cared. For us it's all about whether or not you're good at your job . . . it's all about quiet professionalism, not about your sexual orientation." An Air Force pilot said he could scarcely assess the impact of repeal because "I know that it has been repealed, but it just hasn't affected me in any way, shape or form . . . I guess I would have to say it is a success. I say that because I honestly haven't noticed any difference at all from before the repeal to now." And a heterosexual naval surface warfare commander said, "I kind of look at it like a nonevent. It was like asking, 'did the sun rise this morning?' It went pretty smoothly, like driving over a flat road, you don't even notice a ripple."[12]

Even heterosexual service members who opposed repeal subsequently acknowledged that the new policy had not undermined readiness. According to one Army National Guard sergeant who had opposed open service, there "was not much of a transition, it's not like people come in with rainbow flags or anything . . . the funny thing about the military is, people come in and do a job. That's all there is to it." A Navy SEAL who opposed repeal was nonetheless

adamant that the military is a professional force, and that even those who do not agree with particular policies will follow them because that is what they are trained to do: "We're professional; we do what we've done in the past, make the work environment professional."[13]

None of the experts who were interviewed knew of any evidence suggesting that DADT repeal has harmed military readiness. For example, Dr. Jay Goodwin, a principal author of the Pentagon's 2010 report on DADT repeal, reported that "in terms of negative impact, I have not heard of any." As President of the Inter-University Seminar on Armed Forces and Society, John Allen Williams communicates regularly with numerous scholars and experts who study civil–military relations. Asked during our study about the implementation of DADT repeal, he said that it "appeared to be very smooth and very well-done" and that he was not aware of any negative consequences. David Kaiser, a professor at the Naval War College, said that "Today's field-grade officers know the troops don't care, for the most part." He added that "I haven't seen any indication that anyone's very worried about it. I haven't seen any indication that things are going badly." And David Levy, an Air Force Academy professor, commented during his interview that "I knew this was not going to be an issue . . . but I was somewhat amazed about just how much of a nonissue it was. There was virtually no talk about it whatsoever." He said it was "almost eerie" how little attention the change had garnered. "I just don't see anyone talking about this, and I check with a lot of people about it, in classrooms, and elsewhere," he said.[14]

Political and military leaders seem largely in the aftermath to have concluded that DADT repeal has not compromised readiness. In February 2012, for example, President Obama referred to repeal as a nonevent and said that while some warned that ending the policy would be a "huge, ugly issue," the result was that "nothing's happened." Leon Panetta, toward the end of his tenure as Defense Secretary in May 2012, reported that, based on an unreleased Pentagon report that assessed the first months of the new policy, repeal was "going very well . . . It's not impacting on readiness." Former Secretary Panetta then added, "Very frankly, the military has moved beyond." General Martin Dempsey, then newly appointed as Chairman of the Joint Chiefs of Staff, told reporters in May 2012 that "I have not found any negative effect on good order and discipline." He asked, "What were we afraid of?" and answered that "We didn't know" how repeal would go, but ultimately "it worked out well." Three months after the new policy of open service went into effect, the service chief who was most outspoken against repeal, Marine Corps Commandant James Amos, said he was "very pleased with how it has gone." According to the *Washington Times*, Amos "said he heard little from Marines about serving with openly gay troops." In March 2012, Pentagon spokeswoman Eileen Lainez confirmed that the new policy is "proceeding smoothly across the Department of Defense."[15]

Interviewers designed a pre-test/post-test quasi-experiment of nonequivalent groups as an independent means for assessing whether repeal had undermined readiness. In the case at hand, a group of service members (n = 80) ranked their unit's readiness on a scale of 1 to 10 two months before DADT repeal, and then another group of service members (n = 120) ranked their unit's readiness six months after repeal. By comparing the pre- and post-repeal average reported levels of readiness, our research group was able to assess whether the new policy of open service was associated with any change. To avoid priming the subjects' attitudes about repeal, our survey did not mention DADT or sexual orientation. The troops did not report any significant change in readiness after DADT repeal: the average level of unit readiness for the pre-repeal group was 8.10 while the average post-repeal ranking was 8.11.[16]

Separately, in response to a January 2012 *Military Times* survey, 4.5 percent of 733 active-duty troops and 59 reservists polled said that, after DADT repeal, their unit was negatively impacted when someone disclosed being gay or bisexual or when an openly gay or bisexual

person joined their unit.[17] That said, a comparison of 2011 pre-repeal and 2012 post-repeal *Military Times* survey data showed that service members reported approximately the same level of military readiness after DADT repeal as before it. On all four components of readiness measured by *Military Times* surveys (quality of training, officers and enlisted leaders, and whether today's service members are the best ever), the 2012 post-repeal data indicated approximately the same levels as the 2011 pre-repeal data.[18] Had the repeal of DADT compromised overall readiness in any discernible way, it would then have been difficult to understand why, in every dimension of readiness assessed by the *Military Times* survey, respondents remained stable after the new policy of open service went into effect. One hypothesis our research group advanced at the time was that any remaining claims of unit harm perhaps reflected disapproval of the repeal itself, rather than any concrete evidence of an actual decline in readiness.

Contrary to expectations of a post-repeal decline in readiness, the research undertaken revealed considerable evidence, during open-ended interviews, about ways in which the new policy had actually enhanced the military's ability to pursue its mission. More specifically, both experts and service members reported that repeal had enhanced military readiness in the areas of discipline, command, family readiness, and spirituality.

A Navy pilot, for example, reported about two gay service members who broke a shipboard rule prior to the repeal of DADT. Prior to repeal, their commanding officers were unwilling to bring charges for their relatively low-level transgression, because doing so would have inadvertently resulted in disclosure that the service members implicated were in fact gay. The infraction of which they were guilty was minor and had a very slight penalty associated with it, but the penalty for their being labeled as gay would have been separation from the military. Because the commanders did not believe that the lower infraction was significant enough to warrant discharge, they declined to charge the pair with the lesser infraction. "This put the leadership in an awkward position," explained the pilot, "and the repeal just takes away that extra hurdle and allows commanders to lead better."[19]

III. Components of Military Readiness

1. Unit Cohesion

Unit cohesion refers to bonds of trust among members of a military unit.[20] With two exceptions (two active-duty interviewees expressed concerns about the possibility of a future decline in cohesion), none of the heterosexual troops interviewed during the study offered any evidence suggesting that DADT repeal undermined cohesion. None of the LGBT service members we interviewed or surveyed reported any decline in unit cohesion following the repeal of DADT. Nor did any of the scholarly experts we interviewed know of any evidence suggesting that repeal has undermined cohesion.

Martin Cook, Stockdale Professor of Ethics at the Naval War College, summarized the apparent position of many academic scholars, remarking that arguments stressing possible damage to unit cohesion "were really a smokescreen for other reasons; those were just the only publicly acceptable reasons they [military opponents of the ban] could put forward."[21] One member of our research team observed daily operations of multiple military units, and found no major differences between units that included openly LGBT troops and those that did not. Finally, top political and military leaders themselves have since confirmed that DADT repeal did not prompt any noticeable or measurable decline in cohesion. In February 2012, President Obama said of DADT repeal that "there hasn't been any notion of erosion in unit cohesion." Former Defense Secretary Panetta told the press in May 2012 that repeal is "not impacting on

unit cohesion." Aside from the one retired general who, as noted in a previous section, said that "I believe evidence is growing that substantiates my initial concerns," none of the opponents of DADT repeal, including activists, watchdog organizations, or retired generals, identified any evidence contradicting senior leadership's contention that repeal has not undermined unit cohesion.[22]

Although the preponderance of evidence suggests that repeal has not undermined cohesion, our study one year following DADT repeal did identify data indicating that the new policy of open service has promoted greater honesty, which, in turn, has enabled the troops to develop tighter bonds of trust. Published and ongoing longitudinal research at West Point confirms that both military academy and ROTC cadets are increasingly tolerant of gays and lesbians in the military, even more so following repeal.[23] And LGBT troops who participated in our quasi-experiment reported a slight increase in cohesion after DADT repeal: the average level of unit cohesion for the pre-repeal group was 7.18, while the average post-repeal ranking was 7.65, an increase of 6.5 percent.[24] Finally, the interview data collected in 2012 suggested that repeal had promoted greater trust. A heterosexual Marine sergeant reported that "it's been a lot better since we now know with whom we serve. It's all out in the open and now there is no wondering or guessing. We know. And knowledge is power!" He went on to say that "We now get along better and we accept our unit members as they are; we do not beat around the bush or sugarcoat anything. It's a lot better now. [We're all] very equal."[25]

2. Recruitment and Retention

The preponderance of evidence, prior to and following repeal in 2012, suggests that repeal has not had any discernible impact, either positive or negative, on recruitment or retention. Although 8.4 percent of service members participating in the *Military Times* surveys cited above reported that DADT repeal had reduced their likelihood of re-enlisting, a comparison of 2011 pre-repeal and 2012 post-repeal *Military Times* surveys shows that after repeal, service members were just as likely to say that they would remain in the military as they were prior to repeal. In response to a question asking "If you had to decide today, would you re-enlist or—if an officer—extend your commitment?", 70 percent of 2011 respondents answered yes (17 percent no, 14 percent undecided), but 72 percent of 2012 respondents indicated that they would re-enlist (15 percent no, 14 percent undecided). In response to the question "Do you currently plan to remain in the military for at least 20 years and earn a full retirement package?", 84 percent of 2011 respondents answered yes (5 percent no, 11 percent undecided), but 85 percent of 2012 respondents indicated that they would remain (3 percent no, 12 percent undecided). Even though 8.4 percent of 2012 post-repeal *Military Times* survey respondents said that DADT repeal made them less likely to remain in the military, repeal appears to be a minor, if not trivial, factor in their decision-making. If repeal were a significant factor in re-enlistment decisions for 8.4 percent of the force, then it would be hard to understand why, post-repeal, troops were just as likely to say that they would re-enlist as was the case before repeal.

That said, the correlation between re-enlistment intentions and actual re-enlistment is generally low unless intention data are collected shortly before the expiration of terms of service. Hence, it is important to consider actual rates of re-enlistment, rather than subjective intentions alone. In that respect, the military services have successfully met their respective recruitment and retention targets in the years following DADT repeal. According to recruitment and retention numbers released by the Department of Defense on June 29, 2012, more than nine months after DADT repeal went into effect, "All four active services met or exceeded their numerical accession goals for fiscal 2012, through May."

The Navy, Marine Corps, and Air Force achieved 100 percent of their goals, while the Army exceeded its goal with an additional 253 recruits, thus reaching 101 percent of its target. In addition, "The Army, Navy, Marine Corps, and Air Force all exhibited strong retention through the eighth month of fiscal 2012." On the reserve side, "five of the six reserve components met or exceeded their numerical accession goals for fiscal 2012, through May." The Army Reserve exceeded its goal, reaching 104 percent of its target, and the Marine Corps Reserve also exceeded its goal at 106 percent of its target. The Navy Reserve, Air Force Reserve and Air National Guard all met their targets at 100 percent. According to the press release, "all reserve components are on target to achieve their fiscal year attrition goals."[26]

While our study formally terminated afterwards, a quick review of DOD figures suggests these successful recruitment trends have continued during FY 2013 and FY 2014 as well.[27] The Army National Guard (ANG) was the only reserve component that did not meet its recruitment target in 2012, reaching only 95 percent of its goal. However, trend data suggest that the shortfall had nothing to do with DADT repeal. The ANG's post-repeal recruitment numbers mirrored its pre-repeal totals, indicating that repeal was not a likely factor in its performance. In FY 2011, the ANG was the only reserve component to fail to meet its goal, achieving 96 percent of its target. I have not updated these figures since, but a spot check indicates, within acceptable margins of variation, all the regular and reserve units of the nation's armed forces have seen no measurable mpact, one way or another, of the DADT repeal on their actual recruitment statistics.

3. Assaults and Harassment

Despite warnings about an increase in assaults, our research at the time did not uncover any evidence suggesting that DADT repeal had led to any discernable increase in violence among service members. A Pentagon spokesperson noted in April 2012, for example, that "[m]ilitary officials say they're unaware of any discipline issues relating to gays serving openly."[28] *American Forces Press Service* reported in March 2012 that, according to then Chief of Naval Operations Admiral Jonathan Greenert, "the U.S. Navy checks the status of the fleet constantly, but there has been no uptick in conduct incidents since the repeal went into effect."[29] Lieutenant Josh Seefried, Co-Director of OutServe, a network of 5,700 active-duty LGBT service members, reported at the time that he had heard of one case in which a possibly gay service member may have been physically attacked following repeal, but that it was unclear whether the victim was in fact gay, or, in any case, whether he was attacked on account of any belief by the attacker that the victim was gay.[30] Service-members Legal Defense Network (SLDN), a well-regarded watchdog organization with nearly two decades of experience monitoring the status of LGBT troops, reported in March 2012 that, since repeal, its staff had received only "a few minor complaints." SLDN staff has since confirmed that the complaints were about implementation issues, not assaults.[31]

In May 2012, the Center for Military Readiness (CMR) released a statement suggesting that DADT repeal has caused an increase in male-male rape among service members. The statement, titled "Early Consequences of Military LGBT Law," cited an April 2012 U.S. Army study that reported an increase in male-male sexual assaults between fiscal year 2006 and fiscal year 2011. Yet the Army collected most of the data for that study over a period of years *prior* to repeal. The repeal itself was implemented on September 20, 2011, just nine days before the end of fiscal year 2011.[32] Thus, the study cited in support of the CMR claim in fact contained almost no data from the period following repeal. No other watchdog organization or individual opponent of DADT repeal has since reported any case of violence attributable to the new policy of open service.

Despite the lack of violence associated with DADT repeal, there were many instances in which service members expressed anti-LGBT sentiment. In response to an open-ended question asking LGBT troops whether they had experienced discrimination after DADT repeal, and, if so, to describe it, 11 percent of respondents mentioned disturbing incidents.[33] While harassment, discrimination, and bias remain problems in the wake of DADT repeal, with the exception of isolated occurrences, our 2012 study found no evidence suggesting that service-wide patterns of harassment followed as a direct consequence of repeal. Sexual orientation-based harassment long predated DADT repeal, so its mere continuance could not itself be attributed to the new policy of open service.[34] And in contrast to the small reports of discrimination, the majority of LGBT service members (72.4 percent) reported during our study that they had actually been well treated following DADT repeal.[35]

Indeed, our research in 2012 found many incidents in which DADT repeal was associated with a leveling off or even a decline in harassment. For example, an enlisted soldier stationed at a military university reported that when DADT was in effect, his unit mates often used degrading, antigay language, almost absentmindedly and with little consequence. After repeal, he reported, "it was kind of a big deal for two weeks," with people wondering what it would mean for people to be openly gay. But after the transition occurred and the initial questions died down, the new attitude seemed to be, "Now that I know someone who is [gay], I'm talking about a real person. I'm not just using abstract insults [but words] that actually mean something."[36]

4. Morale

Morale is a catch-all term that can refer to *esprit de corps*, satisfaction, well-being, and interpersonal adjustment, and that can be used to characterize an individual, a unit, or an entire organization. Despite concerns about a post-repeal decline in morale, the preponderance of evidence indicates that DADT repeal produced no overall change in service-wide morale. All three measures of morale recorded during the 2012 *Military Times* surveys indicated that morale remained constant through the uniformed military service over the period 2011 to 2012, immediately prior to and following DADT repeal. Respondents to the January 2012 post-repeal survey reported approximately the same quality of life, job satisfaction, and willingness to recommend a military career to someone else as respondents to the July/August 2011 pre-repeal survey.[37] And, as discussed earlier, post-repeal respondents were as likely to say that they planned to remain in the military for 20 years and that they would re-enlist if offered the opportunity to do so in 2012, following DADT repeal, as did respondents in the months leading up to repeal.

Although repeal did not produce any net change in service-wide morale, the new policy did lead to a decrease in personal morale for *some* service members, while leading to an *increase* in morale for other individuals. According to a January 2012 *Military Times* survey of 751 heterosexual, active-duty, and mobilized service members, for example, 13.7 percent reported that DADT repeal "had a negative impact on my morale" and 30.6 percent of troops disagreed that "openly homosexual people should be allowed to serve in the military."[38] Although DADT repeal produced a decline in morale for some service members, it led to an increase for others, and the benefits of the policy shift were quite consequential for some troops, both gay and straight. An Army signals analyst reported that "after the repeal, it was as if a huge weight was lifted off my shoulders. It was an invigorating feeling knowing that there was nothing left to hide."[39] A gay enlisted soldier reported that "As far as morale goes, now nobody has to worry about getting kicked out for it, so my morale has gone way up in that aspect."[40]

James Parco, who served in the Air Force for 20 years and taught leadership strategy at the U.S. Air Force Academy and Air Command and Staff College, reported in 2012 that "the fact

that we've actually instilled this new sense of integrity into the service by the repeal of the law has been the biggest impact, but it's completely unobservable unless you actually talk to these individuals who were oppressed one on one. If you ask them, they'll unequivocally tell you that 'absolutely it has fundamentally changed my life, my view of the military, my existence; I just feel like a revived person, something is very, very different.'" Professor Parco added that many LGBT troops in 2012 were surprised about the difference repeal made to them: "Most of the people were shocked that it would actually impact them internally," he said. "Very few realized the kind of internal impact it would have and how they would feel after" the change. "It fundamentally changed their view of how they saw themselves in terms of the organization."[41]

The 5.8 percent of LGBT and heterosexual troops who reported in the 2012 *Military Times* survey that repeal had a positive effect on their morale is less than the 13.7 percent of heterosexuals who reported a decline. The evidence suggested, however, that in most cases of decline, the decrease consisted of only minor disappointment. This did not seem puzzling to researchers at the time, inasmuch as the extensive scholarly literature on the determinants of military morale did not mention the presence or absence of LGBT colleagues.[42] By contrast, for some of those whose morale reportedly improved, a "huge weight was lifted off" their shoulders. And, service-wide, time-series data discussed above indicate that morale overall did not decline as the new policy of open service took effect. Our 2012 post-repeal study thus suggested that repeal had led to an increase in morale for some service members and to a decrease for others, and that because the positive and negative consequences of the policy shift roughly balanced one another, no net service-wide change in morale resulted from repeal.

IV. Conclusion

The 2012 studies of the impact of DADT repeal in the U.S. turned out to be consistent, as predicted, with previous extensive studies of the experience of non-U.S. militaries that have allowed LGBT troops to serve openly. According to those studies, none of the allied militaries that have enacted policies of open service suffered any discernable decline in overall combat readiness, nor degradation of any essential components of readiness, including cohesion, recruitment, retention, assaults, harassment, or morale. Studies in the period leading up to the U.S. repeal were extensively conducted by a wide range of scholars and organizations, including the Pentagon's Comprehensive Review Working Group and the RAND Corporation. Such studies uniformly acknowledged that the Dutch military was the first allied military service to permit LGBT personnel to serve openly in 1974. Ever since, none of the studies has documented any decline in readiness or its component dimensions that could be attributable to the lifting of a ban on LGBT troops within that, or any other, allied military.[43]

In the U.S. case, the success of DADT repeal seemed most likely at the time to be a function of the Pentagon's carefully designed implementation and training process, coupled with four additional factors. *First*, there was no wave of mass disclosures after repeal. In fact, only 19.4 percent of 751 heterosexual service members in the 2012 *Military Times* survey indicated that someone in their unit had subsequently disclosed being LGBT, or that an LGBT service member had afterwards joined their unit.[44] *Second*, LGBT as well as heterosexual troops have continued to emphasize professionalism. A Navy supply officer who deployed on a submarine to Afghanistan in 2012 reported, for example, that "most gay people handled themselves very professionally. You didn't have people running in the streets in tutus and there was no base-wide fanfare."[45] *Third*, prior to the enactment of the new policy, only a small minority of those who opposed repeal felt strongly about the issue. A 2006 *Zogby* poll of 545 troops who had fought in Iraq and Afghanistan found that 72 percent were personally comfortable interacting

with gays, and that of the 20 percent who were uncomfortable, only 5 percent were "very" uncomfortable.[46]

Fourth, and finally, most of the troops who strongly opposed repeal had never knowingly served alongside LGBT peers. Their concerns and objections thus may have been based, in part, on *expectations* of what would occur after repeal, rather than any actual negative experiences. When those who opposed repeal, and who did not know any LGBT peers, finally had a chance to interact openly and knowingly with gays and lesbians following the policy change, attitudes may have shifted in some cases.[47]

The release of our research group's preliminary study in 2012 coincided with the one-year anniversary of the repeal of DADT. Based on the substantial evidence we gathered at that time, we concluded that during the one-year period immediately following, DADT repeal had had no negative impact on overall military readiness or its component parts: unit cohesion, recruitment, retention, assaults, harassment, or morale. While repeal produced a few downsides for some military members—mostly those who personally opposed the policy change—we identified important upsides as well. In no case did negative consequences outweigh advantages. On balance, DADT repeal appeared instead to have slightly enhanced the military's ability to do its job by clearing away unnecessary obstacles to the development of trust and bonding.

Although the story of DADT repeal has continued to unfold over time, it remains the case some two years later that DADT repeal has not had any discernable negative effect on the armed forces, and that predictions of dire consequences were incorrect.

Ethics questions and moral dilemmas usually concern *normative* issues: values, beliefs, practices, traditions, and widely held guiding principles regarding one's duties and responsibilities. In this instance, however, those who were morally opposed to granting increased rights and liberties to LGBT individuals desiring to participate in the defense of their country grounded their opposition in a range of harmful *empirical consequences* that might follow in the wake of granting greater license and acceptance to those of whose lifestyle they disapproved.

As a result, the moral dilemma regarding the respect a society might accord to minorities in its midst turned upon matters of policy that were, in principle, measurable or discernable. Interestingly, the American experience mirrored the cases of allied military services in other countries who faced similar policy questions. In those instances, likewise, opponents of open service couched their moral opposition in terms of dire consequences that would ensue if "undesirables" were allowed to enter military service. Our research following the 2012 change in policy, however, yielded results completely consistent with those obtained earlier in these other nations' military services: namely, the policy change would not, and in fact did not, have any of the dire consequences predicted by opponents.

Thus, no valid reasons, apart from the personal beliefs of individuals within the opposition, can be found to support a continuation of either the initial policy of exclusion, or of the subsequent DADT policy of deliberate (and unprofessional) secrecy, deception, and fear. The revised policies regarding military service by LGBT personnel in the U.S. and in its allied nations now reflect a much more widely held moral norm: namely, those who are otherwise willing to place themselves in harm's way in the service of their nation ought not to be prevented from doing so, merely on account of the unsubstantiated discomfort of an aggrieved, but apparently misinformed, minority.

Notes

1. The American Broadcasting Company (ABC News) maintains an online archive of stories and events surrounding the impact of the policy. See: http://abcnews.go.com/topics/news/issues/dont-ask-dont-tell.htm. Accounts of victims, beginning with the first individuals dismissed from active duty under

the policy, may be found at: www.thedailybeast.com/articles/2010/02/03/the-victims-of-dont-ask-dont-tell.html.

2. An account of the origins and brief history of DADT can be found in *Encyclopedia Brittanica Online*: www.britannica.com/EBchecked/topic/1553878/Dont-Ask-Dont-Tell-DADT. There is no evidence that those enacting the ban against "homosexuals" understood the greater social and psychological complexity of the phenomenon addressed, nor that they were aware of, or also intended either to include or exclude, bisexuals or transgendered persons (for example) from serving in the military. It seems a reasonable surmise, however, that such individuals assumed they were excluded, and would have in fact been excluded as well, had they sought to enlist. This linguistic and conceptual confusion over what is understood or meant by the term "homosexual" continues to vex policymaking even in the wake of the repeal of DADT itself in 2011.
3. For example, see the brief account in passing of those flag officers and political leaders who supported lifting the ban during the decade prior to its repeal, in the discussion by Major General Paul D. Eaton (U.S. Army) of how public opinion is influenced and transformed generally, contained in his chapter in this volume. Such defense officials came, by 2010, to include both the sitting Secretary of Defense Robert Gates, and the former CNO and sitting Chairman of the Joint Chiefs of Staff Admiral Michael Mullen: www.nytimes.com/2010/02/03/us/politics/03military.html?_r=0.
4. These concerns remain unchanged and posted to date on the website Flag & General Officers for the Military: www.flagandgeneralofficersforthemilitary.com/.
5. Aaron Belkin and Melissa Levitt, "Homosexuality and the Israel Defense Forces: Did lifting the gay ban undermine military performance?" *Armed Forces & Society* 27, no. 4 (Summer 2001): 541–565.
6. See "Lessons learned from the service of gays and lesbians in allied militaries": www.brookings.edu/events/2010/05/19-military-service.
7. See: www.americanprogress.org/issues/military/report/2010/03/23/7502/implementing-the-repeal-of-dont-ask-dont-tell-in-the-u-s-armed-forces/.
8. This team included Dr. Morton G. Ender, U.S. Military Academy, Dr. Nathaniel Frank, Ph.D., Columbia University, Dr. Stacie Furia, Ph.D., Palm Center, Dr. George R. Lucas, Ph.D., US Naval Academy/Naval Postgraduate School, Colonel Gary Packard, Jr., Ph.D., U.S. Air Force Academy, Professor Tammy S. Schultz, Ph.D., U.S. Marine Corps War College, Professor Steven M. Samuels, Ph.D., U.S. Air Force Academy, and Professor David R. Segal, Ph.D., University of Maryland.
9. See Aaron Belkin et al., "Readiness and DADT repeal: Has the new policy of open service undermined the military?" *Armed Forces & Society* 39, no. 4 (October 2013): 597–601. For the extended version of that study, see: www.palmcenter.org/files/One%20Year%20Out_0.pdf. My current account of the matter in this chapter is derived almost wholly from that report.
10. Cid Standifer, "Survey: DADT repeal has less impact than expected," *Military Times* (March 12, 2012): www.armytimes.com/article/20120312/NEWS/203120318/Survey-DADT-repeal-has-less-impact-than-expected.
11. Statement by General (ret.), May 1, 2012; Interview with Lieutenant General (ret.), May 4, 2012; Interview with Brigadier General (ret.), May 15, 2012; Interview with Brigadier General (ret.), May 1, 2012; Interview with Major General (ret.), May 4, 2012.
12. Interview #54, April 11, 2012; Interview #42, March 27, 2012; Interview #55, April 13, 2012; Interview #38, March 2, 2012; Interview #51, April 9, 2012; Interview #49, April 13, 2012.
13. Interview #38, March 2, 2012; Interview #50, April 11, 2012.
14. Interview with Dr. Jay Goodwin, April 2, 2012; Interview with Professor John Allen Williams, April 3, 2012; Interview with Professor David Kaiser, March 29, 2012; Interview with Professor David Levy, March 22, 2012. The 2010 Pentagon report on DADT is U.S. Department of Defense, *Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell"* (November 30, 2010): www.defense.gov/home/features/2010/0610_dadt/DADTReport_FINAL_20101130(secure-hires).pdf.
15. A sample of such reports at that time includes: Dave Boyer, "Public 'readily accepts' rights for gays, Obama tells donors," *Washington Times* (February 10, 2012); Matthew Hay Brown, "A smooth turn from 'Don't Ask, Don't Tell,'" *Baltimore Sun* (May 20, 2012); Anna Mulrine, "Panetta: No hitches in military's repeal of 'Don't Ask, Don't Tell,'" *Christian Science Monitor* (May 10, 2012); "'Don't Ask, Don't Tell' repeal going well," *UPI* (March 20, 2012).
16. The research team administered its survey exclusively to active-duty members of OutServe. While it would be unsurprising if units composed exclusively of heterosexual troops maintained a steady rate of readiness after repeal, units including openly LGBT troops should have been the most likely to

suffer a drop in readiness after the policy change. That said, nonequivalent group designs are vulnerable to the criticism that observed differences are the result of the non-equivalence, not the intervention.

17. Of 792 active-duty service members and mobilized reservists who completed the survey, 150 (18.9 percent) indicated that since DADT was repealed, someone in their unit disclosed being gay or bisexual. Of those, 32 (21.3 percent) said that the disclosure had a negative impact on their units. In addition, 36 (4.5 percent) reported that since DADT was repealed, an openly gay or bisexual person joined their unit. Of those, 12 (33.3 percent) said that the newcomer had a negative impact on their unit. There was some overlap, in that eight respondents reported a negative impact from a disclosure as well as from an LGBT newcomer. Therefore, a total of 36 (32 + 12 – 8) discrete service members reported a negative impact from either a disclosure or from an LGBT newcomer. Thus, 36 / 792 = 4.5 percent of respondents indicated that after DADT repeal, their unit was negatively impacted when someone disclosed being gay or bisexual or when an openly gay or bisexual person joined their unit. The results of these annual polls are published in the *Military Times*: http://militarytimes.com/projects/polls/.
18. In response to a question asking "How would you rate your unit's level of training for its wartime mission?" 57 percent of 2011 respondents answered that they were very well trained or well trained (29 percent adequate, 10 percent poor or very poor, 4 percent not sure), but 62 percent of 2012 respondents said that they were very well trained or well trained (27 percent adequate, 7 percent poor or very poor, 4 percent not sure). In response to a question about the overall quality of military officers, 60 percent of 2011 respondents answered that they were excellent or good (26 percent average, 14 percent fair or poor), but 63 percent of 2012 respondents said that they were excellent or good (24 percent average, 13 percent fair or poor). In response to a question about the overall quality of enlisted leaders in the military, 62 percent of 2011 respondents answered that they were excellent or good (25 percent average, 13 percent fair or poor), but 64 percent of 2012 respondents said that they were excellent or good (24 percent average, 12 percent fair or poor). In response to a question asking if "today's service members are better than they have ever been," 61 percent of 2011 respondents agreed or strongly agreed (28 percent neutral, 21 percent disagree or strongly disagree), but 52 percent of 2012 respondents agreed or strongly agreed (27 percent neutral, 21 percent disagree or strongly disagree). For complete 2011 and 2012 survey results, see "Military Times Poll": http://projects.militarytimes.com/polls/.
19. Interview #55, April 13, 2012.
20. Robert MacCoun, Elizabeth Kier, and Aaron Belkin, "Does social cohesion determine motivation in combat? An old question with an old answer,"*Armed Forces & Society* 32, no. 4 (2006): 646–654.
21. Boyer, "Public 'readily accepts' rights for gays, Obama tells donors"; Brown, "A Smooth Turn from 'Don't Ask, Don't Tell,'" (May 20, 2012); interview with Martin L. Cook (March 22, 2012).
22. Chris Johnson, "Obama raises $1.4 million at D.C. LGBT fundraiser," *Washington Blade* (February 9, 2012); Karen Parrish, "Report shows success of 'Don't Ask, Don't Tell' repeal," *American Forces Press Service* (May 10, 2012).
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24. Significance: $p < .01$.
25. Respondent #4, Palm Center survey. Active Duty Marine Sergeant, MOS: Light Attack Helicopter Squadron.
26. U.S. Department of Defense, "DOD announces recruiting and retention numbers for fiscal 2012, through May," June 29, 2012: www.defense.gov/releases/release.aspx?releaseid=15418.
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32. Headquarters, Department of the Army, *2020 Generating Health & Discipline in the Force Ahead of the Strategic Reset; Report 2012* (2012): 122: www.armyg1.army.mil/hr/suicide/docs/Army_2020_Generating_Health_and_Discipline_in_the_Force_Report_2012_GOLD_BOOK.pdf.
33. The question as posed was: "Since DADT has been repealed, have you experienced, from your commander or other service member, any forms of discrimination on the basis of sexual orientation? Please explain." OutServe administered the survey in December 2011, and 327 respondents answered the question about discrimination. Approximately 89 percent said they had not experienced discrimination, declined to answer, or indicated that any incidents were minor. The percentages are approximate due to subjectivity in coding. For example, the response "No, one incident of minor taunting but that's it" was counted as a "no." Also see A. J. Walkley, "Command sergeant major allegedly assaults lesbian captain at military ball," *Huffington Post* (April 20, 2012).
34. Office of the Inspector General, U.S. Department of Defense, *Military Environment with Respect to the Homosexual Conduct Policy* (March 16, 2000): 4. www.militaryreport.com/IGreport.pdf.
35. Out of 327 respondents, 17.4 percent responded "very mixed," 4 percent said "mostly negatively," and 6.1 percent did not answer.
36. Interview #2, April 19, 2012.
37. In response to a question about their overall quality of life, 68 percent of 2011 respondents answered that it was excellent or good (22 percent average, 11 percent fair or poor), but 71 percent of 2012 respondents said that it was excellent or good (20 percent average, 9 percent fair or poor). In response to a question about job satisfaction, 79 percent of 2011 respondents answered that they were completely or somewhat satisfied (20 percent completely or somewhat dissatisfied), but 87 percent of 2012 respondents said that they were completely or somewhat satisfied (13 percent completely or somewhat dissatisfied, 1 percent no opinion). In response to a question asking whether they would recommend a military career to others, 76 percent of 2011 respondents said yes (13 percent no, 10 percent undecided), but 88 percent of 2012 respondents said yes (8 percent no, 4 percent undecided). For complete 2011 and 2012 survey results, see "Military Times Poll."
38. "Military Times Poll." Our research team in 2012 derived the percentage of heterosexual troops who reported a decrease in morale, as well as those who oppose the new policy of open service, from raw data provided by *Military Times*.
39. Interview #28, April 30, 2012.
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42. Britt and Dickinson, "Morale during military operations," pp. 164–173.
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28

THE ETHICS OF INCLUSION

Gender Equality, Equal Opportunity, and Sexual Assault in the Australian, British, Canadian, and U.S. Armed Forces

Andrea Ellner

Women have played diverse roles in military campaigns for centuries, but it was only during the twentieth century that their work with or in the Australian, British, Canadian, and U.S. armed forces became increasingly formalized, important, and permanent. Today, official declarations abound avowing the indispensability of gender inclusiveness and diversity for military effectiveness in the twenty-first-century operating environment. Today's "militaries rely more and more on women and members of visible minority and Aboriginal groups to fill their ranks, rendering the recruitment, retention, and optimum employment of these members important to the success of the organization—from the perspectives of both operations and public accountability."[1]

In some units and services, women and members of nonwhite ethnic, non-Judeo-Christian religious, or non-heterosexual minorities have been integrated effectively.[2] However, equal opportunity and diversity policies have not been uniformly successful; for individuals who identify with several minority groups, the situation can be especially precarious. High rates of sexual harassment, assault, and rape in the military make these shortcomings glaringly obvious. That such offences happen at all, let alone in such high numbers, is even more astonishing since they profoundly violate military ethics and practically all professional values by which service members at all ranks are expected to live in all four countries.

Other scholars have explained discrimination and sexual assault in the armed forces through the lens of military culture,[3] but there is surprisingly little scholarly work that explicitly and systematically explores the problem through the lens of military ethics. This chapter seeks to begin to make amends. It focuses on women because the challenges for different minorities are often so specific that they need to be examined in their own right. Likewise, despite similarities, the contexts for sexual assaults against men and women in the military differ to such a degree that a discussion of both within the limits of this chapter could not do justice to either.

Finally, the chapter was originally intended to be a comparative analysis. However, there is insufficient secondary literature that establishes a suitable basis for the meta-analysis that would have made this feasible within the limited space.[4] As a rare comparative study on sexual harassment

in the Australian, Canadian, New Zealand, and U.S. armed forces found, it is difficult to establish a common baseline just for comparing the parameters the countries used to measure statistically the degree of discrimination and sexual harassment.[5] This does not even begin to address policy, legal, and procedural contexts that are interrelated with the ethical frameworks within which the services operate. It will thus be necessary to conduct in future a systematic comparison of the four militaries on a rather grander scale than this modest chapter can provide.

The chapter assumes that there are communalities between the four national armed forces in the areas of core concern. This is deemed a legitimate assumption for two reasons. First, the comparative study cited above found "considerable similarity in the types of behaviour determined to constitute harassment," which included "sexual and personal harassment, abuse of authority, and hazing."[6] Second, as Colonel M. D. Capstick observed, while service cultures differ, for example technological mastery is central to Air Force identities whereas armies revolve around the warrior ethos, "individual services often share some of their most fundamental cultural traits more strongly with their allied counterparts than they do with the other services of their own nation."[7]

The analysis seeks to generate new insights by viewing the phenomena of uneven integration of, and sexual offences against, women, on the one hand, and military culture and values, on the other hand, as closely linked. It argues that professional values are in practice mediated through military service cultures. This can give rise to a differential application of behavioural norms among superiors and peers. Particularly important here are two closely linked fundamental influences. One is the idea that the military is "a self-proclaimed citadel of modern chivalry."[8] The other is the centrality of the warrior ideal to military identities and unofficial hierarchies of esteem and status. Traditionally associated with identity building among ground combat soldiers, "the warrior framework has gained emphasis and legitimacy as a schema for describing the entire military."[9]

The analysis aims to show that these influences shape not only practical applications of the military ethos, which can lead to the exclusion of women and put them at risk of sexual harassment and even assault. They also determine normative aspects of historical and current discourses on attracting or rejecting women's military service.

There is evidence from Australia and the U.S. that the selective application of military ethics and discrimination against women continues beyond deployment and active service, but there is insufficient scope in this chapter to address these dimensions.[10]

I. A Paradigm Shift for Gender Integration?

In all four countries, senior political and military leaders are on record declaring that women are essential in today's armed forces. But, especially in Australia and the U.S., the effectiveness of gender integration policies in the armed forces has come under increasing public scrutiny in light of serious revelations about sexual offences in their ranks. In this sense, gender integration and sexual assault have become intrinsically linked. Following the 2011 Broderick Review into incidents of sexual harassment and assault of women, and more generally their treatment, at the Australian Defence Force Academy (ADFA), the Australian senior military leadership committed itself in writing to improving the integration of women in the Australian Defence Force (ADF). It also declared inter alia that:

> women are essential to the sustainability and operational effectiveness of the Australian Defence Force because they contribute to a diverse workforce which strengthens the Australian Defence Force's ability to be an effective, modern, relevant and high performing organisation.[11]

The British Army emphasizes that "commitment to equality and diversity in the Army is vital to our operational effectiveness."[12] The Royal Air Force prides itself on having repeatedly been nominated a top employer for women. In 2013, the Canadian military's plans to reduce what it considered an unrealistic target of recruiting 25 percent women were criticized as counterproductive, because women and other visible minorities will be "increasingly essential if the military is to remain at its current strength."[13] In the U.S., President Obama called the role of women in the military indispensable.[14]

In addition to the serious ethical implications, for political and military leaders it is thus also a matter of operational capabilities that despite decades of "zero tolerance" policies, service members and particularly women are still being bullied and sexually assaulted by peers or superiors at their home bases, on deployment, and in service academies.[15] In May 2013, U.S. Defense Secretary Chuck Hagel indicated as much when he declared that "this department may be nearing a stage where the frequency of this crime, and the perception that there is tolerance of it, could very well undermine our ability to effectively carry out the mission and to recruit and retain the good people we need."[16]

In Britain and Canada, the problem and the need to prevent sexual assault in the military has attracted comparatively little public attention. The last systematic survey of sexual harassment in the British military was published in 2009.[17] Most recently, the case of Corporal Anne-Marie Ellement, Royal Military Police, who committed suicide after her allegations that she had been raped and subsequently bullied were not adequately investigated, raised some questions about sexual assault in the British armed forces and gave rise to official commitments to improve procedures for complaints and care of vulnerable personnel.[18] In Canada, an article in *Maclean's Magazine* in late April 2014 alleged that sexual assault was endemic in the armed forces. Considering Canada's history of gender integration, this is surprising. It is, however, somewhat difficult for the Defence Ministry to refute the allegations, because the military is "three years behind in reporting military data and criminal statistics—including alleged sexual assaults reports."[19]

Until recently, the prevalent response of the senior civilian and military leadership to such challenges in all four countries has been to reiterate, as Chief of the U.S. Joint Chiefs of Staff (JCS) General Dempsey and Defense Secretary Panetta did in 2012, that sexual assault had "no place in the military," violated "everything the U.S. military stands for," and deterred potential recruits.[20] Likewise, challenged by a parliamentary committee about the April 2014 allegations, Chief of the Canadian Defence Staff General Tom Lawson stated:

> I do not accept from any quarter, the notion that sexual misconduct is simply part of our military culture. . . . Sexual misconduct of any kind is wrong, is despicable, it's corrosive and it runs utterly contrary to everything the Canadian Armed Forces stands for. [21]

Repeated whenever the media and legislators challenged governments and militaries to comment publicly on disturbing reports and statistics of systematic bullying or sexual assault, these seem to be statements of the obvious. They came to sound like assurances to political decision-makers and the military itself that there was no systemic problem, and, if there were, it would all be in hand; there was no need for a fundamental debate.

It appears to be no coincidence that the most significant change in the senior military leadership's public position on the issue has occurred in Australia and the U.S., where the public debate and pressure from the legislature has been persistent and fears arose that the repeated scandals might affect recruitment. In Australia, the Four Corners documentary *Chamber of Horrors*

on sexual abuse at ADFA broadcast in June 2014,[22] and in the U.S. the release in 2012 of the Oscar-nominated feature-length documentary film *The Invisible War* on rape in the U.S. military clearly gave the problem a particularly high profile.[23]

Australian Chief of the Army, Lieutenant General David Morrison's 2013 address on unacceptable behavior in the Army and the need for a profound culture change was pathbreaking; on YouTube, it had received over 1.5 million views by August 2014.[24] He made it clear that there was "no place for this type of behaviour" in the ADF and, more importantly, that after two decades of inquiries into the ADF's culture and justice system, its leadership had ceased to accept "the 'bad apple' argument" and regarded such behavior as "symptoms of a systemic problem," which the ADF would address "in a comprehensive manner."[25]

Australia had opened close ground combat positions to women in January 2013. In June 2014, General Morrison explicitly linked opening all roles in the armed forces to women with the profound culture change he projected a year earlier, and which he advised other militaries to undergo, on the one hand, and sexual assault prevention, on the other hand. He added that:

> Armies that revel in their separateness from civil society, that value the male over the female, that use their imposed values to exclude those who don't fit the particular traits of the dominant group, who celebrate the violence that is integral to my profession rather than seeking ways to contain it—they do nothing to distinguish the soldier from the brute.[26]

In February 2013, General Dempsey used a similar rationale, when he announced that women would no longer be barred from ground close combat roles. He:

> believed that the problem of assaults against women in the military [was] due partly to the combat ban: "When you have one part of the population that is designated as warriors, and another part that is designated as something else, I think that disparity begins to establish a psychology that in some cases led to that environment."[27]

Josh Carr, a former U.S. Army specialist, implicitly agreed when he commented that dropping the combat ban was "a huge step towards objectivity in the military" but predicted it would "take many years to overcome the traditional gender stereotypes prevalent today."[28]

The new reasoning of the senior political and military leadership in Australia and the U.S. connects to insights several decades of critical scholarship on military culture have generated, in particular the centrality and longevity of the cult of hyper-masculinity, warrior ideals, and associated gender stereotypes.[29] They indicate a deeper level of, but also open up new ways of even better, understanding the dynamics that have prevented fuller integration of women. They invite questions about normative underpinnings of the warrior ideal and its interrelationship with the culture and ethics of the organization.

II. Women and the Warrior Ideal

Traditionally, the essence of the warrior ideal lies in heterosexual hyper-masculinity and the exalted physicality, courage, and valor associated with ground close combat roles.[30] If the warrior is the benchmark against which other identities are measured, integrating even different male identities is a challenge. Today, elevating the warrior to the standard measure of the ideal soldier, sailor, or member of the airforce "runs counter to trends in the spectrum of mission requirements

that now fall to operational combat personnel."[31] Morrison and Dempsey have acknowledged the need to adapt military culture to meet these new operational requirements, but this will not be an easy task. In the wake of the sustained high-intensity counterinsurgency operations in Iraq and Afghanistan, military culture is still deeply infused with the warrior ideal.

The still venerated, if contested, status of the warrior was illustrated in the U.S. debate about the ill-fated Distinguished Warfare Medal (DWM) designed "to honour actions . . . with an 'extraordinary' impact on combat operations, not involving personal valour or even proximity to a theatre of war."[32] With reference to drone pilots, a retired Green Beret supposed that "now they will award Purple Hearts for carpal tunnel syndrome."[33] The debate illustrated the still prevailing link between valor, honor, and physical courage, even if it is projected to become less central.[34] It was also indicative of a hierarchy of prestige and honorableness built into the finer structure of the military, because for many contributors it was unthinkable that the new medal might mean as much as or even more than those awarded to service members who distinguished themselves, were injured, or killed in combat in theater.

Underlying this hierarchy is an ethical framework that is rooted in an idea of chivalry that is particularly pernicious for women because it associates valor and honor with physical hardship and heroism, especially in ground close combat. In this construct, it counts for little that today women serve in many combat positions or combat zones. As long as the dominant warrior ideal is not replaced as the embodiment of military valor and women are excluded from, or have yet to arrive in, ground close combat positions, they are—as a group—excluded from occupations that are most likely to enable them to prove that they are worthy of being treated honorably.

The point is thus not that combat exclusions have been curtailing women's career opportunities, although they have.[35] It is that women have been collectively declared ineligible for warrior status and individually denied opportunities to distinguish themselves as ideal warriors. In the prevailing culture, they have thus not been able to command the reverence reserved for male warriors, because they are classified, as Dempsey put it, as "something else." That this affects not only their status, but also the treatment they can expect by their peers and superiors, is connected to the dualistic nature of the concept of chivalry.

III. The Chivalry Trap

Of interest here is the role of the chivalric code of conduct in the attempt to regulate social relations in and of the warrior class.[36] In the nineteenth century, Dew described two theories for the emergence of chivalry, both not only associated with warrior status, but also with implications for gender relations. One suggested that coming-of-age rituals, during which boys of Germanic tribes were endowed with warrior status, had developed into courtly rituals with courtly society the reference point for chivalrous behavior. The other saw the order of chivalry created as a formal institution to address disorder and lawlessness in Europe where "the weak everywhere fell a prey to the strong."[37] The:

> order of chivalry was established to remedy these disorders . . . to succor the oppressed and humble the proud, was the motto of the order; hence women, being the most defenceless portion of society, became the peculiar objects of protection, and as faithlessness was cause of much disorder, knights were to be peculiarly observant of plighted faith.[38]

For Dew, the pinnacle of chivalrous attributes was "love of arms, romantic spirit of adventure, courtesy of manners, the point of honor, and devoted and respectful attention to the female

sex."[39] For Sanderson, a contemporary of Dew, a strong sense of justice, as well as "valor, loyalty, courtesy, munificence, formed collectively the character of an accomplished knight."[40] twentieth-century historian Barbara Tuchman called prowess "the prime essential" of chivalry, and loyalty "chivalry's fulcrum."[41]

Future knights were expected to be socialized into these virtues from the first stage of their courtly education, when they were "taught to reverence knighthood—first impression made on [the page's] mind amid the ladies of the court was that of love, gallantry, honor, bravery, and religion"; he was expected to select a lady as a moral guardian.[42] Sanderson, too, emphasized the importance for knights to "honor, above all, the women, and not to permit any one to slander them, because from them after God comes all the honor that men can acquire"; for him, gallantry expressed "the close union of bravery in knights with this devotion to the fair sex."[43]

Much of this reading of chivalry had survived until today; Moelker and Kümmel even asked in 2007 whether it should be *the* virtue governing interpersonal conduct, for example in the military.[44] And most of chivalry's cardinal virtues can be found in virtually identical terms in the modern service doctrines governing the professional ethics of being a solider, sailor, or member of the Air Force, be this as a team member or a leader. Hence, if today's warriors are perceived—and perceive themselves—as inheritors of the chivalric order, incidents of sexual harassment and rape are inexplicable as they are profound violations of official doctrinal and unofficial chivalric norms.

However, this conclusion would be based on presumptions that are not necessarily valid. First, how far chivalric norms, like any attempt to civilize warfare, were in fact adhered to is debatable. Wingfield saw them as part of the evolution of just war theory, both with regard to *jus ad bellum* as well as *in bello*.[45] Huizinga saw them as the development of rules of a game that allowed the aristocracy to minimize the costs of war.[46] For Tuchman, they were, at best, an ideal and, at worst, fiction, "a veneer over violence, greed and sensuality" that was mostly out of man's reach.[47]

Second, and more importantly for today's female service members, chivalric norms in war only applied to members of the brotherhood of knights.[48] Women were excluded from this circle, and the protection and reverence they were expected to receive from knights came at the price of severely limited agency; this is incidentally the main reason why Moeller and Kuemmel concluded that chivalry was not suited to governing modern interpersonal conduct.

Gender stereotyping, sexual harassment, assault, and rape can coexist with self-perceptions of chivalric or warrior status. As Prestwich put it, during the Hundred Years War, "chivalrous attitudes" affected knights' will to fight and the manner in which they fought, but these attitudes were "tempered by a considerable practicality" in a war that was also "characterized by looting, burning and rape."[49] Tuchman went even further and interpreted historical accounts as reliable evidence that Edward III, who had been so pivotal in promoting the idea of chivalry, did rape the Countess of Salisbury, wife of one of his key subjects.[50]

As a reference for practiced codes of conduct in a modern diverse military, chivalric norms are thus, at best, suboptimal. At worst, they provide an unofficial normative framework that facilitates the toleration and in-group justification of offenses against women and others, including men of any color or creed, who do not match the construct of the ideal warrior. The problem is that chivalric norms and associated gender stereotypes have proven remarkably enduring as the debate about women in ground close combat roles illustrates. In it, two objections are especially notable. Both insinuate that women cannot be trusted as warriors.

One is that women on the battlefield would distract men from their combat tasks and, worse, might lead them to take excessive risks, because men would feel obliged to protect their female peer and rescue her if she were wounded,[51] and could not cope if she were killed. For example, Nate Smith, USMC Officer from 2003 to 2010, argued in 2012 that while women served with

courage and honor in other branches of the military, they did not belong in the infantry. This was inter alia because "Americans do not want their women hunting and killing the enemy, nor are their young men psychologically equipped to accept with stoicism the violent, gruesome deaths of female comrades in arms."[52]

The latter point communicates that women cannot be trusted, because they entice men to act in a chivalrous manner. It is also wrong, as the *Daily Telegraph*'s defence editor pointed out in 2010 when he stated that male soldiers regularly risk their lives to save a wounded fellow male soldier.[53] The former point is also wrong. In 2011, an ABC News/*Washington Post* poll found that "nearly three-quarters of Americans agreed that women should be allowed to serve in ground units that engage in direct combat";[54] the level of opposition between 20 and 26 percent remained steady in 2013.[55]

The second common objection is that women would be unable to rescue a heavy male infantry peer out of a danger zone, because they lack the upper body strength. This argument appears to be of a biological, scientific nature, but ignores the evidence that women can develop sufficient upper body strength and have proven their abilities on operation.[56] Again, it insinuates that women cannot be trusted to do what the warrior ethos demands of them.

The pervasiveness and inherent contradictions of these gender stereotypes is further illustrated by a 2012 survey of the USMC. It found that 17 percent of male Marines would leave the Corps if women were allowed into combat positions; principal reasons included fear of being falsely accused of sexual harassment or assault, women being treated preferentially, pregnancy or other personal issues undermining unit readiness, and for both sexes fraternization and "feeling obligated to protect female Marines."[57] This sits uneasily with another survey's finding that reporting rates of sexual harassment and assault have gone up, which suggests that recent policies have had some success, and that the U.S. Marine Corps and Army registered the largest increases, with 86 percent and 50 percent, respectively, but the number of incidents was stable,[58] which means there has been no progress in prevention.

Why should these practices and perceptions survive after decades of women serving in the four militaries with honor and in increasingly more demanding roles that have brought them much closer to and directly involved them in combat operations?

IV. Moral Conflicts and Minimum Adaptation

The military has always needed women, in uniform and at the "home front," as Enloe has observed, but has been confused, because "the things military commanders want from women just aren't compatible."[59] Women serve in a wide range of roles today not because governments and military leaders readily welcomed them, but because they eventually had to drop objections to their inclusion. This dynamic is important. Personnel shortages repeatedly played a salient role in women's recruitment. In the second half of the twentieth century, social changes leading to equal rights legislation made it increasingly socially acceptable for women to serve, although feminists have never been universally supportive of women joining the military or serving in all combat roles.[60]

The arguments of opponents of all persuasions have consistently been clustered around anxieties about women's appropriate social roles, a belief that war is a man's pursuit for which women are not, nor can they become, physically, emotionally, or morally equipped, and fears that they undermine military effectiveness. For others, such as former Chief of the Defence Staff now Lord Dannatt, barring women from ground close combat roles was a "point of principle"; he thought that "to be in a unit that is given orders to attack a hill, to attack a town, to attack a village, that is a role not for women."[61]

In all four countries, women were only reluctantly accepted by the military hierarchy, in limited numbers, from the nineteenth century as nurses[62] and in World War I (WWI) in Britain in 1917–1918.[63] The U.S. Army resisted such ideas, but the Secretary of the Navy decided that women could be recruited into the Navy and Marine Corps in 1917.[64] Having demobilized all women but nurses in 1918, the wheel had to be reinvented at the start of WWII. Again, the services and governments were reluctant, but WWI had set a precedent. Although run separately from the main military, women's services were better organized, and a sizeable minority moved into occupations traditionally considered men's work.

Women's military service and public roles in the war were accompanied by considerable moral anxieties in society, government, and the military. They were challenging their socially prescribed roles and discovering their public agency. This was confusing to government officials, the military, and parts of society, because the differentiation of roles to which women laid claim did not easily match existing, or allow for a neat distinction between, social scripts for respectable or, conversely, disreputable women. Negotiating social constructs of femininity became a complex business. Reconciling normative expectations of women's roles and behavior in relation to men with the diverse wartime requirements became difficult, because behavior that was officially sanctioned or even encouraged in one context was deemed undesirable in another.

Women contributing to the war effort were expected to maintain their respectability and femininity, but joining an auxiliary service, especially the Army's, might bring them into disrepute or permit them to behave disreputably.[65] British Members of Parliament (MPs) thought it would assist recruitment, if the service ministers' "paternal instinct" comforted mothers by ensuring that "these girls are protected morally, spiritually and physically."[66] Another MP expressed sympathy for "the jealous young husband" who "naturally thought of the satyr of a non-commissioned officer who would be waiting to attack the virtue of his wife" serving in the forces.[67]

Fears about women spreading sexually transmitted diseases and damaging their (reproductive) health or that of men were juxtaposed with the U.S. military's officially sanctioned prostitution, which was considered essential for maintaining morale and hence essential for the war effort.[68] British married women were not to be posted abroad, because it was deemed "essential for the continuance of a sound moral condition in society that the husband and wife should be able, periodically at least, to live together."[69] And, there was the concern that the experience of greater freedoms might undermine women's ability or even willingness to perform such socially prescribed roles as caring for home, husband, and children, or upholding social mores.[70]

In the military, just like today, support for gender integration at all levels, including the higher echelons of the main services, was essential, but not ubiquitous. The need to attract recruits shaped the roles women were permitted to occupy. In the British Army, it took General Pile, General Officer Commanding-in-Chief of Anti-Aircraft Command, to overcome strong male opposition to women working as searchlight and anti-aircraft gun operators, but he failed to have the combat prohibition revoked.[71] The powerful social taboo against allowing women to take part in combat and kill applied across the board.

The scope of women's military service varied with the country's social norms and women's educational opportunities.[72] However, everywhere the measures were seen as imposed under duress of an external existential threat and made more palatable by the exceptional circumstances. That women were recruited as a stopgap measure demanded only a modicum of adaptation of the organizations and male service members, just sufficient to enable them to do their jobs and avoid alienating female recruits.

The notion, or for some the hope, that women were only a temporary presence in the military seems to never quite have died. Since in 1945 most women "went away," traditional constructs of gender roles were only mildly upset. Military culture and the associated values

could largely continue to be built around images of military masculinity. Some women remained in service in all four countries. Their numbers were, however, kept very small with explicit ceilings or very specific expectations of recruits' social standing. Britain retained separate women's services unusually long, until the early 1990s.

In the U.S., there was little indication of a will to adapt military culture to the growing need to recruit women when too few suitably qualified men were prepared to fil the ranks of the new All Volunteer Force (AVF) in the 1970s. Reflecting on this state of affairs, George Quester observed that traditional male officers were not keen on recruiting women and that:

> discussion of women in combat often descends quickly into a series of double-entendre jokes, typically betraying a nostalgia for the good old days when men lived in camps and women were camp followers.[73]

Senior military leaders responsible for recruitment and "thoughtful officers" were taking seriously the potential, but also the "real problem of a more female military service," but, optimistically, he projected that "military services that cannot recruit enough male personnel to fill their rosters may surprise us in how quickly they overcome biases against female recruits."[74]

Yet, Major General (ret) Jeanne Holm, reflecting on the Cold War period, found that "for the most part *women were forced to adapt* to institutional social values, rules, and modes of life"; the services resisted change although they "eventually succumbed to *some* adjustments in the organisation, particularly in matters of social conduct and policies unique to women."[75] In practice, this has meant that women were forced into accepting and justifying the systemic status quo, when they would have benefitted from advocating change. The latter was not an option, lest it might have been perceived as a breach of such military values as loyalty or lacking the necessary mettle to become a member of the service, as Jana Pershing observed in her study of hazing at the U.S. Naval Academy in the 1990s.[76]

For decades, gender equality and equal opportunity policies were afterthoughts to, not principal drivers of, women's recruitment. Rather than preparing for the pending integration of women in new roles, they were aimed at fixing specific problems after they emerged. There has, for decades, also been considerable self-deception about the degree to which the services successfully addressed problems of sexual harassment and assault.

In 1995, The U.S. General Accounting Office compiled a report for a member of the House on Equal Opportunities policies in the U.S. armed forces. It summarizes the findings of a wide range of reports, mainly internal to the DOD or the services. Among them is a summary of the Navy's response to the Tailhook 1991 scandal. Joslyn Ogden called it an "infamous" and "catalytic event whose fallout resulted in the dismissal of several high-ranking officers, the revelation of the Navy's struggle to integrate women into its ranks, and a stain on its reputation,"[77] its admission of inadequate investigation of the incidents but also inadequate leadership at the convention.

Just below this section is a summary of *An Update Report on the Progress of the Women in the Navy, by 1990 Navy Women's Study Group, 1990*. The report had made a large number of recommendations to the Navy on less discriminatory treatment of women, their integration, and prevention of women's harassment and abuse. The status of the recommendations is summarized as: "The Navy reports that all of the sexual harassment recommendations and most of the other recommendations have been addressed."[78]

V. The Real Dangers of Historical Amnesia

Minimal adaptation of processes and cultures was one consequence of treating women in the military as a temporary phenomenon. Lorry M. Fenner, then Lt. Col. in the U.S. Air Force,

observed another, whose effects are also still visible today and reinforce the status of women as Dempsey's "something else." In the late 1990s, she was puzzled by the U.S. public's lack of knowledge about women's service in the U.S. military.[79] Investigating the phenomenon, she found that women's accomplished history in the military was neither acknowledged in scholarly military histories nor in many of the post-WWII public debates or media representations about the role of women in the U.S. armed forces.

She argued that assumed "public anxieties" meant that military restrictions on, and media representations of, women's roles in the military were "constructed in a way that contained [them] within traditional notions of femininity, heterosexuality, and morality."[80] Women's contributions to national defence were thus camouflaged and rendered forgettable. As a result of this invisibility, every round of debates over an expansion of women's roles was doomed to be historically uninformed and untainted by knowledge that past changes were accompanied by challenges to, and a degree of adaptation of, military practice, as well as renegotiations of women's roles in the military and society. It was "historical amnesia" that "confined debates to trivialities and visceral responses."[81]

This is not at all a trivial point. It goes again to the heart of trust in women. These visceral responses, which often became revenants, are yet another way of casting doubt on women's trustworthiness and impact on military effectiveness. Connie Reeves made exactly the same observation about "invisible soldiers" and the fact that women's ability to be effective and contribute to the effectiveness of military operations keeps being forgotten with regard to nurses.[82] Although they take place in wider society, such debates interact with intra-military debates. They can thus be directly relevant for the perception, status, and treatment of women within armed forces.

One such deeply "emotional" argument, as Chief of U.S. Naval personnel Admiral Watkins put it, is over time lost to pregnancy. Watkins pointed this out to his fleet when he disseminated the findings of a 1975 Navy report that refuted the widespread claim that men accrued less lost time than women did due to pregnancy; "men lost 190,000 days to drug rehabilitation and another 196,000 days to alcohol rehabilitation, almost twice the absentee rate of Navy women including time lost to pregnancy."[83] And yet, the same arguments were still put forward in 2007, although recent studies have upheld the 1975 findings. They showed that U.S. Navy women lost no more days than men, "who lose more time due to sports injuries and disciplinary reasons."[84]

Other revenants are discussed by Enloe in the early 1980s; as shown above, they are still part of the debate. Enloe observed the British and U.S. militaries' reluctance to change their conception of women's service as a temporary phenomenon despite the need for female soldiers. This, she argued, triggered in the military "an exaggerated need to pursue more and more refined measures of sexual difference in order to keep women in their place," including "official studies of pregnancy, menstruation and 'upper body strength' in an almost desperate search for some fundamental, intrinsic (i.e. not open to political debate) difference between male and female soldiers" designed to "justify women's continued exclusion from the military's ideological core—combat."[85]

Senior military or civilian leaders overturned such objections whenever they decided to address recruitment problems by opening up more military roles to women. Women's performance in these increasingly varied roles vindicated these decisions. And yet, their success has not prevented opponents of progressive gender integration from repeating disparaging claims. Brigadier Nicky Moffat, who retired from the British Army in 2012 as the then highest-ranking woman, made this point in the current debate on the Army's review of the ground close combat exclusion, when she stated that "arguments against women in combat roles were the 'same that used to be trotted out to exclude women from the wider range of roles in which they are now allowed to serve.'"[86]

The effect of this recycling of arguments, which then have to be refuted with reference to the new context, is not only that it delays official sanction of the entry of women into new roles. It can have a great deal more problematic ramifications for the women who are already serving. The U.S. armed forces have "continually redefined combat and combat support occupations to allow the services to integrate more women"; the military's "repeated violations of its own gender boundaries . . . [exposed] the inconsistencies of gender restrictions when it needed women."[87] Placing women into combat roles unofficially can put female service members' lives at severe risk. Fenner observed for the period between 1945 and 1998 the practice of deploying women in roles for which no congressional authorization existed.[88] She pointed out that since they were officially not allowed to be in these situations, their achievements were not recorded or made public. They were rendered invisible, potentially put in harm's way without adequate training or equipment. This violates a core principle of any service ethos; that is, that superiors have a duty of care for their subordinates.

The practice is not a thing of the past, as demonstrated by the first so-called *Team Lioness* deployed with the USMC for house-to-house searches during the Iraq War.[89] They had been recruited from Army combat support specializations and not been initiated into the USMC's operating procedures and modes of communication. At least once, this meant they were left alone in a life-threatening combat situation, which they might have avoided or coped with better had they been adequately prepared; one of the most exposed members of the team suffered from severe PTSD for years afterwards. They were even edited out of a TV documentary on the operation aired by the History Channel.

Subsequent female engagement teams did receive training, but even in the high-pressure situation of the early Iraq War it is difficult to justify the lack of preparation superiors afforded the first team and the USMC unit with whom they deployed. This is unethical leadership. It is only one example of stretching congressional limits for deploying women; the U.S. Army's long-standing practice of "attaching" women to combat units is another. The practice fosters historical amnesia and can have real-life negative consequences for serving women and the prospect of women being eligible for other combat roles.

While the immediate peers of female service members who acquit themselves in such roles can acknowledge their achievement, women cannot be recognized by the wider military and the public for professional performance in roles from which they are officially barred. This is particularly problematic, if it means that they cannot lay claim to trust from fellow service members beyond their immediate unit in their ability to live by service values that expect them to put the task first, protect the lives of their fellow service members, and, if necessary, risk their own lives. They were prevented from establishing an image more akin to that of the (male) warrior. If they had been killed, they were unlikely to have been widely remembered as warriors or revered as heroes since they were not supposed to have been where they were in the first place.

In parallel with making it difficult for women to be acknowledged as warriors, even the modest equality and diversity policies have been consistently undermined by the pronouncements and behavior of leaders. There is ample evidence that toleration of sexism gives license for further sexism and that this can ultimately create a climate in which sexual harassment, assault, and rape are deemed acceptable.[90] It is unsurprising that women have not been universally successfully integrated and that they confront sexism, sexual harassment, and sexual assault in service, if still-serving and retired senior military leaders send messages that reinforce exclusionary thinking.

An example is the cover senior leaders provided for years in complete disregard for the professional ethos for the USS Enterprise's Executive Officer, Captain Honors, who was punished for making and disseminating sexist "motivational videos" only long after the event.[91] Women working in a sexist environment are significantly more likely to experience rape, because rape

needs to be seen as a stage on a continuum of violence starting with harassment. Since leaders are responsible for the command climate "the leadership behaviours of officers are a powerful risk factor for violence towards servicewomen."[92] Even if sexist attitudes are voiced from outside, such as ex-USMC member and former U.S. Navy Secretary James Webb's infamous invectives against women over the decades,[93] like-minded serving more junior ranks may take their cue from them especially if they originate from a retired officer. In a less direct manner, these senior leaders thus reinforce the idea of the brotherhood of knights and the implied chivalric code, which provides unofficial legitimacy for discriminatory behavior against women and other visible minorities.

VI. Conclusions

In the past year, the Australian and U.S. senior military leadership has made important progress in understanding and conceptualizing sexual assault and gender integration as being closely related to the exclusion of women from certain combat roles. This analysis has demonstrated just how important that recognition and the revocation of the ground close combat exclusion are for the prospects of truly equal treatment of women in the armed forces.

In current military culture, the warrior ideal is the most important measure of the prestige, honorableness, and trustworthiness of service members, and that ideal is ultimately grounded in the practice of ground close combat. While men in other roles may fall short of the ideal, unlike women they are not part of a collectively excluded group whose worth is measured as deficient not only because they are not men, but also because they are not even potentially eligible to become ideal warriors.

This is highly problematic in ethical terms, because in practice the warrior ideal is associated with an unofficial chivalric code that is discriminatory in ways that are highly relevant to female service personnel. They are excluded from the circle of initiates to whom the chivalric code applies, first because they are not part of the (ground close combat) warrior class, and second because, as women, they are denied agency and considered to be in need of protection. Together, these two exclusions make women simultaneously dependent on male protection and vulnerable to their predation.

Gender integration policies so far have, however, not enabled women or encouraged all men to change the cultural parameters that have allowed for the perpetuation of the unofficial application of the chivalric code. This is because, despite the long history of women's distinguished service in the military, the armed forces as organizations neither invited nor quite accepted women as permanent members; to some degree, the discourse in wider society has also contributed to this historical amnesia. As a consequence, women's achievements have been left unrecorded or suppressed, sometimes for constitutional reasons, and their capabilities unrecognized.

Notwithstanding many successful careers women have had in service, in the public debate women were thus often doomed to being subjected to sexist prejudices and stereotypes, many of which had to be refuted successfully several times over. This has mattered for serving women in several ways. They were potentially put at greater risk of sexual assault, because their peers and superiors were encouraged by the sexist aspects of the public debate. If they were sent into combat operations for which their superiors had no authorization, their achievements remained unrecognized and they were unable to establish their professional credentials. This then reinforced the underlying cultural predisposition of those who live by the chivalric warrior code to neither trust nor respect female service members.

It is for these reasons that the new understanding among the senior military leadership in Australia and the U.S. is of such huge importance. But the analysis has also made it clear what

a complex undertaking it is to change military culture so profoundly that women will be treated in accordance with the military ethos; that is, with integrity, respect, and honor.

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PART V

Emerging Ethical Challenges for the Military Profession

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29

ETHICAL ISSUES IN ARMED HUMANITARIAN INTERVENTION

Stephen Coleman

In the modern world, there are a range of very different types of missions in which members of the military may be required to participate. Obviously, military forces train for, and do still on occasion engage in, traditional state-on-state conflict. Military forces also engage in operations against well-organized irregular forces and in counterinsurgency and/or counterterrorism operations, which may occur both at home and within the territory controlled by other states. The military personnel of many states are involved in operations that seek to protect national borders from incursions, not by armed military forces, but by foreign civilians whose actions are seen, in some way, to threaten the national interest. Military personnel may be required to assist, again at home or abroad, in missions that provide humanitarian relief and/or reconstruction after a natural disaster. Last, but certainly not least, they may be required to participate in what might be generally described as "peace" missions, which attempt to deal with problems created by human violence. By their very nature, peace missions inevitably occur within territory controlled by other states. Such missions can be divided into different types, of which the most notable are peacekeeping operations, peacemaking operations, and what have come to be known as armed humanitarian interventions.

Peacekeeping operations are situations where peace has been established, usually through means of a formal treaty or ceasefire agreement, and where the formerly warring parties consent to the deployment of independent peacekeeping forces. The peacekeeping forces, often organized under the auspices of the United Nations (UN) or another multinational organization, consist of foreign military personnel, who move into the area with the primary mission of monitoring ceasefire or peace agreements, though they may also engage in other tasks, such as aiding in reconstruction, monitoring elections, and so on. Peacemaking operations (sometimes referred to as peace-enforcement operations) are carried out in situations where there is an existing conflict between opposing organized armed groups but where peace has not been established. The aim of peacemaking operations is to move independent external forces into the area in order to separate the warring parties and/or force them to negotiate with each other. If a peacemaking mission is successful, then it may morph smoothly into a peacekeeping mission, with

the same foreign military personnel who were originally deployed to separate the warring parties now staying to monitor the newly forged peace agreement.

An armed humanitarian intervention (AHI) is a somewhat different sort of military campaign, since an AHI is: (1) conducted in foreign territory by the military forces of one or more states; (2) directed against an organized military force (often the armed forces either of a state or supported by a state); and (3) launched because that organized military force is engaged in deadly violence against a local civilian population. An AHI is usually only launched in response to what have come to be called "crimes of mass atrocity" (that is, genocide, ethnic cleansing, war crimes, and crimes against humanity). One good example of such an operation is the North Atlantic Treaty Organization (NATO) operation in support of Kosovo in 1999; another is the UN-sponsored operation in Libya in 2011.

States may have a range of motivations for participating in the various operations. But peace operations generally, and AHI in particular, stand out among other types of military operations because they may be undertaken for purely humanitarian reasons, where there are no national interests directly at stake for the intervening state(s).[1]

I. Common Features of Humanitarian Interventions

While the various types of humanitarian operations may shade into each other in some circumstances, they do all share some features that mark them out as rather different to the other types of operations in which military personnel may be involved. The most important difference is that in all these types of operations, the aim of the intervening military forces is to protect people within *other* states from violence and/or the ravages of war, rather than to directly advance the interests of their own state.[2] Since the very aim of the operation is to protect people, usually civilians, within these other states, the methods that are utilized in the course of a humanitarian operation ought to reflect this aim. However, states are usually loath to risk the lives of their own military personnel when national interests are not on the line, which means that force protection is often a high priority, and thus interventions often rely on methods that reduce the risk to intervening troops, even if these methods may not, objectively speaking, be the most effective means of achieving the operation's aims.

A concrete example of this can be found in the NATO Intervention in Support of Kosovo, where one of the significant criticisms of this intervention was the fact that the NATO bombings inflicted a significant number of collateral casualties among Albanian Kosovars, the very ethnic group that the intervention was launched to protect. In order to protect the lives of NATO personnel, the entire intervention was conducted from the air, with most aircraft ordered to remain at a height that drastically reduced the risk of them being effectively engaged by anti-air defenses. While this tactic reduced the risks to NATO pilots, many critics of the intervention have claimed that this also led to mistakes in targeting and to increases in collateral damage.

Humanitarian operations of all sorts are a relatively recent phenomenon. The first official UN peacekeeping operation saw international troops deployed to the Middle East to monitor the ceasefire that came into force at the end of the Arab–Israeli war in 1948. This force was designated the United Nations Truce Supervision Organisation (UNTSO), and while its role has changed from time to time as a result of renewed hostilities in the region (notably in 1956, 1967, and 1973), it has remained active ever since, acting as a go-between for the hostile parties in the area, and attempting to ensure that isolated hostile incidents do not escalate into major conflicts. Armed military interventions launched for purely humanitarian purposes are an even more recent concept, with the first operation of this sort probably being the operations in Somalia in 1992. Ethnically motivated violence against civilians during the breakup of the former

Yugoslavia, as well as condemnation of the international failure to deal with the genocide in Rwanda in 1994, led to an increased commitment to such operations, prior to the events of September 11, 2001.

II. Ethical Challenges of Armed Humanitarian Intervention

There are two quite different types of ethical problems that arise out of AHI. The first type of problem, which I will address only briefly, relates to the question of whether or not governments are actually ethically justified in ordering military personnel to deploy for an AHI given that no national interests are directly at stake. The second type of problem relates to the manner in which such operations ought to be conducted by the personnel involved, given that the aims of such operations are utterly different from traditional military operations.

1. AHI and the Ideal of Military Service

When people enter into military service, they are entering into an occupation that may well put their life and health at risk. As is noted elsewhere in this volume,[3] military personnel serve the state under conditions of "unlimited liability," knowing that they may lose their own life in serving that state. If military personnel are willing to risk their lives in the service of the state, then it can certainly be argued that the state has a responsibility to only put the lives of military personnel at risk when vital national interests are at risk, as has been noted by writers such as George Lucas[4] and Martin Cook.[5] The problem here is that in some cases, perhaps in even many cases, there are no such vital interests at stake when a state considers deploying military forces as part of an AHI. Thus, members of the military who have signed up to defend their state and its vital interests from external threats might well argue that the state is violating the moral contract with its military personnel by deploying them in an AHI, and thus risking their lives, when vital interests are not at stake.

I would suggest that such an argument has greater strength in some cases than in others and that the strength of this argument varies somewhat depending upon the state involved and exactly when the military personnel involved entered into military service. Given the number and scale of humanitarian operations mounted across the world in the 1990s, particularly by members of NATO, it is difficult to argue, for example, that a person who entered into military service in one of those NATO countries around the end of the millennium would have had no expectation of being deployed to such an operation, and thus that the state would be breaching its moral contract with such a person by engaging in an AHI. Someone who entered into service in the U.S. military after the attacks of September 11, on the other hand, might have a more legitimate claim that they had joined up to defend the U.S. against the threat of further terrorist attacks and thus that they had no expectation of being involved in an AHI. Similarly, someone who entered into military service with a state that had never even deployed military personnel in a UN peacekeeping operation (for example, Israel) might well have grounds for arguing that the state was in breach of the moral contract with its military personnel should those personnel be required by the state to participate in an AHI.

2. The Use of Military Force and AHI

Peacekeeping operations have traditionally been undertaken in situations where the formerly warring parties have reached some sort of ceasefire or peace agreement and that agreement involves those parties consenting to the deployment of independent peacekeeping forces, who will move into the area to monitor those agreements and engage in other operations, such as

aiding with reconstruction, where this is appropriate. UNTSO is a classic example of this sort of deployment; during its history, the military personnel attached to this force have monitored ceasefire agreements between Israel and all its neighbors, Egypt, Jordan, Syria, and Lebanon. UNTSO has also monitored more substantial agreements that have been established between these different parties at various times, most notably with regard to the peace agreement between Israel and Egypt in the Sinai Peninsula, the ceasefire agreement between Israel and Syria in the Golan Heights, and the peace agreement between Israel and Lebanon along their mutual border. Many other UN peacekeeping operations along similar lines have been mounted in other parts of the world.

Importantly, in all of these deployments, the role of the UN forces has been to act strictly as impartial observers; the personnel attached to these operations are empowered by their ROE to use lethal force if this is necessary in order to protect themselves, but their role in these deployments is to observe and report on violations of the peace agreements, rather than to intervene in order to prevent problems from arising in the first place. Their strict impartiality has also been important in these sorts of circumstances, since if the UN peacekeepers are seen to favor one side of the dispute over the other, then their reports on any violations of the peace agreement may be seen to be biased, which is likely to lead to a loss of trust in the role of the peacekeepers and thus will be more likely to lead to future problems with that peace agreement. ROE that only permit the use of force in self-defense are appropriate when the role of UN personnel is simply to observe and report; the nature of the role means that casualty numbers are likely to be relatively low.[6] But if the role of peacekeeping forces requires them to engage in ways beyond merely reporting violations of peace agreements, then quite different ROE are likely to be required if the mission is not to end in failure. Unfortunately, many other types of peace operations, including AHI, have relied on the same ROE as peacekeeping operations, a factor that probably helps to explain the failures of some of those peace operations.

Traditional peacekeeping operations are relatively low-risk operations for the peacekeeping forces for several reasons, most important probably being the fact that there is an existing peace agreement, which, if breached, will involve the armed forces of recognized states firing upon each other. But the situation for intervening forces will be much more complicated, and more dangerous, if there is no existing peace agreement, if some of the belligerents in the area are not state forces, but rather are irregulars or paramilitary groups, or if ceasefire agreements, if and when they do exist, are violated by forces who are not targeting enemy combatants, but instead are targeting civilians. If such missions are to succeed, then they seem to require more complex ROE, since if intervening forces are only allowed to act in direct self-defense, then they will be placed in the position that apparently confronted members of UNPROFOR[7] on a number of occasions, and may thus be forced to simply watch as atrocities were carried out by state or semi-state forces in the area.[8]

In cases such as AHI, where intervening forces aim to protect civilians from violence, they need ROE that allow them to get involved in situations in a wider range of circumstances and to use a much wider range of levels of force, rather than simply allowing them to use deadly force if necessary for self-defense.[9] In such cases, intervening troops need to remain impartial, but cannot remain uninvolved by simply watching and reporting, as would be the case in a peacekeeping mission.

III. Humanitarian Interventions and Constabulary Operations

What is really necessary in AHI is for the intervening troops to act like police officers. Police, or at least good police, are impartial, in that they treat everyone with equal respect no matter

what their nationality or ethnic background, but they are not mere observers since they are permitted, and indeed are required, to become involved in situations where people's fundamental human rights are being threatened.

Of course, the big difficulty with expecting soldiers to act like police officers is that police are trained and equipped very differently from military personnel. Soldiers who are expected to act like police officers are likely to run into difficulties in situations where their military training does not adequately prepare them for the tasks they are likely to face. One of the reasons why this difficulty arises is that the usual principles of discrimination and proportionality still apply in situations where military personnel are effectively being asked to act as police officers. But the standard military equipment and the resources backing up the military personnel are such that these principles may actually be very difficult to apply appropriately, in that it can be very hard for such personnel to know who they ought to take action against and what sort of action they can take that will actually be proportionate.

There can also be other difficulties that can arise for military personnel who are being asked to act in a role that is more familiar to police officers. These difficulties are particularly obvious when the task that these military personnel have been given involves them dealing extensively, or perhaps even exclusively, with noncombatants. Once again, this is a situation that police officers are well prepared for, but which is entirely outside the usual range of military activities.

Over the course of my career, I have been involved in teaching ethics, including ethical issues involved with the use of force, to both police officers and military personnel. When discussing the ethical issues that might arise out of the ROE issued for a particular operation, I have found that it is quite common for military personnel to slip from talking about ROE to talking about OFOF (that is, orders for opening fire) and back to ROE, all within the same conversation. This demonstrates that those military personnel have seen ROE and OFOF as essentially the same thing, and thus that "engaging" in accordance with the ROE simply equates to the use of lethal force.

But the police officers I taught thought about things quite differently. While these police did not actually use the term ROE, they would certainly have understood its meaning and how it would have applied to the use of the arms and appointments that they carried. These police effectively had a set of ROE for the use of any physical force at all, another, somewhat overlapping, set of ROE for the use of incapacitant spray,[10] another (again overlapping) set of ROE for the use of their baton, another for the use of their Taser,[11] and yet another for the use of their firearm. Thus, in any situation that required the use of physical force, these police officers would almost inevitably have a range of options available to them and from those options they would be expected to choose the one most appropriate to the situation they faced at the time. The range of physical force options available to these police officers was a reflection of the role they perform within society and of the wide range of different situations that they might face while performing that role, situations that they have been trained to expect and to deal with in the ordinary course of their duties. The usual role of military personnel, on the other hand, is very different from the role of police officers, and the training that military personnel receive and the equipment with which they are issued reflect this.[12]

Basic military training is about preparing military personnel for combat. In blunt terms, it is about killing people, in particular examining who it is legally appropriate to kill, and when, how, and why it is appropriate to kill them. The basic equipment that military personnel are issued with is also focused on this task. All the fighting equipment issued to an ordinary soldier is designed for one of two purposes: either to help the soldier kill enemy personnel, or to protect the soldier from the enemy's attacks. Thus, one of the reasons why peacekeeping operations can be so difficult for the personnel involved is that many situations that those personnel will

have to deal with are ones where it is clearly not appropriate to kill *anyone*, yet where some forceful action must still be taken.

Consider a case such as that related by Anthony Hartle,[13] where military personnel have been deployed to a country wracked by ethnic tensions. The soldiers in Hartle's case are operating in an area where a new peace accord has just been established and members of a particular ethnic group, the "Andolosians," who had previously been driven out of the area by violence, are now returning to their homes in a nearby town. The soldiers are manning roadblocks and have been given the task of ensuring that the Andolosians only enter the town a few people at a time, since there is concern that the arrival of a large group of Andolosians might provoke a new outbreak of violence. But one group of Andolosian civilians, led by some young men who are carrying babies, force their way through the first roadblock, using the presence of the babies as a type of psychological battering ram; the soldiers, wary of taking action that might cause harm to the babies, are hesitant to use force, and the rest of the Andolosians follow the "baby ram" through the gap in the roadblock. Hartle asks what the officer in charge of the soldiers ought to do as the group of Andolosians approach the next road block with their "baby ram."

The large group of Andolosians who are approaching the roadblock are obviously not a threat to the lives of the soldiers; they are simply threatening the mission that the officer and his troops have been entrusted with. The basic dilemma for these soldiers is that the general mission for which they have been deployed (that is, to keep peace in the country and attempt to ensure that civilians are protected from harm) seems to be at odds with what is required in order to achieve the specific mission they are currently tasked with (that is, to prevent large groups of Andolosians from returning to the town). The reason these two things appear to be at odds with each other is that the primary means that military personnel are trained to use in order to achieve their objectives (that is, the application of lethal force) is obviously inappropriate for the task at hand.

While using lethal force would stop these civilians from re-entering the town, the resultant civilian casualties would certainly undermine the goals of the overall mission; the use of lethal force against unarmed civilians would also clearly be a breach of international law. This highlights, once again, the sorts of problems that can arise when military personnel are asked to perform tasks that would ordinarily be performed by police officers. Given that dealing with civilians, including unruly civilians, is a fundamental part of a police officer's job, modern police officers will usually be both better trained and better equipped to deal with this sort of situation than these soldiers were. This is certainly not intended as a criticism of the job that military personnel have done in peacekeeping and peacemaking operations; my point is simply that such operations are quite different from those that military personnel are fundamentally trained to undertake, and thus problems ought to be expected when military personnel are required to act in the role of police officers, just as they would be if police officers were required to fight a war. The differences between police and military personnel have been recognized, at least to some extent, by the UN; this is obviously from the fact that many UN peacekeeping, as opposed to peacemaking, operations now include a significant number of international police officers among their personnel.

IV. Should Future AHIs be Carried Out with Non-Lethal Weapons?

The fact that these sorts of problems have become so common in the context of peacekeeping and peacemaking operations, as well as the fact that the military personnel who are engaged in such operations are so often called upon to act like police officers, has led some people to suggest that military personnel ought to be equipped with some of the weaponry that modern police officers are. In particular, the claim is that military personnel ought to be equipped with various

types of non-lethal weaponry that could be used in such situations.[14] However, equipping military personnel in this way might actually introduce a new range of problems.

One problem for military use of non-lethal weapons is that this use may violate current international law in some circumstances. The 1993 Chemical Weapons Convention, for example, bans the use of Riot Control Agents (RCAs) as weapons of war,[15] though not for use in law enforcement, including domestic riot control situations.[16] This situation was actually commented on by then Secretary of Defense Donald Rumsfeld, who complained in testimony to the House Armed Services Committee that "in many instances our forces are allowed to shoot somebody and kill them, but they're not allowed to use a non-lethal riot control agent."[17] It could perhaps be argued that the use of RCAs is actually permitted in military operations short of war, such as peacekeeping operations, but it is questionable whether AHI would also fall into this category, especially if intervening forces are engaged in direct conflict with organized armed groups.

There are also issues for military use of non-lethal weapons with regard to the *jus in bello* considerations of discrimination and proportionality. Consider the issue of proportionality. Donald Rumsfeld noted that it seems odd that military personnel might be allowed to shoot someone, but not use a non-lethal agent, and this certainly does seem counterintuitive, to say the least. So intuitively it might seem to be the case that if it is considered proportional to shoot someone, then it must also be proportional to use any non-lethal agent; if it is proportional to kill someone, then it must also be proportional to use a weapon that is not intended to kill. However, the mere fact that a weapon is not intended to kill its target does not mean that the weapon does no harm, and some weapons that are intended to have non-lethal effects have been banned by other international conventions on the grounds that the use of these weapons does actually cause disproportionate harm. The use of permanently blinding laser weapons, for example, has been banned under Protocol IV of the Convention on Certain Conventional Weapons;[18] these weapons are considered to cause disproportionate harm despite the fact that the effects of such weapons are non-lethal. Thus, problems related to the proportionality of non-lethal weapons cannot simply be ignored; it cannot simply be assumed that all non-lethal weapons will meet the requirements of proportionality in any case where the use of lethal force would be considered to be proportional.

Even more serious with regard to the use of non-lethal weapons by military personnel are the problems with regard to discrimination. When the principle of discrimination is applied to the use of lethal force, it is always applied before the use of that force; military personnel are simply not permitted to deliberately target noncombatants. However, many advocates of non-lethal weapons seem to advocate their use in a manner that applies the principle of discrimination *after* the use of force rather than before. The following quotation from Michael Gross is a good example of this:

> Unlike the use of ordinary weapons, non-lethal weapons deliberately target civilian non-combatants so that the harm they suffer is no longer incidental but intentional. Targeting civilians in this way requires that one subject the principle of non-combatant immunity to a "lesser evils" test that compares a small amount of intentional harm with a greater level of non-intentional harm that comes from using high explosives. If the former is significantly less than the latter, then there are moral grounds to targeting civilian non-combatants with non-lethal weapons.[19]

Some non-lethal weapons that might be used by military personnel seem to have indiscriminate effects and would thus fail to abide by the principle of discrimination; such weapons would

include RCAs, anesthetizing gases, water cannons, and so on. However, the issues of discrimination that would arise out of the use of non-lethal weapons that target an individual, such as pepper sprays or Tasers, for example, are essentially the same as arise out of the use of lethal weapons, in that the main issue is whether it is appropriate to fire at this particular individual or not. Thus, if it is indeed legal for military personnel to use these types of weapons in at least some circumstances, the problems of using such non-lethal weapons might be considered to be a reasonable cost, if they can solve some of the other problems that arise for military personnel in peacekeeping and peacemaking operations.[20] Whether military personnel might have a tendency to overuse non-lethal weapons, simply because they are non-lethal, is another question entirely.

Notes

1. Consider, for example, the comments about U.S. involvement in operations in Somalia in 1992 made by General Anthony C. Zinni (USMC), who performed the role of Director of Operation for the Marine Taskforce in Somalia. "I think it was clear that President Bush made the decision to intervene not based on any political motivation. Obviously, you couldn't find anything that you could even closely or remotely tie to a vital national interest in our intervention in Somalia." "Perspectives on intervention: The case of Somalia—a response to Professor Lucas," in George R. Lucas, Jr & W. Rick Rubel, Eds., *Ethics and the Military Profession: The Moral Foundations of Leadership* (Boston, MA: Pearson, 2008): 343.
2. Of course, their state's interests may be indirectly advanced in some way and this will, in many, if not most, cases, be a significant consideration in the minds of the political leaders who decide to commit troops to these operations in the first place.
3. See Chapter 26 this volume.
4. See G. R. Lucas, Jr., "Ethical issues in the use of military force for humanitarian intervention," in G. R. Lucas & A. C. Zinni, *Perspectives on Humanitarian Intervention* (Berkeley, CA: Institute for Intergovernmental Studies/Public Policy Press, 2001): Chapter 3.
5. See *The Moral Warrior: Ethics and Service in the U.S. Military* (Albany, NY: State University of New York Press, 2004): 74–75.
6. For example, according to UN figures, there have been 36 military fatalities during the 66-year operation of UNTSO. See: www.un.org/en/peacekeeping/resources/statistics/fatalities.shtml.
7. United Nations Protection Force in Croatia and in Bosnia and Herzegovina between 1992 and 1995.
8. This problem is certainly not exclusive to UNPROFOR; many other UN peacekeeping deployments have faced similar situations, including the forces who remained in Rwanda as part of UNAMIR (United Nations Assistance Mission for Rwanda) while the genocide was occurring in that country in 1994.
9. In July 2014, a Dutch court ruled that Dutch peacekeepers, and thus the government of The Netherlands, did not take adequate steps to protect the lives of civilians who were sheltering in the Dutch military compound at Potočari, and thus were indirectly responsible for the deaths of more than 300 civilians killed during the so-called Srebrenica Massacre. The court ordered the Dutch government to pay compensation to the relatives of those victims. See www.bbc.com/news/world-europe-28313285. It is interesting that the court held this view even while acknowledging the very restricted ROE for the mission.
10. Police in different jurisdictions use different types of incapacitant sprays, such as pepper sprays (OC or PAVA spray) or some form of tear gas (CS spray), but all have similar incapacitating effects.
11. Taser is actually the brand name for an electroshock muscular incapacitation device that uses an electric current to disrupt the brain's ability to control the muscles of the body. See the further discussion of "non-lethal" weapons by Pauline Kaurin, in Chapter 35 of this volume.
12. It should be noted that in the U.S. in particular, many police departments now have access to a range of equipment that was previously only available to the military. Although the intention in providing that equipment may have been to ensure that the police would be able to handle counterterrorism operations, its use in many other situations has led to concerns about the militarization of policing.
13. Anthony E. Hartle, *Moral Issues in Military Decision Making*, 2nd ed. (Lawrence, KS: University Press of Kansas. 2004): 186–187.

14. The term "non-lethal" is somewhat controversial since virtually any weapon can have lethal effects in some situations. This has led people to seek other terminology that could be used to describe them. Examples include "soft-kill weapons," "less-than-lethal weapons," "sub-lethal weapons," and so on. In addition to Professor Kaurin's treatment in this volume, see David A. Koplow, *Non-Lethal Weapons: The Law and Policy of Revolutionary Technologies for the Military and Law Enforcement* (Cambridge: Cambridge University Press, 2006): 9–10; and Neil Davison, *"Non-Lethal" Weapons* (Basingstoke: Palgrave Macmillan, 2009).
15. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1993). Article I, Point 5: "Each State Party undertakes not to use riot control agents as a method of warfare."
16. Ibid., Article II, Point 9(d).
17. Quoted in Brad Knickerbocker, "The fuzzy ethics of nonlethal weapons," *Christian Science Monitor* (February 14, 2003): www.csmonitor.com/2003/0214/p02s01-usmi.html.
18. The full name of this treaty is the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects. Since permanently blinding laser weapons are not by their nature indiscriminate, it is obvious that the reason for the inclusion of such weapons in this treaty is that they may be deemed to be "excessively injurious" (that is, that they cause disproportionate harm to their targets). Protocol IV, regarding permanently blinding laser weapons, was adopted in October 1995.
19. Michael L. Gross, "The Second Lebanon War: The question of proportionality and the prospect of non-lethal warfare," *Journal of Military Ethics* 7 (2008): 1–22, at pp. 15–16.
20. For further discussion of some of the issues raised by military use of non-lethal weapons, see Stephen Coleman, "Discrimination and non-lethal weapons: Issues for the future military," in David Lovell and Igor Primoratz, Eds., *Protecting Civilians in Violent Conflict: Theoretical and Practical Issues for the 21st Century* (London: Ashgate, 2011).

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30

PRIVATE MILITARY CONTRACTORS AND THE MILITARY PROFESSION

George Lucas

At the present time, the military forces of most nations cannot undertake operations of any sort, for any purpose whatsoever, either individually or in coalition exercises, without the support and active participation of "private military contractors" (PMCs). This rapidly growing dependency of many of the world's national militaries on the private sector has developed over the past two decades, since the end of the Cold War. In North America, one could argue that colonial powers availed themselves of this kind of private service from the time of Miles Standish and John Smith (both of whom were private security contractors).[1] Nevertheless, the enormous growth in this kind of contracting began to occur only during and after the so-called "First Gulf War" of 1991, in the effort by U.S.-led UN coalition forces to repel an invasion of the nation of Kuwait by the government of Saddam Hussein, then President of Iraq.

This development is quite astonishing in its extent, and also conceptually counterintuitive in modern society. The United Nations "Convention Against Mercenaries," for example, is commonly understood as intending specifically to inhibit (rather than foster) the growth of private military forces and outlaw their use by UN member nations. Specifically, United Nations General Assembly Resolution 44/34 (December 4, 1989; as revised and ratified on October 20, 2001), technically known as the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries*,[2] clearly states that members and signatory states "are not to recruit, use, finance or train mercenaries," who in turn are defined (originally in Article 47 of Protocol Additions to the Geneva Conventions of August 12, 1949) as persons hired to provide security or to engage in warfare who are not citizens of the state at war, nor under the control of, nor sent in an official capacity as representative of another state, but are privately engaged in conflict strictly for personal financial gain.

This convention in turn reflects the long-standing historical experience among nation-states that there is fundamental moral conflict of interest in serving as a mercenary. Wars, and the killing and destruction that they cause, are thought to be morally wrong, and so should be avoided insofar as possible. But the mercenary makes his or her living by fighting, and so, simply from interests of livelihood, must be committed at some level to desiring, rather than abhorring, war. The Italian Renaissance political philosopher Niccolò Machiavelli, for example, complained

vigorously about this underlying conflict of interest, and protested vociferously against the widespread reliance of Italian city states on mercenaries during his lifetime. In Chapter XII of *The Prince* (1532), he denounced "mercenaries and mixed auxiliaries" as "useless and dangerous."[3] Motivated by financial gain, he grumbled, they serve the best paymaster, rather than any discernable political purpose. They are prone to quit, to run from the conflict, or even to "switch sides" if the financial incentives change, or the conflict itself becomes too risky in light of their compensation. In sum, Machiavelli argued, mercenaries are unprincipled and wholly unreliable. Why, then, should we now choose to reintroduce the long-decried reliance on these "soldiers of fortune?"

The first response to this apparent paradox is that the "private military contractors" (PMCs) now critically relied upon to support and augment national and coalition military operations in war zones are not, strictly speaking, "mercenaries" in the technical sense. The UN Convention itself characterizes a "mercenary" as an individual hired and employed to bear arms and to serve as a soldier for a government other than his own. The vast majority of PMC employees, by contrast, do not bear weapons of any sort, and are also directly employed by the military services or diplomatic agencies of their own nation, and are deployed under their own government's auspices to serve on foreign soil.

The critical dependence of national military and diplomatic personnel upon the private sector does not result from a deliberate policy by individual states to "privatize" their militaries. Rather, in an era jointly characterized by voluntary, non-conscript military services, coupled with increasingly severe economic constraints, it has proven increasingly necessary, as well as more cost-effective, to "outsource" a number of non-combat, but mission-critical, operations and services to the private sector. These outsourced or "privatized" functions typically range from supplying and preparing food, to providing maintenance and sanitation at military outposts, and even to supervising the training of host-country police and military forces during peacekeeping and stability operations (as, for example, U.S., NATO, and other coalition military operations in Bosnia, Kosovo, Iraq, and Afghanistan).

At the far extreme of this range of private services, however, is the increasing use of Armed Private Security Contractors (APSCs) to provide security for diplomatic missions and personnel, to protect vital supply convoys, and even to guard military installations themselves (for which APSCs serve as sentries or police). As with the larger phenomenon of the growth of involvement of the private sector in military operations generally, this reliance on APSCs has not resulted from a deliberate, collective, or even well-thought-out strategic or policy decision by national militaries. Instead, the increased reliance upon private security forces in war zones is largely the result of an extension of conventional domestic practice within those member nations themselves. In most NATO countries, for example, private firms have long been retained to provide guards, sentries, and traffic police for domestic or "in-country" military installations as readily as other firms have long been retained on those same military installations to operate the motor pool, provide routine building maintenance or grounds keeping, or to supply, deliver, prepare, and serve food for troops in the "mess hall."

Thus, the rapid growth of reliance upon the private sector to support military missions abroad can be seen largely as a form of "mission creep." That is, present reliance on the private sector stems from an unreflective extension of customary domestic practices into the international arena, primarily out of necessity or convenience, without much thought for the long-term implications or consequences of extending such practices.[4] Adapting a phrase from Hannah Arendt,[5] we might term this the "banality of the private sector," in marked contrast to the historically malevolent or sinister moral reputation attached (for example, by Machiavelli) to any reliance on mercenary military forces. Whether banal or malevolent, however, this situation is unlikely

to change. How might the various national military forces and diplomatic missions who have elected to employ private military contractors most adequately cope with this new feature of modern warfare?

I. The Putative Benefits of the Private Sector

Proponents of this dramatically increased reliance upon the private sector would assert that this public-private partnership in the military realm is beneficial rather than sinister. Indeed, the commercial or corporate sector's motto of "better, faster, cheaper" seems well suited to providing reliable, quality food and sanitation services for military personnel deployed (often with little advance warning or preparation) in peacekeeping or stability operations, such as a humanitarian catastrophe. This tacit policy serves to increase the number of highly trained uniformed personnel who are thus available to engage in the primary military mission of life-saving, peacekeeping, or nation building, while leaving logistical concerns more properly in the hands of nonmilitary support personnel. Likewise (proponents of the present arrangement argue), the private sector is able to mobilize quickly to provide technologically complex logistical support (such as weapons systems maintenance, or operational advice and technical consulting). It takes months or even years for military units to recruit, train, and deploy uniformed personnel with these requisite technical skills. By contrast, a contract may be "let out" to a private defense contractor to provide skilled technical support personnel during a military crisis with very little lead time.[6]

As an additional economic consideration, military personnel in service to their country enlist, or are commissioned, to serve for a specified period of time. During that assigned period of national service, they are salaried with full benefits, whether or not they are actually deployed in military operations. Upon leaving their nation's military service, in addition, such personnel may be entitled to a range of "veteran's benefits," from education to healthcare, for the remainder of their lives. By contrast, employees of a private military contractor are governed strictly by the terms of their employer's contract. They are usually paid quite generously, but only while deployed on assignment, and are usually responsible for providing their own benefits (such as healthcare and life insurance) from their salaries. Private employees can be let go or reassigned quickly when the PMC's primary contract (or the need for their individual services) terminates. There is no lifetime guarantee of residual benefits at public expense.

Finally, advocates of this increasing reliance on a "public–private military partnership" note that the "irregular" or unconventional military operations (IW) in which professional military forces will likely be involved for the foreseeable future—counterinsurgency (COIN), humanitarian assistance, or peacekeeping in failed states—often have an underlying economic dimension, which private contracting helps alleviate. Private military contractors frequently, upon arrival in a "failed state" or an unstable zone of conflict, offer employment to local inhabitants (to cook, clean, provide other labor, and even serve as translators). The use of PMCs during such IW operations thus provides a reliable source of jobs and incomes to the most desperately impoverished population sector in the "target" country, and serves to promote economic stability and heightened security in contested regions of the world. It is for such reasons that quite a few of the world's military leaders and policy experts generally conclude that contemporary and future military operations are "unsustainable" apart from reliance upon the private sector.

II. The Ethical Challenges to the Military Profession

These arguments in support of the present public–private military partnership, however, should not be allowed to minimize a number of complex ethical challenges that this arrangement

inevitably has already posed, and that it will likely continue to generate.[7] Ideally, for example, the contracts required for provision of specific services to military and diplomatic services should be negotiated *transparently*, through a fully open and competitive bidding and procurement process designed to assure the highest-quality service at the best price. Likewise, proponents of the current system often claim that the terms of compliance specified in the contract itself will provide sufficiently for *accountability and oversight*, both of the PMC and of the behavior of its employees. Thus, poor performance or insufficient compliance by the contractor with the terms of the contract, or improper behavior in the host or client country by a contractor's employees, should serve as grounds for dismissing those employees, or terminating the contract with the firm. The existence of these commercial sanctions in the "free market" are often touted as adequate mechanisms to enforce compliance, guarantee satisfactory performance, and ensure best practices by all parties.

Regrettably, in actual practice, these "free market" ideals are seldom attained. Transparency in bidding and contract procurement is frequently absent, and the prospects for favoritism, graft, cronyism, bribery, and corruption are rife. As often as not, even absent corrupt motives and unscrupulous character, most military forces simply lack a sufficient number of trained and experienced procurement officers to supervise these negotiations properly. Those assigned to these duties, moreover, even given the highest level of competence and the best of civic intentions, may be rapidly overwhelmed by the size and scope of their task, particularly in the chaotic and compelling circumstances accompanying armed intervention in a failed state, or in the midst of an unfolding humanitarian crisis. The urgent need for a wide range of diverse services in the midst of war does not constitute (to put it mildly) an ideal situation within which to publicize, receive, review, and award large and complex contracts in a just and orderly fashion, nor to establish effective external controls and oversight to ensure full compliance.[8]

Even if overworked and overwhelmed government contracting officers are not subjected to bribery and corruption, there are ample opportunities for unscrupulous and even incompetent PMCs, or the occasional unscrupulous employee, to take advantage of these unsettled circumstances. At present, for example, there is no accepted and generally recognized system—certainly not at the international level—for evaluating, registering, or licensing private contractors, or otherwise defining or upholding reasonable professional standards of performance on the part of companies and their employees. When errors of procurement are made, or incompetence discovered, there is often little recourse open to the aggrieved parties beyond termination of contract.

Furthermore, even the very best and most reliable private firms (just as their domestic counterparts do upon occasion) may hire an incompetent or unscrupulous employee. The sanctions available for disciplining inappropriate, unprofessional, or even criminal conduct are often woefully inadequate, and hardly sufficient to serve as a deterrent to malevolent behavior. It hardly seems sufficient, for example, to punish an employee found to have engaged in criminal conspiracy, kidnapping, and human trafficking (as happened, for example, in Kosovo) merely with dismissal and severance of pay and privileges! Yet, under current prevailing circumstances, there is little other recourse available. Thus, establishing and sustaining what are sometimes termed the "inherently governmental" functions of contract supervision, oversight, and accountability (particularly of individual personnel) in zones of combat constitutes, in actual practice, a formidable challenge that should never be underestimated.

The allegedly unprovoked and indiscriminate killing of 17 Iraqi civilian bystanders in Monsour Square, Baghdad, on September 17, 2007, by security guards employed by the former U.S. firm Blackwater Worldwide,[9] constituted a dramatic illustration of the range of problems associated with building integrity and ensuring best practices by private contractors in zones of

conflict. That specific incident has been denounced as an example of regrettable indifference and unprofessional lack of concern of private security employees for the welfare of the local populace.[10] Such criticisms, however, altogether miss the most salient feature of that unfortunate incident. The "welfare of the local populace" is, by definition, seldom if ever the principal, or even the proper motive for a private, commercial contractor. Instead, it is concern for the welfare and safety of the *customer* or paying *client* that constitutes the overwhelming contractual concern of the APSC and its employees.

This factor underscores sharply the underlying differences of organizational values and intentions between public and professional organizaions (such as a democratic nation's military forces) and private, commercial organizations. The former exist to serve their nation and its legitimate interests. Its individual members, accordingly, in their professional training and orientation, are routinely and extensively socialized into that ethic of public service and sacrifice. Private commercial organizations, by contrast, exist to serve their customers and clients. The welfare of the wider public is guaranteed through their activities only insofar as these commercial firms operate within a well-defined system of legal jurisdiction and accountability—one that, for example, is competent to detect and punish both private firms and their individual employees for their failure to exercise due care, or for criminal negligence. In regions of armed conflict, let alone in failed states, it is precisely these systems of accountability and jurisdiction that have deteriorated. Absent the firm rule of law, the local population is left to rely upon the goodwill of the private firm, as well as upon the character of its individual employees. When these fail, there is little left to victims in the way of recourse.

Recognizing this dilemma, the professional military forces of virtually every minimally just, rights-respecting, or otherwise "democratic" state are imbued with a sense of public service and public accountability. Character education is a hallmark of professional military education within these nations. The goal of character education and "professional military socialization" is to ensure that individual members of each nation's military may be empowered to use deadly force when necessary, and entrusted to use such force responsibly and economically, and only insofar as is necessary to achieve legitimate national aims. Individual failures in exercising this weighty responsibility—for example, engaging in criminal activities (robbery, rape, extortion, or murder), or behaving in a careless, negligent, or indiscriminate manner when using deadly force—are accountable under stern military law and discipline.

Nothing could be more different from what might be termed the private-sector or "corporate" ethic, which focuses on corporate ambition and achievement within a competitive environment, with "successful performance" judged almost entirely in terms of client and customer satisfaction. Former Blackwater CEO Erik Prince, for example, proudly emphasizes his (former) organization's immaculate performance record in having never allowed a single client or "principal" to come to bodily harm during nearly seven years of providing security services in highly volatile and extremely hazardous war zones. This is indeed a remarkable and enviable performance record, indicative of the highest standards of competence in providing for client security. That is precisely the service that Blackwater Worldwide, Inc. pledged to provide.

The difficulty, however, is that this record on behalf of its own clients is not the only standard by which to judge the performance of APSCs. Critics from the military perspective complain that this very record of accomplishment itself constitutes a stark problem. The aggressive, militant, and belligerent behavior of APSC personnel, through which such protection to clients is accorded, offends and alienates the local population, and (as in Monsour Square) often also threatens them with disproportionate and highly inappropriate risk of harm or death. This is because the welfare of non-contractual third parties, such as the local population, *simply does not count* in terms of

compliance with the contract. Thus, the very success and proficiency of the APSC (as judged by this corporate or contractual standard) simultaneously impedes the military's larger COIN or IW objectives of gaining the loyalty and trust of the local population in a failed state by guaranteeing their safety and security and ensuring the rule of law.

Finally, it is quite possible that most of these foregoing considerations and conundrums are wholly irrelevant to the personal motivations of a great many individuals who go into this field. The designation of "mercenary" suggests their motives are all about wealth and financial gain. But in fact, this is psychologically problematic, to say the least. Pulitzer Prize-winning journalist Steven Fainaru carefully followed the lives and deaths of four young former military enlisted personnel who subsequently joined a poorly organized and inadequately resourced private security firm in Iraq.[11] Very soon thereafter, all four were kidnapped and finally executed by al-Qaeda insurgents. Their remains were returned to their grieving families without the military honors that normally accompany active military personnel killed in action. In essence, their prior military service, and their very lives (their families felt) were simply swept aside and forgotten.

And for what? Fainaru's interviews with the families and his acquaintance with the victims persuaded him that it was not so much the prospect of financial gain, as psychological damage sustained from active duty combat. Service in the Iraq War had transformed all four into "adrenaline junkies," unable to readjust after deployment to the normalcy of civilian life, and hence vulnerable to the excitement (as well as tempted by the good pay) of jobs back in the combat sector.

III. Conclusion: The Future of Private Military Contracting

Well-trained and professional military personnel in the employ of private firms will almost certainly continue to play a useful role in providing services that were once the domain of military police ("M.P.s") and Marine guards. Private security contractors may undertake "guard duty," and conduct routine police patrols on established and secure military posts and domestic-based military installations, as well as within military installations located securely within specified areas of a nation's military allies.

An emerging consensus in the aftermath of the Blackwater incident, in particular, suggests that armed private contractors ought never to be deployed "outside the wire"; that is, in areas of dispute and active armed conflict, which by law and tradition remain the purview of professional, active-duty military personnel under national and international control and accountability. This proposal recognizes that a vast majority of the ethical challenges have been generated simply by the presence of APSC in zones of combat, where legal jurisdiction and accountability have been decidedly ambiguous. Such a restriction, however, leaves unaddressed the question of how to provide security for logistical supply convoys operating in such areas. That relatively limited task, however, might simply be returned to military control without creating much in the way of an obstacle with respect to manpower requirements. These are among the policy and professional questions remaining to be ironed out.[12]

One intriguing suggestion for using armed private contractors, first put forth by foreign affairs expert Max Boot of the U.S. Council on Foreign Relations, however, is for nations and the United Nations to fund and hire private firms to undertake humanitarian military operations. These operations, as described in the preceding chapter, are designed to protect victims of social unrest, insurgency, and particularly of ethnically inspired genocidal violence.[13] As members of the United Nations agonized over how best to cope with the civil unrest and ethnic violence in southern and western Sudan in 2006, Black argued that a small force of, say, Blackwater security guards would, at a fraction of the cost of deploying reluctant national militaries, bring matters to a quick resolution.

While this suggestion was quickly overshadowed (and seemingly discredited) by the Nisour Square incident, there is some anecdotal and conceptual evidence that this proposal might work. Conceptually, humanitarian military intervention (as noted in the preceding chapter) would represent a situation in which the "vector" of corporate responsibility to protect the "paying client" would align perfectly, rather than (as in Iraq) conflict with the interests of the wider population. In the case of humanitarian intervention, that is, the welfare of the general population, and their protection from harm by marauders bent on genocide, would constitute precisely the "corporate mission," for which success would be financially rewarded.[14]

In all other respects, however, the threat of outsourcing inherently military operations to private contractors should continue to provoke concern and cautious oversight. Decades ago, Vice Admiral James B. Stockdale, the "conscience of the [U.S.] Navy," wrote that military ethics was a very different kind of morality, different, specifically, and incompatible with the values of business organizations in particular.[15] If the military is a profession, characterized (as Stockdale claimed) by the professional military virtues of honor, obedience, courage, public service, and sacrifice, then it seems hard to understand how a corporate or business model could replace it. Contrariwise, if it did prove possible to replace national militaries effectively with private contractors, then what are we to make of the claim of the military itself to constitute a profession, characterized principally by public service rather than profit and personal gain?

There is much of value that is at stake in this newly emergent challenge to ethics and the military profession. The argument is similar in many important respects to that accompanying money-saving proposals on many domestic fronts to replace professions such as local police and professional firefighters with private contractors. This could work and it might even save (or at least appear to save) scarce public funds. Perhaps, the aftermath of a global financial crisis and dwindling public resources in many nations, this is all we can afford.

But, to ring a change on Machiavelli, one might wonder whether in the U.S., for example, such private contractors would have unflinchingly pushed themselves up the stairs of the World Trade Center to rescue victims of 9/11, or performed the other heroic feats for which these life-saving and security-providing domestic professionals are justly honored there, as they are justifiably respected for their public service and sacrifices in many other nations. As Admiral Stockdale worried, something vital and important might be in danger of being sacrificed in this corporate bargain.

Notes

1. See Sarah Percy, *Mercenaries* (2007). I do not include some of the most famous of the Spanish "conquistadors" two centuries earlier only because a majority, if not all, of these famous military explorers were technically on "active duty" directly in the service of the king, as opposed to "retired" from active duty and/or private employed, as were both Smith and Standish.
2. See: http://legal.un.org/avl/ha/icruftm/icruftm.html.
3. Available from the Constitution Society at: www.constitution.org/mac/prince12.htm.
4. P. W. Singer, *Corporate Warriors: The Rise of the Privatized Military Industry* (Ithaca, NY: Cornell University Press, 2003; rev. edition 2008).
5. Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin, 1994). Unreflective bureaucrats who, in her words, fail to *think*, may be guilty of, or complicit in, a multitude of moral errors. In this instance, the lower-level desire for quick, inexpensive solutions to difficult logistics problems drove the policy and the increased usage, rather than any top-level, considered strategic policy.
6. Dean-Peter Baker, *Just Warriors, Inc.: The Ethics of Privatized Force* (London: Continuum, 2011).
7. For an account of these, see Baker, above, and also James Pattison, *The Morality of Private War: The Challenge of Private Military and Security Companies* (Oxford: Oxford University Press, 2014).

8. See Col. Jeffrey D. McCausland, *Developing Strategic Leaders for the 21st Century* (Carlisle, PA: Strategic Studies Institute Press, 2008): www.au.af.mil/au/awc/awcgate/ssi/devel_strat_ldrs.pdf.
9. Reuter's News Service account of the event and subsequent trials: www.reuters.com/article/2013/10/17/us-usa-crime-blackwater-idUSBRE99G1A320131017. See also coverage in the *Washington Post*: www.washingtonpost.com/world/national-security/new-charges-brought-against-former-blackwater-guards-in-baghdad-shooting/2013/10/17/9307b562-3759-11e3-8a0e-4e2cf80831fc_story.html. For an account of the rise and operations of Blackwater itself, see Jeremy Scahill, *Blackwater: The Rise of the World's Most Powerful Mercenary Army* (New York: Nation Books, 2007).
10. LT Matt Courtney, LT Sean Maloney, LCDR William Pugh, and LCDR Andrew J. McFarland, USN, and Mr. Joseph Prisella, DOD/USN (Patuxent River Naval Air Station, MD), "War is Big Business," in G. R. Lucas and W. R. Rubel, Eds., *Case Studies in Military Ethics*, 4th ed. (New York: Pearson, 2011).
11. Steve Fainaru, *Big Boy Rules: America's Mercenaries Fighting in Iraq* (Philadelphia, PA: Da Capo Press, 2008).
12. Security contractors, moreover, constitute only a tiny fraction of the PMCs operating in war zones. The particular dilemma they collectively present has been specifically and meticulously addressed in the deliberations of international legal experts under the auspices of the International Committee of the Red Cross (ICRC), as summarized in the "Montreux Document" (September 2008). That document carefully sets forth proposals to amend legal statutes, clarify and extend appropriate legal jurisdiction over APSCs operating in war zones, remove areas of ambiguity in the interests of all concerned parties, and otherwise promote best practices by host and client states. As such, this document should be read and critically pondered by the military supervisors of all rights-respecting and minimally just states, and its provisions for law and best practice with regard to the use of armed private security contractors, insofar as is feasible, should be followed. For a full text, see: www.icrc.org/eng/resources/documents/misc/montreux-document-170908.htm.
13. Max Boot, "Send in the mercenaries: Darfur needs someone to stop the bloodshed, not more empty UN promises." Council on Foreign Relations: www.cfr.org/publication/10798/send_in_the_mercenaries.html; "Accept the Blackwater mercenaries!" www.cfr.org/security-contractors/accept-blackwater-mercenaries/p14359; see also James Pattison, "The principled case for employing private military and security companies in humanitarian interventions and peacekeeping operations," (January 29, 2010): http://ssrn.com/abstract=1544463.
14. The anecdotal, historical evidence comes from the performance on such a mission by one of the first distinct private security firms, South-African based "Executive Outcomes." Composed of former South African security forces disbanded by President Nelson Mandela during the dismantling of apartheid in South Africa itself, the company was subsequently hired by the government of Angola to provide security and stability in the aftermath of a hotly contested election, whose results an insurgent group, UNITA, refused to accept. The firm quickly re-established law and order, trained the local militia, defeated UNITA, protected the population, and guarded Angola's civil infrastructure (including its valuable oil fields) from insurgent attacks. In the initial confusion regarding the use of "mercenaries" by the Angolan government, however, these efforts were denounced and the company forced to withdraw. Civil unrest quickly resumed thereafter. Perhaps, in hindsight, this was a moralistic or legalistic rush to judgment, based upon an underlying conceptual confusion and moral uncertainty about the mercenary problem, rather than a wise and prudent policy decision for the people of Angola.
15. "Military ethics is not at home with business values," in *A Vietnam Experience: Ten Years of Reflection* (Stanford, CA: Hoover Institution Press, 1984): 110–112.

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31

ETHICS AND THE HUMAN TERRAIN SYSTEM[1]

Colonel Daniel S. Zupan

Human Terrain System Mission

The U.S. Army Human Terrain System functions as the enduring primary social science-based human domain research, analysis and training capability, focused on enabling leaders to remain adaptive when shaping current and future complex strategic and operational environments which support Unified Action Partners world-wide.[2]

The U.S. Army's Human Terrain System (HTS) has been a controversial program from its inception.[3] Although the furore of its early days has diminished significantly, detractors of the program remain. There are complaints about mismanagement and ineffectiveness. Many of these complaints were legitimate early in the program's existence. Those problems have largely been addressed and ameliorated.[4] As with any organization, however, the program in its current incarnation has its faults—just as does every human institution. This chapter is not an apologetic for all past or present, real or imagined, HTS sins. However, there is one enduring criticism about HTS that I will attempt to silence, namely the claim that HTS is an unethical program, and that there is something inherently immoral about deploying social scientists to war zones in support of the military.[5]

I. Is the HTS Enterprise Inherently Unethical?

For some detractors, HTS is an inherently unethical program. These critics typically do not single out specific aspects of the program as problematic, but reject it outright. For example, prominent members of the American Anthropological Association (AAA) Robert Albro and Hugh Gusterson state that HTS inherently "contravenes anthropological ethics,"[6] suggesting that there is something *intrinsic* to the HTS program that makes it an unethical enterprise:

> Sending social scientists to study local populations in the company of armed troops amid active hostilities will not produce *scientifically reliable*[7] information. Just as important are the long-term consequences of this approach. Embedding anthropologists with combat brigades undermines their independence and duty not to harm populations —requirements that are the linchpins of anthropological ethics. Calling embedded

> anthropologists "social scientists" does not solve the problem . . . when ethnographic investigation is determined by military missions . . . where data collection occurs in the context of war . . . all characteristic factors of the HTS concept and its application . . . it can no longer be considered a legitimate professional exercise of anthropology . . .[8]

The reasoning in this statement seems to be that HTS practitioners are virtually incapable of conducting research in an ethical manner, simply by the nature of the work and the environment in which they practice their craft. The claim is that HTS is an illegitimate enterprise by virtue of the fact that it occurs in a conflict environment and in support of the military.[9]

Such criticism, however, simply begs the question: HTS cannot plausibly be considered illegitimate because its practitioners employ their expertise in a conflict zone in support of the military, and *any* such enterprise exercised in a conflict zone supporting the military is illegitimate. Since this criticism of the program pointedly rests on a fallacy, one might conclude that this settles the matter. But it does not. There may be a deeper, more insidious motivation for the opprobrium directed at HTS. In the same article, Albro and Gusterson assert:

> *Military readers may find anthropologists' preoccupation with ethics quaint when there is a war to be won, but the pressure war creates to cut ethical corners is one of the reasons anthropologists are so troubled by HTS.* In the end, all professions have ethical commitments they will not compromise, even in war. Doctors insist on their obligation to save lives, even to the point of treating wounded enemy combatants; military chaplains do not engage in killing the enemy.[10]

It appears that some critics of HTS believe that any endeavor undertaken by the military is inherently unjust. I find it ironic that some anthropologists judge the military so negatively. Their negative judgment suggests that they have not done adequate research on the culture that is the U.S. military. The authors clearly assume that the military jettisons ethical concerns during war, that the military "cut[s] ethical corners." If they undertook a good-faith study of the U.S. military, however, they would find that such aspersions are grossly unwarranted. They would discover instead that the U.S. military and NATO coalition forces are obsessed with the ethical conduct of war. The evidence regarding this is overwhelming, and readily available.[11]

Even if one were to discount such ethical concerns within the military entirely (as perhaps constituting some sort of public relations gimmick), surely it would be prudent to consider the military's ethic more carefully. That is, even from the misguided perception that the military lacks moral motivation, it should be apparent why the military would nonetheless be committed, for example, to the just conduct of war. The military well understands that it cannot win any war, especially a counterinsurgency, if it violates the laws of land warfare, or fails to discriminate between legitimate and illegitimate targets (for example, between combatants and noncombatants). If military forces engaged in counterinsurgency do not follow the laws of land warfare, they alienate the local population and incite their enmity, which increases the danger to the military's troops at the same time that it decreases or extinguishes the military's chances for success.

Additionally, it is worth noting that perhaps (indeed, almost certainly) military personnel understand, far better than the layperson, the pressure war creates to cut ethical corners. For reasons both moral and prudential, the U.S. military demands ethical conduct in war. To imply that soldiers suddenly abandon their moral bearings with the onset of war does a great disservice to the men and women who routinely risk their lives fighting their nation's wars—persons who often accept greater risk to themselves precisely in order to protect noncombatants.

In the same statement, Albro and Gusterson recognize that "all professions have ethical commitments they will not compromise, even in war."[12] At this point, they unwittingly turn their argument upon themselves: for, given that we *all* face ethical challenges, why is it so unique and troubling that HTS should turn out, on balance, to be faced with the same pressures as other professions who participate in armed hostilities in some fashion? The authors themselves point out that doctors manage (and are expected) to adhere to the ethical canons of their profession, even when caught up within the maelstrom of war. What it is about HTS members that (at least according to these two authors) makes them uniquely vulnerable to ethical lapses in the face of war? Is it not much more reasonable, instead, to presume that social scientists, just like their counterparts in the medical and clerical fields, are fully capable of, and committed to, ethical conduct in war and peace, and to upholding their standards of professional ethical behavior in the midst of war in particular?

II. Issues of Consent

Another issue that troubles critics of HTS has to do with concerns about consent.[13] A significant portion of HTS research entails face-to-face, primary source interviews. Given that the interviews occur in a war zone, security is an obvious problem. Since HTS personnel are not soldiers (and are legally noncombatants), military personnel provide for their security. Many HTS personnel exercise the option, in addition, to carry a firearm for self-protection. The concern, then, becomes: "How can an interviewee plausibly be considered to have consented or have been given the option to consent, when he is surrounded by people bearing arms?"

This question is somewhat misconstrued when we place the broader circumstances in their proper historical context. Modern Afghanistan has been a war-torn land for nearly half a century, often occupied by foreign military forces. In the late 1990s and early 2000s, the Taliban controlled most of the country. Many Afghans initially welcomed Taliban rule, since the Taliban helped to stem the anarchy that local warlords had perpetuated following the exodus of the Soviet Union's military occupation forces in 1989. The Taliban gradually lost favor among the people, however, when they began a rule of terror masquerading as a legitimate form of Islamic government.

Since 2002, thousands of U.S. and Coalition forces have occupied Afghanistan. Is it correct to claim that the Afghans have "consented" to being occupied? The answer is not straightforward. At the onset of Coalition activities, it would have been difficult to argue that there was a legitimate Afghan government that could have consented to an armed intervention.[14] Pakistan was the only country in the world that recognized the Taliban as the legitimate government of Afghanistan. Therefore, it is difficult to claim that the Taliban were in a position to make any claims on behalf of Afghanistan.

Supposing (for the sake of argument) that they were in such a position, however, it is at least clear that the Taliban did not consent to an armed intervention. What subsequently became known as "ISAF" ("International Security Forces—Afghanistan") was initially a coercive action, sanctioned by the United Nations against a government that refused to curb or terminate the terrorist organization operating and training with impunity in its midst. We must stipulate, however, that there are both justified and unjustified forms of coercion. For example, when a criminal assaults his victim in order to rob her, his coercion is not unjustified; but when a police officer uses force to protect the victim and apprehend the criminal, his coercion *is* justified. This is a consequence of what the German Enlightenment philosopher Immanuel Kant explains as the "principle of freedom":

> Resistance that counteracts the hindering of an effect promotes this effect and is consistent with it. Now whatever is wrong is a hindrance to freedom in accordance with universal laws. But coercion is a hindrance or resistance to freedom. Therefore, if a certain use of freedom is itself a hindrance to freedom in accordance with universal laws (i.e., wrong), coercion that is opposed to this (as *hindering of a hindrance to freedom*) is consistent with freedom in accordance with universal laws, that is, it is right. Hence there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it . . . one can locate the concept of right directly in the possibility of connecting universal reciprocal coercion with the freedom of everyone . . . [strict] right rests . . . on the principle of its being possible to use external constraint that can coexist with the freedom of everyone in accordance with universal laws. Thus when it is said that a creditor has a right to require his debtor to pay his debt, . . . it means . . . that coercion which constrains everyone to pay his debts can coexist with the freedom of everyone, including that of debtors, in accordance with a universal external law. Right and authorization to use coercion therefore mean one and the same thing.[15]

Unjust coercion by its very nature rules out the possibility of consent. It is not possible for the assault victim to consent to being violently assaulted. But it is certainly possible for her to consent in principle to any assistance that would defend her *against* such unjustified behavior. The judgment that any particular instance of coercion is just does not hinge on whether someone *does* or *would* consent. Rather, as Kant explains, the question of justice hinges on whether it is *possible* to consent to the principle generating the coercion as an act that protects and promotes the moral agent's freedom. Hence, it is possible even for the criminal to "consent" to a principle that establishes the possibility of coercion being used against him.

I will not here discuss the *jus ad bellum* justice of the ISAF cause. I will simply presuppose the position that the U.S. and NATO invasion and subsequent ISAF occupation of Afghanistan was both legally and morally justified, but I will not argue the point further here. Even if the Afghan invasion and occupation is justified in general, as furthering principle of freedom, the question still would remain: "What, in principle, could any individual Afghan citizen be presumed to be consenting to?"

Obviously, no single response could satisfactorily answer this question. One answer would be that the citizen could, in principle, consent to being *helped* in the relevant ways (as we assume it is possible for the victim in the robbery scenario to consent to being helped by the police officer). Insofar as the Taliban were oppressing and coercing Afghans, to the extent that the military invasion and occupation reduced or removed oppression, consent is de facto possible.

But then—since one of the primary missions of HTS, as part of that morally and legally justified occupation force, is to promote sociocultural understanding among all stakeholders for the purposes of finding peaceful resolutions to problems in order to reduce unnecessary suffering of soldiers, civilians, and enemy forces—it follows that HTS activities themselves are ethically *unproblematic*. The operating principle behind the HTS program is consistent with, and promotes, the principle of freedom.

A final question, perhaps the most appropriate one, then emerges: "What would constitute consent (for example, consent to be interviewed by an HTS researcher) under the general circumstances that obtain in war?"[16] Under these general conditions, it might be inappropriate to invoke the arguments of the preceding paragraphs. We might say, rather, that in some very general way, consent is indeed ruled out in advance, since even an alleged scenario of persuasion occurs in the coercive environment that is war. Perhaps the most that we can hope for is that

a potential interviewee understands: (1) that he or she is not threatened in the immediate situation; (2) that the interviewers are not themselves the further means of coercion; and (3) that the interview itself is not compulsory.

If it is the case that proper informed consent is impossible under the circumstances of war, however, then it follows that issues of consent, or the inadvertent involvement of harm, are not unique to HTS. Hence, the concerns about informed consent of, or the doing of harm to, potential research subjects is not a tenable criticism of HTS uniquely, but of all otherwise persuasive and intentionally beneficial activities (medical treatment, for example, or psychological care) that occur within the context of war. It would then seem inappropriate, and perhaps even disingenuous on the part of those who fault the vulnerability of HTS exclusively on this account, especially given that the quintessential purpose of employing HTS researchers is precisely to reduce or eliminate the need to resort to the use of coercive force.[17] Our principal focus heretofore has been on informed consent. Now we turn more directly to the ethical conundrum of actively intervening in a conflict context in order to do good, versus a passive ethic of deliberately avoiding such professional intervention, in order to avoid the doing of harm.

III. Do No Harm?

We are led to this point in the discussion because some critics of HTS contend that HTS fails to uphold the mandate to do no harm. The AAA, for example, in their "Statement on Ethics," begin: "A primary ethical obligation shared by anthropologists is to do no harm,"[18] and their considered opinion is that anyone, particularly an anthropologist (and, by extension, any social scientist), working with/for HTS cannot meet this obligation. This notion of doing no harm is problematic in several ways. It is a rather feeble moral goal, and as a primary ethical obligation it may be antithetical to any credible moral code. Finally, it is epistemologically illusive.

First, to epistemic concerns. Lacking omniscience, we will find it impossible to *know* that our interaction with others does no harm. How can the anthropologist say she does no harm? As soon as she interacts with a research subject, she has had an impact on the subject/culture. Certainly, she will look at probable second and third order effects of her encounter; she will take steps to reduce the chance for harm; but she must admit that she cannot know with any degree of certainty whether harm will ensue. The AAA recognizes this indeterminacy but seems to gloss over its significance:

> As with all anthropological work, determinations regarding what is in the best interests of others or what kinds of efforts are appropriate to increase well-being are value-laden and should reflect sustained discussion with others concerned. Anthropological work must similarly reflect deliberate and thoughtful consideration of potential unintended consequences and long-term impacts on individuals, communities, identities tangible and intangible heritage and environments.[19]

These are fine sentiments indeed, but sentiments that implicitly recognize the futility of setting for oneself and others the ethical goal of doing no harm. Furthermore, in this passage, the AAA endorses appropriate efforts to increase well-being, which is precisely what HTS exists to do. Moreover, part of the purpose of HTS is to inform military commanders of the consequences of their actions (and inactions) on the population/culture/society. So the purposes of HTS are entirely consistent with AAA values. Indeed, the passage above amounts to an implicit (and, I presume, unintentional) endorsement, rather than a serious criticism, of HTS.

Even if one could fulfill the goal—and know it—of doing no harm, an ethic grounded on this goal would appear rather flaccid since it seems to ignore a crucial element of morality—the duty to render aid. It is worth noting that neither the original nor modern versions of the Hippocratic oath include a mandate to do no harm.[20] The covenants of this oath focus on what a doctor must do to help others. Perhaps the requirement to do no harm is implied, but the emphasis is on positive duties we have toward others. Our obligation to avoid hurting others follows from the negative duty to respect the rights of others. But respect for rights is not the whole of justice, which also, and equally, includes the positive duty of beneficence.[21]

It might simply be argued that HTS suffers from the same epistemological ambiguity that affects anthropological field research generally: namely, lack of ultimate knowledge as to whether active interventions in the lives and cultures of others finally results in the doing of good. While it might be true that we will not know all the consequences of our actions, that lack of knowledge is much less problematic for HTS than it is for someone whose overriding ethical commitment is to do no harm. The HTS ethic is closely aligned with the modern version of the Hippocratic oath. Doctors will admit that they cannot always (if ever) know all the outcomes of their ministrations. When several curative regimens are available, they oftentimes do not know which is the most efficacious. But, finally, they are obliged to choose one over another—indeed, so they must. To refrain from acting for fear of making a mistake would render the medical profession impotent. To refrain would be radically inconsistent with the *raison d'être* of the medical profession.

Of course, in a great number of cases, the doctor can foresee the results of his intervention. He bandages a wound, the bleeding stops, the patient recovers. He removes a cancerous growth, and the patient goes on to live a flourishing life. The immediacy of the problem to be solved disambiguates the foreseen efficacy and appropriateness of the indicated medical procedure. The case for HTS is similar (though not identical) to that of the medical professional. We discover, for example, why the local farmers are enraged when our helicopters land in their fields. The unit knows *that* they are enraged but not *why* they are enraged. The "why" turns out to be the fact that the rotor wash was blowing their recent wheat harvest to the winds. With this knowledge, the unit could coordinate with the village elder to discern where the unit could establish a landing zone that did not have these deleterious effects. As a result of HTS intervention, conditions for cooperation can be established, improvised explosive device (IED) incidents are reduced, young men are less inclined to join the insurgency, and so forth.[22]

As in the foregoing example, HTS functions in large part to alleviate the damage wrought through epistemic shortfalls. HTS recognizes the inherent difficulties that inevitably arise when different cultures interact. Those difficulties multiply and increase in intensity under conditions of duress, and particularly during war. HTS exists to mitigate the negative impact of the inevitable inadvertent cultural missteps that otherwise increase these cultural misunderstandings and the tensions they foment, decrease opportunities for mutual understanding among local populations and coalition forces, and elevate the probability of recourse to violence.

IV. HTS as a Moral Requirement

War is necessarily coercive. It is analytically true that war causes human suffering and violation of human rights, usually on a grand scale. Hence, if there are measures we can take to reduce such suffering and rights violation, we are morally obligated to take them. Oftentimes, our inability to understand another culture is a direct cause of needless strife and deprivation. The past decade of armed conflict speaks emphatically to the increased pain and suffering that follow from our violating the cultural norms of countries that have the misfortune of playing host to our military

ventures. Many of these violations are entirely unwitting and wholly unintended. They occur simply because we are ignorant of those cultural norms and practices. Even our most well-intended plans can yield disastrous results when we attempt to implement them without understanding the people who will be affected.

The HTS is one of the best programs in the U.S. military for providing sociocultural analysis to units in the field. In fact, HTS is the only organization whose primary mission is to conduct primary source sociocultural research and analysis in direct support of the warfighter. The HTS concept of the term "sociocultural" is holistic and systemic. All human activity occurs within and as part of culture. Therefore, the HTS analytical lens does not look at economic aspects of culture, religious aspects of culture, and so forth as if these are separate categories distinct from culture. All of these so-called aspects are merely subsets of the universal set "culture."

HTS support to the military is indispensable for preventing conflicts or, if prevention efforts fail, for minimizing the need for, and the collateral damage (both physical and moral) of, violent responses. HTS provides the commander the capability to understand the complex, multi-tiered sociocultural phenomena and regional relationships that pervade the operational environment in order to achieve greater success in all operations and activities, and to achieve that success with minimal use of force.

Given that all human activity occurs within and as part of culture, HTS advocates a paradigm shift in the way military planners think. We should privilege human terrain considerations before all others. Planners think in terms of secondary and third order effects of the various actions they contemplate undertaking. But without a sociocultural understanding of the human domain within the operational area, our efforts to discern second and third order effects amount to guesswork. But we owe humanity more than mere guesswork when we contemplate undertaking actions that threaten the gravest of consequences for the people who will be most directly affected by those actions. We have a moral duty to employ the HTS capability, as part of the larger moral and legal requirement to use every available means to mitigate the suffering inflicted during war.

Notes

1. The views expressed herein are those of the author and do not purport to reflect the position of the Human Terrain System, the Department of the Army, or the Department of Defense.
2. "Human Terrain Mission Statement," in the *HTS Handbook*, Chapter 2, p. 4 (2008): www.vho.org/aaargh/fran/livres9/humterrainhandbo.pdf.
3. There is an enormous literature generated by this controversy. Two comprehensive studies, written from opposing viewpoints, provide a succinct summary of the history and issues. See George R. Lucas, Jr., *Anthropologists in Arms: The Ethics of Military Anthropology* (Lanham, MD: AltaMira Press, 2009); and Roberto Gonzalez, *American Counter-Insurgency: Human Science and the Human Terrain* (Chicago, IL: Prickly Paradigm Press, 2010).
4. For an examination of the program from a variety of perspectives at present, including response to these complaints and concerns, see: *Social Science Goes to War: The Human Terrain System in Iraq and Afghanistan*, Eds. Montgomery McFate and Janice Laurence (New York: Oxford University Press, 2014).
5. This paper in large part addresses HTS in the context of the ongoing war in Afghanistan. It should be noted that HTS can (and should, I shall argue) be used in non-kinetic environments as a key enabler in preventing conflict.
6. Robert Albro and Hugh Gusterson, "Commentary: 'Do no harm,'" *Defense News* (April 25, 2012): 1. www.defensenews.com/article/20120425/C4ISR02/304250001/Commentary-8216-Do-no-harm-8217-?odyssey=mod|newswell|text|FRONTPAGE|p. (Hereafter referred to as "Do no harm.")
7. The very notion of "scientific reliability" is problematic. It would seem that the authors owe the readers some discussion about how they understand scientific reliability.
8. "Do no harm," p. 2, emphasis added.

9. A recent follow-on field study of social scientists who participated actively in the program, conducted by the noted AAA anthropologist and ethicist Carolyn Fleuhr-Lobban, offers data that bear directly on these concerns. See: Carolyn Fluehr-Lobban and George R. Lucas, Jr., "Assessing the human terrain teams: No white hats or black hats please," in *Social Science Goes to War*, *op. cit.*
10. "Do No Harm," p. 2, emphasis added.
11. Maneuver Leader's Self Study. Available at: www.benning.army.mil/mssp/MEPDOW/. Center for the Army Profession. Available at: http://cape.army.mil/aaop/. Also see: ADP 1, *The Army*, September 2012; ADP 6-22, *Army Leadership*, August 12.
12. "Do no harm," p. 2.
13. HTS has multiple checks to ensure that the conduct of field research and reporting adheres to internationally accepted ethical standards, to include local and country standards when applicable.
14. The reader might question whether any armed intervention is consented to by any nation. But when nations fulfill their treaty obligations with other nations, that fulfillment often takes the form of an armed intervention to help the ally defend against an aggressor state.
15. Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1996): 25–26.
16. It would be interesting to investigate what it would mean to consent to not being helped. Certainly, there are cases where people consent to/demand that they receive no help: DNR cases are classic examples. But what about more common scenarios where someone is, say, drowning? It is not obvious that there is a principle to which he could consent that would permit me to fail to help him. Suppose all I need do is throw him a life jacket that is readily at hand and would require very little effort and no risk on my part. Since we are embodied creatures, our possibility to consent requires that our bodies endure. When faced with a situation where my body could be enabled to endure through someone else's rendering aid, it seems that I could not possibly consent to a principle that endorsed non-aid. I could not consent to the bringing about of a state of affairs that eliminates my very capacity to consent. Much more can be said about such matters. I introduce the issue here to highlight another possible moral shortcoming of an ethic whose fundamental principle is to do no harm.
17. This chapter is not about just war theory; hence, I have not discussed *jus in bello* issues. Nonetheless, an examination of HTS in terms of *jus in bello* can help shed light on the ethics of the program. By my lights, any program of the likes of HTS clearly fulfills the requirements of *jus in bello*. An argument to justify this assertion must be postponed, although I think the assertion uncontroversial.
18. American Anthropological Association, *Statement on Ethics: Principles of Professional Responsibilities* (Arlington, VA: American Anthropological Association, 2012): http://ethics.aaanet.org/ethics-statement-0-preamble/.
19. Ibid.
20. Available at: www.pbs.org/wgbh/nova/body/hippocratic-oath-today.html.
21. Kant, in the work cited above, does distinguish duties of justice (for example, non-injury) from duties of virtue (for example, the duty of beneficence). In the larger scope of justice (the Greek conception of *Dike*, or our Judeo-Christian conception of "righteousness"), however, "duties of justice" would encompass both negative and positive duties. An adequate justification of this claim, however, is clearly beyond the scope of this chapter. Nonetheless, the idea that we must, say, save someone's life if we can do so with little risk to ourselves, is appealing and consistent with some of our most considered notions about morality. Suppose I see a baby on a train track. A train approaches; all I need do is take three steps, pick up the baby, and take three steps back to safety. The train is fully a minute away. To do nothing seems monstrous, yet technically I would fulfill the duty of "first doing no harm" were I simply to refrain from intervening. Whether the baby has a rights claim against me is not of moral significance. But for those who think I must save the baby, they recognize my duty to save her.
22. The example is real, but I do not have written documentation, so I ask the reader to consider the example as a possible, conceivable scenario, offered for illustrative purposes.

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32

MILITARY OPERATIONS AND MEDIA COVERAGE

The Interplay of Law and Legitimacy

Laurie R. Blank

On November 14, 1854, William Howard Russell filed the first war report from the front lines of conflict, an account of the Charge of the Light Brigade in the Crimean War of 1854–1856.[1] Filed by telegraph, Russell's dispatches "brought the war home to readers . . . [writing] with clarity and vitality about the grandeur and the horror of battle."[2] Over a century and a half later, media coverage of military operations not only informs the public about the events of conflicts near and far, but also plays a significant role in the determinations and perceptions of the success, legitimacy, and lawfulness of military operations. Understanding this interplay between media coverage, demands for information and transparency, law, and legitimacy is therefore essential to any training for and implementation of military interaction with the media, as well as to the planning and execution of successful military operations.

This chapter explores the challenges of carrying out military operations in an age that combines instant, round-the-clock news and Internet coverage with heightened attention to international law compliance and legitimacy. News reports of conflict, targeted strikes, and other military operations reach the public nearly instantaneously. Individuals with cell phones post videos on YouTube, rebel groups use Twitter, and even the 24/7 news cycle seems to be yesterday's news. In addition, international law—whether the law of armed conflict, human rights law, or the law governing the use of force—has become a central component in the discourse about conflict and military operations, in both the policy, advocacy, and academic circles, and the general public. Over the past few decades, several studies have examined the development of military–media relations throughout the past century or more, and a number of authors have addressed the consequences for military commanders of the so-called "CNN effect."[3] However, the impact of media coverage and the Internet now goes beyond strategic decision-making to legal consequences—both pre-execution and post-execution—and to the very legitimacy of the military operations at issue. In both of these areas, law and legitimacy, perception plays a consequential role, often more important than the actual facts and concrete information.

The first section provides brief background on the role of the media in reporting on conflict and the nature of war reporting and information dissemination about military operations in the

21st century. Using this foundation, the second section analyzes the current linkages between law, legitimacy, and military success. With legitimacy at the heart of every military operation and international law compliance a centerpiece of the media and advocacy discourse, planning and execution of military operations does and must continue to incorporate both facts and perception about law and legitimacy into every aspect of decision-making. Finally, transparency has become the new buzzword with regard to United States operations—whether targeted strikes by unmanned aerial vehicles, detention operations, or other actions. The legal and policy debates regarding transparency add an additional layer of complexity to this interplay between law, legitimacy, and success, and introduce challenging questions about where to find the right balance between the needs of the military in planning and executing operations and the needs and demands of the public and the press for information.

I. The Nature of Media Coverage of Military Operations

In 2014, little time elapses before media reports of targeted strikes, snatch-and-grab operations, or firefights reach the public, a far cry from the days of William Howard Russell's dispatches by telegraph and even from the daylong delay in getting broadcast information from the battlefield in Vietnam to the U.S. news consumer. As news coverage—used broadly to include television news, newspapers and other print media, and Internet news and blogs—operates in real time, the public has nearly immediate awareness of military operations, their successes and failures, and the strategic and policy decisions involved. "Today, commanders at all levels can count on operating '24/7' on a global stage before a live camera that never blinks. This changed environment has a profound effect on how strategic leaders make their decisions and how warfighters direct their commands."[4]

These developments also prompt an examination of the needs and goals of both the military and the media in a conflict environment. The military's goal is "to win the war and keep casualties to a minimum."[5] The press "wants to tell the story."[6] As a result, the former seeks to control information; the latter seeks full freedom and use of information. This inherent tension lies at the heart of the military–media relationship. For example, during Operation Desert Storm, the military used press pools and military escorts, out of concerns for operational security, the safety of the journalists, and logistical difficulties, and, at least partly, to avoid "an unsanitized presentation of the carnage of battle."[7] Some therefore argue that the Persian Gulf War was one of the most under-reported wars in U.S. history. At the same time, however, others claim that it was the most transparent conflict until that time:

> a war in which pilots were shown taking off to bomb an enemy capital—where cameras were waiting to broadcast the results; a war in which a single news source (the Cable News Network) was employed in all capitals, its raw and undigested information transmitted instantaneously around the globe, reaching the public and policy makers at the same moment.[8]

These different presentations of media coverage from a single conflict demonstrate the complexity of the interplay between the military and the media.

The public's experience with war is now both more divorced and more immediate than ever before. A smaller percentage of Americans than ever before serve in the armed forces or have friends or relatives who do, leading to a "growing disconnect between the American people and the military."[9] At the same time, coverage of conflict now brings home "in real time the grim reality of the battlefield"—homes and villages destroyed, troops on patrol returning fire

from insurgents, children and the elderly amidst the debris and destruction of war—"all conveyed 'live,' as though the world had a front-row seat on the blood and gore of modern warfare."[10]

Historically, the impact of media coverage on operations has been a driving force in the military's view of the media's role. In particular, "the capacity of the media to undermine public and political support for an operation involving casualties"[11] and to erode troop morale has been a central concern. Although since discredited by numerous studies, the belief that "reporters opposed to the [Vietnam War] used . . . freedom [of access] to publish negative stories that contributed significantly to the final defeat"[12]—often called "Vietnam Syndrome"—was standard. Although some argued that U.S. success in the Persian Gulf War put those concerns to rest, the pictures of American soldiers being dragged through the streets of Mogadishu just over two years later "seem[ed] to have made it all but impossible for Mr. Clinton to change many minds"[13] about the value of the U.S. military operations in Somalia and the United States soon pulled out of Somalia.

All of these tensions and historical conceptions are magnified by the exponential growth in the speed, breadth, and variety of information dissemination in today's environment. Technological advances and smaller, more lightweight equipment capable of point-to-point transmissions from any location on the globe to any other has revolutionized wartime coverage. The Internet disseminates information at immeasurable speeds and in an enormous variety of formats. In effect, these "changing technological and institutional features of news coverage have outpaced formal attempts to order media–military relations."[14] Adding in YouTube and cell phones produces a complex and dynamic environment where sharing and commenting on information is uncontrolled and unconstrained. Access to cell phone technology is even more widespread than Internet access, as seen by the use of cell phones as a potent information source during the Arab Spring, the civil war in Syria, and other recent situations. Videos become a major information source—"YouTube can empower individuals [when] easy upload of their videos, without editorial oversight, allows access to a nearly unlimited audience."[15]

Based on all of these developments, media is no longer the news organizations, the wire services, and commentators. Rather, "a more timeless definition [of new media] should consider new media as any capability that empowers a broad range of actors (individuals through nation-states) to create and disseminate near-real time or real time information with the ability to affect a broad (regional or worldwide) audience."[16] This dynamic, multifaceted environment is the lens through which to launch any examination of the linkages between media coverage, international law discourse and compliance, and legitimacy, and to explore key issues for military commanders to address in planning and executing military operations in the twenty-first-century information environment.

II. Law, Legitimacy and Military Operations

Legitimacy has always been an essential component of military operations—particularly with regard to public support for the launch of operations and the continuation of those operations. When public support for an operation wanes, political leaders face significant challenges in continuing the mission in the face of diminished legitimacy. In counterinsurgency operations, legitimacy is the dominant and ultimate goal that enables mission success. As the *Counterinsurgency Field Manual* proclaims, "Lose Moral Legitimacy, Lose the War."[17] Although

> [m]ilitary legitimacy is about might and right . . . in operations other than war such as stability operations and counterinsurgency operations (COIN), might must be right

> to achieve mission success. That is because mission objectives in COIN are more political than military, and legitimacy is the center of gravity in achieving those political objectives.[18]

Until recently, the justification for the use of force and the extent of force used were key components of legitimacy. International law compliance—specifically with the law of armed conflict—is now central to the perception of strategic legitimacy. The U.S. and other states seek to—and must—leverage the international legitimacy that flows from compliance with international law when they use force to achieve strategic goals. As Brigadier General Mark Martins, then Commander of the Rule of Law Field Force in Afghanistan, stated in 2011:

> The question [of rule of law in military operations] urges inquiry into how law has constrained, enabled and informed our own military operations since September 11th, 2001, even as it also causes us to mull whether and how an abstract concept we all approach with a multitude of assumptions arising from our own experiences can possibly help oppose ruthless and diverse insurgent groups halfway across the globe. The case I will briefly sketch today is this: your armed forces heed and will continue to heed the law, take it seriously and in fact respect it for the legitimacy it bestows on their often violent and lethal—necessarily violent and lethal—actions in the field.[19]

Understanding the law is therefore essential to any discussion of legitimacy. This understanding then builds the foundation for analyzing how media coverage in an age of hyper-attention to international law compliance drives, and changes, the legitimacy equation in dramatic ways.

1. International Law and Armed Conflict

Law has regulated the use of force, military operations, and conflict throughout history. Also known as international humanitarian law or the law of war, the law of armed conflict (LOAC) dates back thousands of years and has served as an essential guide for military commanders and lawyers, particularly through modern history. LOAC governs the conduct of states, individuals, and nonstate actors during armed conflict, and provides the overarching parameters for the conduct of hostilities and the protection of persons and objects.[20] LOAC applies during all situations of armed conflict, with the full panoply of the Geneva Conventions and customary law applicable in international armed conflict and a more limited body of conventional and customary law applicable during non-international armed conflict. The central LOAC principles of distinction, proportionality, and precautions determine the lawfulness of targeting individuals and objects during armed conflict. The principle of distinction mandates that all parties to a conflict distinguish between those who are fighting and those who are not, and that parties only target those who are fighting. In addition, soldiers and all other fighters must distinguish themselves from civilians.[21] The principle of proportionality states that parties must refrain from attacks where the expected civilian casualties will be excessive in relation to the anticipated military advantage.[22] All parties must take precautions when launching attacks to ensure that the objects of attack are legitimate targets and that all feasible measures are taken to minimize harm to civilians and the civilian population.[23]

LOAC authorizes the use of lethal force as first resort against enemy persons and objects within the parameters of the armed conflict[24] and also provides, based on treaty provisions and the fundamental principle of military necessity, for the detention of enemy fighters and civilians

posing imperative security risks.[25] Along with these authorities, however, come obligations—such as the obligation to use force in accordance with the principles of distinction and proportionality, the obligation to protect civilians and those no longer fighting from the ravages of war to the extent possible, and the obligation to treat all persons humanely.

Similarly, the just war tradition—legal and moral parameters for resorting to war—is centuries old.[26] Modern *jus ad bellum*, the international law governing when a state may lawfully use force on the territory of another state, has its roots in early twentieth-century treaty law and is encapsulated in the United Nations Charter framework. In particular, the United Nations Charter prohibits the use of force by one state against another in Article 2(4): "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."[27] In addition to the customary exception that force may be used with the consent of the territorial state, the Charter provides for two exceptions to the prohibition on the use of force: the multinational use of force authorized by the Security Council under Chapter VII in Article 42, and the inherent right of self-defense in response to an armed attack under Article 51. When a state uses force in self-defense, the force used must be necessary and proportionate to the goal of repelling the attack or ending the grievance.[28] Thus, the law focuses on whether the defensive act is appropriate in relation to the ends sought. The requirement of proportionality in *jus ad bellum* measures the extent of the use of force against the overall military goals, such as fending off an attack or subordinating the enemy. The requirement of necessity addresses whether there are adequate non-forceful options to deter or defeat the attack. To this end, "acts done in self-defense must not exceed in manner or aim the necessity provoking them."[29] A third criterion is immediacy, which addresses the temporal constraints on the use of force either before or in response to an armed attack.

Always critical to the protection of persons and the ability of states to pursue essential national security interests, these bodies of law have become a major, indeed central, part of the discourse about conflict, national policy, and both state and individual action. In the 1990s, genocide, war crimes, mass atrocities, and international criminal justice became part of the public discourse in the aftermath of the conflicts in the former Yugoslavia, Rwanda, Sierra Leone, and ongoing conflicts in the Democratic Republic of the Congo, Sudan, and elsewhere. The attacks of September 11, 2001, then brought LOAC onto the front page, spurring a decade-plus national and international dialogue about detention, the nature of conflicts with terrorist groups, interrogation, targeted killing, asymmetrical warfare, military commissions, and a host of other complex conflict-related topics. Debates about the appropriate justifications to use force in the territory of another state—the very essence of the *jus ad bellum*—have also taken center stage with debates about the intervention in Kosovo, the legality of the U.S. invasion of Iraq, humanitarian intervention and the Responsibility to Protect (R2P) doctrine, and the potential use of force in Syria in response to the Syrian regime's use of chemical weapons in the summer of 2013, for example.

The nature of current conflicts and U.S. operations, which have been predominantly counterinsurgency campaigns, highlights how and why LOAC compliance lies at the heart of legitimacy. In Kosovo, an operation driven by moral legitimacy claims rather than classical international law justifications for the use of force,[30] the conduct of the NATO operations against the Milosevic regime dominated the media and advocacy community's presentation of the conflict. As a result, "collateral damage, rather than ethnic cleansing and the refugee crisis, threatened to become the central issue of the Kosovo conflict, undermining the moral credibility of, and hence public support for, the campaign."[31] In counterinsurgencies and other contemporary military operations, protection of civilians is a, if not *the*, primary mission objective because

counterinsurgency success rests on winning the support of the local population. Civilian deaths, injuries, and destruction, even if they are lawful and the unintended consequence of successful operations against the insurgents, are fatal to both legitimacy and chances for success.

In any mission where civilian protection is the central goal—whether counterinsurgency or humanitarian intervention or many types of stability operations—harm to civilians or perceived harm to civilians has multiple negative consequences. First, in the most direct form, civilian harm impedes mission accomplishment in the short-term. Second, civilian harm bolsters the opposition forces (whether insurgents or a state repressing its own population) and serves as an effective recruiting and public relations tool. Third, regardless of the actual legality of the acts that led to the civilian harm, the mere perception that the military is causing the deaths of civilians is sufficient to engender claims of war crimes and other LOAC violations. Either or both of the second and third effects leads directly to the fourth: loss of legitimacy. When insurgents appear to be the better protectors of the civilian population, the counterinsurgent loses legitimacy, the ultimate objective in counterinsurgency. When state forces engaged in counterinsurgency or humanitarian intervention appear to be committing war crimes, they lose legitimacy at home, eroding valuable public support for the mission.

2. Law, Perception and the Role of Media Coverage

Media coverage and Internet or cell phone videos tell the world what appears to have happened in a particular attack or firefight. Even today's nearly instantaneous real-time dissemination is therefore retrospective—the audience learns about the event based on the results. LOAC, in contrast, rests on a prospective analysis. Questions of civilian harm implicate the principle of proportionality, introduced briefly above, which requires parties to refrain from any attack in which the expected civilian casualties are likely to be excessive in light of the military advantage gained from the attack. Thus, proportionality operates to minimize incidental civilian harm, or collateral damage. Although the law is clear that proportionality is a prospective analysis that looks only at the expected civilian casualties and the anticipated military advantage, current conflicts see a steady erosion toward a retrospective analysis driven by media coverage of civilian casualties and, in certain cases, exploitation of that coverage.

A. LOAC, Proportionality and Civilian Casualties

Proportionality balances military necessity and humanity, the principles that lie at the foundation of LOAC, and is the manifestation of two central LOAC concepts. First, the means and methods of attacking the enemy are not unlimited.[32] Rather, the only legitimate object of war is to weaken the military forces of the enemy. Second, the legal prohibition against targeting civilians does not correspondingly mean that all civilian deaths are violations of the law. Even though a "legitimate target may not be attacked if the collateral civilian casualties would be disproportionate to the specific military gain from the attack,"[33] the law has always tolerated "[t]he incidence of some civilian casualties . . . as a consequence of military action."[34] Military commanders and decision-makers must therefore assess the advantage to be gained from an attack in light of the likely civilian casualties.

The laws of war have incorporated these ideas since long before The Hague and Geneva Conventions, and the modern formulation of proportionality in Additional Protocol I. Indeed, LOAC proportionality has long historical roots, stemming from St. Thomas Aquinas's "doctrine of double effect,"[35] which was essentially "a way of reconciling the absolute prohibition against attacking noncombatants with the legitimate conduct of military activity."[36] In establishing the

basic parameters of the obligation to protect civilians and the civilian population, Article 51 of Additional Protocol I prohibits any "attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[37] This language demonstrates that Additional Protocol I contemplates incidental civilian casualties, and appears again in the provisions governing precautions in attack.

Although it may seem straightforward to declare that militaries should never attack when the loss of innocent life will outweigh any military benefit from the attack, in practice applying proportionality is rarely clear-cut because it compares civilian harm and military advantage, two dissimilar factors. As one commentator glibly explained, military commanders are not issued a "proportionometer" to help them make such calculations.[38] Comparing the destruction of a munitions factory or a storage facility for rockets, for example, to the number of civilian deaths or serious injuries is difficult, perhaps impossible. Even though "balance" or "weighing" are the most common terms used when discussing proportionality, the actual test requires an examination of "excessiveness," as stressed in Additional Protocol I. Therefore, that "proportionometer" cannot help determine precisely when one additional civilian death will "tip the scale" and make an otherwise lawful attack disproportionate. Instead, "focusing on excessiveness avoids the legal fiction that collateral damage, incidental injury, and military advantage can be precisely measured."[39] Rather than a mathematical concept, therefore, proportionality is a guideline to help ensure that military commanders weigh the consequences of a particular attack and refrain from launching attacks that will cause excessive civilian deaths.

Critically, analyzing proportionality in any given situation also requires an understanding of the correct perspective. As the very language of Additional Protocol I shows, referring to "anticipated" military advantage and "expected" civilian casualties, proportionality must be viewed prospectively, not in hindsight. Instead, the information available and the circumstances at the time of the military operation in question must govern any assessment of the balance between military advantage and civilian casualties. Combat, even a minor firefight, involves confusion and uncertainty—the "fog of war"—so these "decisions cannot be judged on the basis of information which has subsequently come to light."[40] The law does not judge commanders based on the outcome alone, nor does it require commanders to be right in all circumstances.

A second concern with a retrospective approach stems from the vastly different nature of military advantage and civilian casualties. The former is abstract, has little or no emotional impact, and is difficult to convey in pictures, while civilian casualties are dramatic and emotional, and "lend themselves to powerful pictures and strong reactions."[41] Observers will often find it difficult to assess fairly whether collateral damage is excessive in practice because the military advantage from an attack may not be immediately apparent. It may seem simpler to merely add up the resulting civilian casualties and injuries after an attack and assess the actual value gained from a military operation, because "the results of an attack are often tangible and measurable, whereas expectations are not."[42] However, doing so fails to do justice to the complexities inherent in combat; the proportionality of any attack must thus be viewed from the perspective of the military commander on the ground, taking into account the information he or she had at the time. The retrospective approach can therefore lead to departures from the accepted application of the principle of proportionality.

B. Media Coverage and the Power of Perception

Collateral damage and proportionality is where the nature of today's media and Internet discourse effectively merges perception with legal analysis, requiring a thorough understanding

of the effects of media coverage and planning for steps to address these challenges. The way in which instantaneous distribution of video and reporting on drone strikes, close air support for patrols, and other attacks suggests that LOAC violations have been committed impacts the legitimacy of military operations in several ways. First, when civilian protection is at the heart of the mission—as in most current operations—"superfluous civilian injury or destruction of civilian property is, in the short term, nearly always at odds with mission accomplishment,"[43] as noted above. The *perception* of such civilian harm has the same effect on mission accomplishment. Second, coalition operations can suffer fissures as a result of the legitimacy deficit that civilian harm—or the perception thereof—causes. "Recent conflicts have continued to demonstrate to U.S. military and political leaders how allies and coalitions can be highly sensitive to perceived law-of-war and human rights violations and how such violations can undermine legitimacy, adversely affecting the 'soft power' on which the leadership of many international cooperative activities depends."[44] Third, media coverage of civilian casualties has become a major strategic and tactical tool of insurgents and terrorist groups seeking to win the upper hand in the battle for legitimacy and local support.

A look at U.S. and NATO operations in Afghanistan over the past several years highlights the first two challenges—mission accomplishment and coalition operations. Moreover, these challenges occur amid the added complexity of what some have termed "broadcast via broadband," which involves "an unimaginable convergence of hi-tech gadgetry and populist journalism, enriched by millions of bloggers . . . offering their opinions, . . . questioning decisions by officials, . . . in a nutshell—scrambling opinion with fact and affecting the course and conduct of a war."[45] In the conflict in Afghanistan, U.S. and allied forces have faced a challenging task of battling Taliban militants and al-Qaeda and associated terrorist groups while building a secure environment for the government to develop its capacity, rule of law, and security operations. Minimizing civilian casualties became a key feature of U.S. strategy in Afghanistan in its effort to win "the hearts and minds" of the local population. As General Stanley McChrystal, former ISAF Commander in Afghanistan, stated in testimony before Congress, "I would emphasize that how we conduct operations is vital to success . . . This is a struggle for the support of the Afghan people. Our willingness to operate in ways that minimize casualties or damage, even when doing so makes our task more difficult, is essential to our credibility."[46]

The connection between the civilian casualties and U.S. and NATO legitimacy in Afghanistan was direct and immediate. Media coverage of the debates over the U.S. rules of engagement (ROE) for the use of force in Afghanistan, which were redesigned in response to the deleterious effect civilian casualties were having on the mission, then demonstrated yet another legitimacy consequence. After General McChrystal issued a new Tactical Directive on the use of force in 2009, highlighting the need to "avoid the trap of winning tactical victories—but suffering strategic defeats—by causing civilian casualties or excessive damage and thus alienating the people,"[47] the media and the blogosphere featured complaints from U.S. and coalition soldiers about the restrictions. Soldiers were uncertain about the exact parameters of the authority to use force and some received conflicting interpretations of the ROE.

Beyond these complaints and uncertainties about how to apply the new ROE, however, the media coverage fostered a much greater dissatisfaction with the ROE among the general public. The American public, and even top civilian leaders and politicians, seemed to believe that U.S. troops in Afghanistan were unable to defend themselves and were forced to withstand attacks by the Taliban without the authority to shoot back.[48] The parents of one U.S. service member killed in Afghanistan charged that "Our soldiers are forced to fight with one hand tied behind their backs. They're not allowed to take care of business."[49] Such reports presented the parameters for the use of force as requiring U.S. troops to actually take enemy fire before engaging

with kinetic force, a requirement not present in the ROE at all. Nonetheless, the media coverage suggested—and the American public believed—that the U.S. was struggling in Afghanistan because of its own rules, because it defined the mission in a way that requires limits on the use of force and on the situations in which force is appropriate. This perception itself can be problematic, even if it is based on an inaccurate or partial understanding of the actual situation on the ground. In effect, "[a]s soldiers feel more restricted in using force and as friendly deaths mount, public support for a foreign deployment may fade quickly in a nation that abhors American casualties."[50] Even when tactical victories continue, this erosion of support can spell strategic victory for the opposing side.

As another example, recall the September 2009 NATO bombing of two tankers in Kunduz, Afghanistan, on the orders of the commander of the nearby German army base. Over 130 people were killed, including at least 90 civilians.[51] The immediate reaction was that the attack must have been an LOAC violation because of the number of civilian deaths, notwithstanding uncertainty about how many dead were insurgents and how many civilians. LOAC is clear that any analysis of the lawfulness of an attack must be based on the perspective of the commander at the time of the attack, not on the after-the-fact results of the attack. However, such an approach offers little benefit or appeal in the world of media coverage, where instant conclusions and graphic pictures are the key to success. Lengthy investigations into the commander's perspective at the time of the attack, what he knew or should have known, and his expectations regarding civilian casualties and military advantage simply do not fit into today's media cycle. But the easy math of the retrospective analysis—multiple civilian casualties, therefore LOAC violation—does. In fact, President Hamid Karzai of Afghanistan even suggested that the attack had targeted innocent civilians, issuing a statement that "targeting civilian men and women is not acceptable."[52] The leap from collateral damage to deliberate targeting was swift and demonstrated how quickly perception becomes reality. The legitimacy consequences —weakening support for the war and driving a wedge between coalition members—were immediate as well: Germany's Minister of Defense, Deputy Minister of Defense, and Army Chief of Staff all resigned over the incident as public support for the German mission in Afghanistan wavered substantially.[53]

One year later, the federal prosecutor investigating the German commander for violations of both law and procedures dropped the case, concluding that he had violated no rules in ordering the air strike—based on the information he had at the time of the strike.[54] However, the investigation, using a prospective approach to proportionality and targeting, was no match in the propaganda world for immediate claims of civilian casualties and disproportionate attacks in the media.

The third challenge—the strategic and tactical use of media coverage of civilian casualties by insurgents and terrorist groups—poses perhaps the most daunting challenge for militaries and for the cultivation of an effective military—media relationship. Unfortunately, even though one of LOAC's primary goals is the protection of civilians, civilians are not only often in greater danger from military operations than in the past, but civilian casualties are now a tool in and of themselves. "News coverage is dominated by . . . the newest trend, civilian deaths, leaving coalition commanders to engage in an endless cycle of public apologies."[55] While significant media attention on innocent civilian deaths is not only appropriate, but also critical, during wartime, the way in which that coverage is manipulated and encouraged for strategic purposes raises serious concerns. Media reports on civilian casualties caused by state forces, whether in Gaza, Iraq, Pakistan, Lebanon, or Afghanistan, generally produce an immediate outcry and claims of criminal liability. In contrast, interestingly, reports of civilian casualties caused by militants frequently receive little, if any, attention.

Insurgents quickly see the strategic and tactical benefits of greater media attention to civilian casualties and the quick-time reaction to such casualties. With international law compliance in the spotlight, "such groups and [rogue states] use new informational technologies to exploit images of dead civilians and other evidence of alleged law-of-war violations"[56] to attack law-compliant militaries where it matters: legitimacy. Furthermore, these propaganda successes provide great motivation to use tactics that place civilians in greater danger, such as human shields, launching attacks from civilian buildings and areas, and co-opting ambulances for transport of fighters, for example. The resulting civilian casualties are caused by the unlawful behavior of the insurgents, but the public views them as the result of the attack, fostering the perception of LOAC violations.

Once it creates an environment in which civilian casualties are immediately and directly linked to LOAC violations and thus legitimacy, the insurgent group has significant incentives to create situations leading to greater and greater civilian casualties. The more civilian casualties result from military operations, the more strategic power they can wield. In effect, "winning the 'war of perception' may be as important as success on the battlefield."[57] Here lies the true danger for civilians: one party to a conflict benefits greatly—on a strategic and a tactical level—from civilian casualties, and therefore creates an environment in which civilians are at greater risk for loss of life and property. Militants use civilian deaths to their advantage on a strategic level to undermine support for the military campaign both domestically and internationally. In pursuing their goal of gaining "political leverage by portraying U.S. forces as insensitive to LOAC and human rights . . ., opponents unconstrained by humanitarian ethics now take the strategy to the next level, that of orchestrating situations that deliberately endanger noncombatants."[58] Civilians thus become a pawn at the strategic level as well, because they are used not only for tactical advantage (for example, shelter) in specific situations, but for broader strategic and political advantage as well.

This combination of tactical exploitation of the law and strategic use of the results as propaganda has become exponentially more effective with availability of new information technologies and means of disseminating information in an instant. As David Kilcullen explains:

> One of the biggest differences between the counterinsurgencies our fathers fought and those we face today is the omnipresence of globalized media . . . Web bloggers, print, radio and television reporters and other are monitoring and reporting your every move. When the insurgents ambush your patrols or set off a car bomb, they do so not to destroy one more track, but because they want graphic images of a burning vehicle and dead bodies for the evening news. Beware the "scripted enemy," who plays to a global audience and seeks to defeat you in the court of global public opinion.[59]

As the means of transmitting information has become smaller, cheaper, and infinitely more capable, states no longer have control over the use of information. Indeed, states must develop new practices for both military and political leaders to manage the consequences of a vast and rapid flow of information. Recent developments and analysis highlight several approaches to these challenges.

General Ray Odierno, the Army Chief of Staff, emphasized the importance of a good working relationship between the military and the media because of the rapid pace of information sharing and media reporting on wartime events. In such an environment, "[I]t is inevitable that first reports out will be wrong about 50 percent of the time, due to a variety of circumstances . . . it is up to the military to follow up on those first reports by getting the most accurate information back out to the reporters as the facts become known and available."[60] Of course, the challenge of

correcting media reports after the fact lies in the overpowering impact of perception as created by the first news reports. Legal analysis is often ponderous and deliberate; public reaction is instantaneous, visceral, and emotional. In essence, today's information environment is akin to a "genie in a bottle"—"once information is out of the bottle, trying to stuff it back in is very difficult."[61] As a result, planning for operations must involve proactive and prophylactic measures to address the nearly inevitable—even if wholly baseless—claims of illegality and illegitimacy that will arise. Before attacks are launched, "lawyers, planners, and commanders nowadays must consider the unprecedented new video record that may be created, especially if an attack risks harm to civilians and is likely to be scrutinized later."[62] This video record may be from cameras on the attack platform itself, network reporters, or even individuals with cell phones or other personal video recorders. Just as opponents flaunt videos that purport to show unlawful conduct, the military must be prepared with footage to demonstrate the legality—and thus legitimacy—of its actions.

Even a cursory look at the difference between the public reaction to Operation Cast Lead, the Israel Defense Forces operation in Gaza from December 2008 to January 2009, and Operation Pillar of Defense, the November 2012 operation to end a new round of rocket attacks, demonstrates the effect of significant use of visual information in the public discourse. Soon after events occurred in the latter conflict, the IDF distributed video and other information about particular strikes, enabling it to take the lead in reporting its strikes rather than reacting to claims of violations. "Years later than it should have, the IDF has come to understand that fighters and smart bombs are not enough to win the battle for public opinion, and that one good picture can save commissions of enquiry and a few other international headaches."[63] In some recent counterterrorism operations, Israeli units have included a "combat cameraman" whose primary task is to record events, with a helmet camera, from the unit's perspective. The information gathered can be used for intelligence purposes, criminal prosecution, or to ensure the accuracy and validity of news reports and counter the flow of propaganda.

Throughout conflict areas and situations of violence, one can now see "the more prevalent use of visual information to record operations in order to proactively tell an accurate story or effectively refute enemy 'dis-information.'"[64] The instantaneous nature of both media coverage —and, as a result, public judgment—about firefights, targeted strikes, and other operations, coupled with LOAC's emphasis on prospective analysis in assessing the lawfulness of action, highlights the need for militaries to gather and present information in real time. Doing so helps to counter the powerful effect of media coverage on determinations of lawfulness and legitimacy by diminishing the reliance on retrospective information only. In addition, the use of real-time information in this manner helps to ensure the correct application of LOAC and preserve the delicate balance the law creates between military necessity and humanity. Immediate claims of criminality after an attack that causes civilian deaths fail to adhere to the basic parameters of LOAC's principle of proportionality, by eschewing the necessary prospective approach and finding violations based solely on an after-the-fact totaling of death and destruction. In effect, such a retrospective approach is akin to "assess[ing] incidental civilian losses for which the attacker is responsible by simply conducting a body count. Such an oversimplification is as superficial as assessing the quality of a hospital by only counting the bodies in its morgue."[65]

But the importance of real-time information goes beyond the analysis of a particular attack. The potential erosion of the prospective nature of the proportionality analysis has significant detrimental impacts on the implementation of LOAC and the fulfillment of LOAC's goals overall. Efforts to avoid the problematic public relations consequences of any civilian casualties from strikes targeting specific leadership targets could lead commanders to instead simply adopt the tactic of large-scale attacks on enlisted personnel on the assumption that such attacks engage no

complicated and amorphous proportionality judgments. Whereas carefully targeted strikes can have substantial efficacy in reducing the enemy's ability and will to fight while causing only minimal casualties, the alternative would lead to extensive casualties and prolonged conflicts, certainly an unappealing result from the perspective of military leaders, political leaders, or the public.

In addition, the retrospective approach does not provide either clarity or predictability for commanders planning and executing future military operations. A commander who is to be judged based on post-attack effects has no way to know, at the time of the attack, how to determine the parameters of lawful conduct. Here, it is important to emphasize that proportionality is more than just a principle; it is a methodology for assessing lawfulness in advance through careful consideration of both the value of the military advantage and the likelihood of civilian casualties. Providing real-time information to counter the instinctive and emotional response that media and Internet coverage fosters therefore accrues directly to the military's benefit by helping to promote the effective and appropriate application of LOAC during military operations.

III. Transparency

The relationship between the military and the media has, of course, always centered in some way on issues of access to and control of information. Concerns about transparency and calls for greater transparency fall squarely within that framework. As one comprehensive report on the interaction between the military and the media explains:

> Maintaining secrets—denying vital knowledge to the enemies of the United States—is an essential part of the military's responsibilities. On the other hand, the press strives to be as informed as possible on as many topics as possible; concealing information is anathema to a reporter . . . For this reason, it is particularly important to examine ways in which the news media may properly inform the public on the conduct of wars without assisting foes and jeopardizing the lives of American soldiers.[66]

As this statement demonstrates, questions of transparency and access to information have historically focused on the operational concerns that can arise when information about military operations, including movement of troops, attack plans, or knowledge of the enemy, becomes public. These concerns led to restricted access, censorship, or other controls, such as in the Persian Gulf War, when military leaders feared that the Iraqi forces would learn about the attack plans and the surprise attack would be undermined or foiled.[67]

The continued advances in technology only exacerbate these concerns, such that real-time media coverage—with filming that is and can be broadcast in minutes or even real time—is "providing a source of intelligence"[68] to the enemy. As one study of the 2006 Israel–Hezbollah conflict described:

> Journalists employed both the camera and the computer, and, with the help of portable satellite dishes and video phones, "streamed" or broadcast their reports . . . as they covered the movement of troops and the rocketing of villages—often (unintentionally, one assumes) revealing sensitive information to the enemy. Once upon a time, such information was the stuff of military intelligence acquired with considerable effort and risk; now it has become the stuff of everyday journalism. The camera and the computer have become weapons of war.[69]

These developments in media coverage, with regard to both access and speed of dissemination, are matched, or even dwarfed, by the impact of the cell phone camera, YouTube, and the blogosphere. In many situations, these capabilities are one of the only ways the world can learn about conflicts and atrocities where the state blocks access to journalists or even targets journalists directly, such as at various times during the conflict in Syria. For the military in an open society, these capabilities add exponentially to the flow of information about military operations and therefore require additional planning before and during operations for managing and addressing the flow of information.

1. Transparency and Targeted Strikes

The use of unmanned aerial vehicles (UAVs), or drones, to launch targeted strikes is a significant component of the demands for transparency and the linkages to legitimacy. With extensive surveillance capabilities and the ability to loiter over a target for hours, days, or even weeks, UAVs offer extraordinary potential for compliance with LOAC. These heightened capabilities lead to two polar opposite conclusions with regard to legitimacy. Some argue that the very use of precise weaponry adds legitimacy to the attacks because they are being conducted in a manner that offers the maximum ability to minimize harm to civilians. For others, it seems that these enhanced capabilities mandate greater legitimacy because so much more information can be gathered and known about the target, the area of the attack, the incidental victims, and other relevant facts. The futuristic nature of unmanned weapons platforms launching missiles halfway around the world in remote areas has also led to a steady media and public fascination with UAV strikes, leading to claims of "killer robots,"[70] a "PlayStation mentality," and other claims about such strikes.

At times, the U.S. government has fallen directly into a trap set by the ongoing media and Internet coverage of UAV strikes and civilian casualties from such strikes. In trying to demonstrate that the use of UAVs makes the use of force lawful and legitimate, U.S. intelligence officials announced at one point that U.S. strikes in Pakistan had caused zero civilian casualties, that "there hasn't been a single collateral death because of the exceptional proficiency, precision of the capabilities that we've been able to develop."[71] There is little doubt that this statement, and others emphasizing the precision and lawfulness of strikes, was the result of, and an answer to, the extensive media coverage of civilian casualties from UAV strikes. However, it also had substantial consequences with regard to the legitimacy debate.

First, UAV strikes against hard-to-identify militants operating and seeking shelter in and among civilians—even with the extraordinary surveillance capabilities and precision-guided weapons being used—simply cannot leave the civilian population entirely unscathed. Claims of zero civilian casualties only served to motivate the media and human rights groups to debunk those claims, leading to more and more coverage of the precise issue, civilian casualties, that poses the greatest challenge to the legitimacy of the strikes. Second, the far-fetched nature of the claim of zero civilian casualties created the impression that the U.S. was hiding something, another blow to legitimacy. This suggestion of secrecy and false representations merely fueled additional calls for transparency and opportunities for media coverage not only of the actual strikes and their effects, but also of secrecy and excessive claims of national security. Very quickly, transparency and legitimacy became the story, rather than the alleged militants being targeted or the civilians caught in the crossfire.

Third, this statement highlights the conflation of law and policy that has marked the discourse about targeted strikes for several years. Both the White House Fact Sheet on *U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United*

States and Areas of Active Hostilities[72] and the leaked Department of Justice memo analyzing the legality of targeted strikes against American citizens abroad[73] set forth policy guidelines that appear to be legal obligations or frameworks, leading to confusion about what the U.S. is obligated to do by law and what the U.S. is choosing to do as good counterterrorism policy. Counter-insurgency strategy and mission imperatives appropriately seek to eliminate civilian casualties as much as possible in the fight for "hearts and minds." But international law does not require no civilian casualties—indeed, the law accepts that there will be incidental casualties from lawful attacks, a tragic but not criminal consequence of war. Guidelines that the U.S. will not launch strikes unless there is a "near certainty that non-combatants will not be injured or killed"[74] are just that—policy guidelines driven by strategic, policy, and legitimacy concerns layered on top of legal obligation. The need for legitimacy, combined with the effects of media coverage, however, make policy start to look like law.

Finally, the zero-casualties statement emphasizes the need for military leaders and policymakers to understand the difference between law and legitimacy, notwithstanding the inherent connection of the two in modern conflicts. The combination of UAVs' highly precise targeting capabilities and strategic needs to reduce civilian casualties has led to a growing—and mistaken—perception that any civilian deaths are unlawful. That is, the nature of the discourse in the media and the advocacy community led many to believe that LOAC actually prohibits *any* civilian deaths, even if incidental and entirely unforeseeable. The claim of zero casualties, along with the implied affirmation of such a standard, threatened to further cement this faulty approach. Although the natural inclination is to seek to enhance legitimacy both at home and abroad, pronouncements that do so at the expense of correct application of the law are likely to circle back and undermine or erode legitimacy because of the intricate linkage between law compliance, including the perception of such compliance, and legitimacy in today's conflicts.

2. Is Transparency Now the Key to Legitimacy?

The issue of transparency has thus now segued from one of operational security to one of legitimacy. Websites track strikes in Pakistan and Yemen, providing detailed reports on the number of strikes, the persons targeted, and the number of civilians injured or killed.[75] Non-governmental organizations in the United States and abroad investigate and report on patterns of strikes or particular incidents, focusing on the conduct of the strikes, the applicable law, and the effects of strikes on the civilian population in selected areas in Pakistan and Yemen, for example.[76] The U.S. Congress has entered the fray as well with proposed provisions in the Intel Authorization Act requiring the government to report publicly on the numbers and categorization of casualties from UAV strikes.[77]

A significant component of the debates surrounding the U.S. use of targeted strikes against al-Qaeda and other terrorist operatives focuses on calls for greater transparency from the U.S. government regarding who is being targeted, the legal rationale for the targeted strikes, which agency is launching the strikes, who has been killed by strikes and how the U.S. government categorizes such persons, and other questions. Over the past few years, the U.S. government has provided a steady trickle of information about targeted strikes, the legal rationale for such strikes, and other components of the program, in speeches by the President and high-ranking officials. The Obama Administration issued Presidential Policy Guidelines for the use of targeted strikes as a counterterrorism measure and leaked portions of a Department of Justice memorandum analyzing the legal basis for targeted strikes against American citizens outside the United States.[78] Demands for transparency have continued, nonetheless, from human rights groups, the media, and, in particular, the United Nations Special Rapporteurs on Extrajudicial,

Summary or Arbitrary Executions and on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism. For example, in an October 2013 interim report, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions stated that:

> transparency require[s] that the criteria for targeting and the authority that approves killings be known and that drone operations be placed in institutions that are able to disclose to the public the methods and findings of their intelligence, criteria used in selection of targets and precautions incorporated in such criteria.[79]

Most recently, the U.S. Court of Appeals for the Second Circuit ordered the government to disclose the redacted version of a memo related to the targeted killing of Anwar al-Aulaqi.[80] Unlike efforts to gain access to information about battles, strategic decisions, and other operational considerations in past conflicts, these calls for transparency focus on information about law and legal analysis.[81] As the discussion above demonstrates, the leap from law to legitimacy is a short one indeed.

A complex mix of law, morality, and policy lies at the heart of the debates and public discourse about UAV strikes. As a result, even though legal claims that the United States has a legal obligation to be transparent about targeted strikes rest on shaky footing,[82] framing the transparency question in terms of legitimacy has proven to have greater power and traction. As human rights organizations have argued, the Obama administration's "so-called 'targeted killing' program will never be seen as lawful and legitimate if U.S. officials don't explain what right they have to kill the people they're targeting."[83] Furthermore, by marrying law and legitimacy in this manner, transparency becomes vital to lawfulness, as well as to legitimacy, because legitimacy now rests on law compliance. Just as legitimacy concerns have led to perceptions that all civilian deaths are unlawful in war, so similar legitimacy concerns will now foster the belief that international law mandates transparent operations, even during armed conflict. Understanding this complicated web of relationships between LOAC, legitimacy, transparency, and policy will help military leaders to determine the most effective means of interaction with the media to maximize successful and lawful execution of military operations—and the perception of successful and lawful military operations.

Notes

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2. Louis P. Masur, "The special correspondent," *New York Times* (March 24, 2011).
3. Dan Fitzsimmons, "On message: News media influence on military strategy in Somalia and Iraq," *Journal of Military & Strategic Studies* 9 (2007): 1. The CNN effect "hypothesizes a causal link between media reporting and politico-military decisions." See also Steven Livingston, "Clarifying the CNN effect: An examination of media effects according to type of military operation," Research Paper R-18 (June 1997): The Joan Shorenstein Center for Press, Politics and Public Policy, Harvard University.
4. Margaret H. Belknap, "The CNN effect: Strategic enabler or operational risk?" *Parameters* (2002): 100.
5. Frank Aukofer and William P. Lawrence, "America's team, the odd couple: A report on the relationship between the media and the military," Freedom Forum First Amendment Center, Vanderbilt University (1995).
6. Ibid.
7. Livingston, "Clarifying the CNN effect," 4.
8. Efraim Karsh, "'The generals' war': An incomplete success," *New York Times* (January 29, 1995).
9. Philip Ewing, "Defense leaders fear military–civilian 'disconnect'," *Politico.com* (February 20, 2011): www.politico.com/news/stories/0211/49838.html.

10. Marvin Kalb and Carol Saivetz, "The Israeli–Hezbollah War of 2006: The media as a weapon in asymmetrical conflict" (2007): www.brookings.edu/~/media/events/2007/2/17islamic%20world/2007islamforum_israel%20hezb%20war.pdf.
11. Ibid.
12. Douglas Porch, "'No bad stories': The American media–military relationship," *Naval War College Review* 55 (2002): 91.
13. B. Drummond Ayres, Jr., "The Somalia mission: Voices; a common cry across the U.S.: It's time to exit," *New York Times* (October 9, 1993).
14. Porch, "'No bad stories'," p. 98.
15. Dennis M. Murphy, "Fighting back: New media and military operations," Center for Strategic Leadership, United States Army War College (November 2008): 6.
16. Ibid.: 4.
17. Department of the Army, FM 3-24, Counterinsurgency (Washington, DC: Headquarters, Department of the Army, 2006): 7–9. As U.S. Army Field Manual 100-20 (Draft), Operations other than War (30 September 1994) explained, "Legitimacy is often the center of gravity in [operations other than war]. Political, economic, information, and military actions are all aimed at enhancing one's own legitimacy." FM 100-20, p. 1-16.
18. Rudolph C. Barnes, Jr., "The rule of law and civil affairs in the battle for legitimacy," *Military Legitimacy and Leadership Journal* (2009): 2.
19. Brig. Gen. Mark J. Martins, Harvard Law School Dean's Distinguished Lecture (July 5, 2011).
20. LOAC is set forth primarily in the four Geneva Conventions of August 12, 1949, and their Additional Protocols. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, August 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609.
21. See Additional Protocol I, art. 48.
22. See ibid., art. 51(5)(b).
23. See ibid., art. 57.
24. See Geoffrey S. Corn, "Back to the future: De facto hostilities, transnational terrorism, and the purpose of the law of armed conflict," *University of Pennsylvania Journal of International Law* 30 (2009): 1352–1353 ("[A]rmed conflict is defined by the authority to use deadly force as a measure of first resort.").
25. See Third Geneva Convention, art. 4 (describing various prisoner of war categories); Fourth Geneva Convention, arts. 42, 78 (permitting internment).
26. Ian Brownlie, *International Law and the Use of Force by States* (1961): 4–5.
27. U.N. Charter, art. 2(4).
28. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, 246 (July 8); Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14 (June 27); Jus Ad Bellum, (Ethiopia v. Eritrea), Ethiopia's Claims 1-8, Partial Award (Eritrea Ethiopia Claims Commission 2005), www.pca-cpa.org/upload/files/FINAL%20ET%20JAB.pdf.
29. Oscar Schachter, "In defense of international rules on the use of force," *University of Chicago Law Review* 53 (1986): 132.
30. The Kosovo intervention is famously described as "illegal but legitimate" because of the lack of international law support for humanitarian intervention as a reason for the use of force in another state. See, for example, Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000): 4.
31. Porch, "'No bad stories'," p. 101.
32. Additional Protocol I, art. 35(1).
33. *Legality of the Threat or Use of Nuclear Weapons*, p. 587, ¶ 20 (J. Higgins, dissenting).
34. See Judith Gardam, "Necessity and proportionality in *jus ad bellum* and *jus in bello*," in *International Law, the International Court of Justice and Nuclear Weapons*, Eds. Laurence Boisson de Chazournes and Philippe Sands (1999): 283–284.

35. See Saint Thomas Aquinas, *On Law, Morality, and Politics*, Eds. Richard J. Regan and William P. Baumgarth, 2nd ed. (Indianapolis, IN: Hackett Publishers, 2003): 225–227.
36. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th ed. (New York: Basic Books, 2006): 153.
37. Additional Protocol I, art. 51(5)(b).
38. See Joseph Holland, "Military objective and collateral damage: Their relationship and dynamics," *Yearbook of International Humanitarian Law* 7 (2004): 48.
39. Michael N. Schmitt, "Fault lines in the law of attack," in *Testing the Boundaries of International Humanitarian Law*, Eds. Susan Breau and Agnieszka Jachec-Neale (London: British Institute of International and Comparative Law, 2006): 293.
40. Canada, Reservations and Statements of Understanding made upon Ratification of AP I, § 7 (Nov. 20, 1990), cited in Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law* (vol. I, 2009): 332.
41. Holland, "Military objective," p. 47.
42. Schmitt, "Fault lines," p. 294.
43. Richard M. Whitaker, "Civilian protection law in military operations: An essay," *Army Lawyer* (November 1996): 8.
44. Jack Beard, "Law and war in the virtual era," *American Journal of International Law* 103 (2009): 422.
45. Kalb & Saivetz, "The Israeli–Hezbollah War," p. 21.
46. Hearing to Consider the Nominations of Admiral James G. Stavridis, USN for Reappointment to the Grade of Admiral and to be Commander, U.S. European Command and Supreme Allied Commander, Europe; Lieutenant General Douglas M. Fraser, USAF to be General and Commander, U.S. Southern Command; and Lieutenant General Stanley A. McChrystal, USA to be General and Commander, International Security Assistance Force and Commander, U.S. Forces, Afghanistan Before S. Comm. on Armed Services, 111th Cong. 11 (2009) (statement of Lt. Gen. Stanley A. McChrystal). Indeed, reports confirmed that civilian casualties served as the best recruitment tool the insurgents could have and thus dealt a severe blow to mission accomplishment: "the data are consistent with the claim that civilian casualties are affecting future violence through increased recruitment into insurgent groups after a civilian casualty incident." Luke N. Condra et al., "The effect of civilian casualties in Afghanistan and Iraq," National Bureau of Economic Research Working Paper 16152 (July 2010): 3.
47. Headquarters, International Security Assistance Force, Kabul, Afghanistan, Tactical Directive of July 6, 2009, www.nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf (explaining further that "gaining and maintaining [the support of the population] must be our overriding operational imperative . . .").
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49. David Zucchino, "Military families fault rules of war; some call limits on troops a key reason for the growing U.S. toll in Afghanistan," *Los Angeles Times* (September 2, 2010): A1.
50. Martins, Dean's Distinguished Lecture, pp. 14–15.
51. Stephen Farrell and Richard A. Oppel, Jr., "NATO strike magnifies divide on Afghan War," *New York Times* (September 4, 2009): A1. www.nytimes.com/2009/09/05/world/asia/05afghan.html; "Kunduz airstrike relatives to demand compensation," *New Europe* (November 28, 2009); "Kunduz air strike victims to get $5,000 payout," *The Local* (August 5, 2010).
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33

DRONES AND TARGETED KILLINGS

Facing the Challenges of Unlimited Executive Power

Amos Guiora and Jason Shelton

Unlimited executive power, in the face of threats to the nation-state, raises deep concerns and important questions regarding morality of state power. Effective counterterrorism requires the state to apply self-imposed restraint. Targeted killing decisions rest on the specific identification of individuals, who pose an imminent threat to the state's national security, and are therefore legitimate targets within the framework of lawful self-defense. The discussion regarding the legality and effectiveness of targeted killing must address the morality of the nation-state's decision to specifically target an individual, identified as a legitimate target.

This chapter proposes that the nation-state has an obligation to conduct itself morally during counterterrorism targeted killing operations. Moral conduct is absolutely necessary wherever soldiers are engaged in conflict. This obligation holds true, whether combat takes place "house to house" or using remotely piloted aircraft, tens of thousands of feet up in the sky. Simple to write, difficult to implement, for the operational reality of armed conflict, short of war, is that a soldier must make multiple decisions involving various factors, all of which have never-ending "spin-off" potential. The implication is that no decision is linear, and every decision leads to additional dilemmas and spurs further decision-making.

To address these issues, this chapter will be divided into the following sections: Section I—Executive Unilateralism: The Current U.S. Approach; Section II—Morality and the Use of State Power; Section III—Checks to Ensure Legality and Morality; Section IV—The Morality Discussion: Warfare, Military Training, and Future Targeted Killing Policy; Section V—Risks of Imposing Morality Requirements; Section VI—Opposition to Morality; Section VII—Implementing Morality; Section VIII—The Greater Good; and Section IX—Conclusions.

The essence of the targeted killing policy is the state's decision to target an individual, deemed to pose a threat to national security. Its legality depends on ensuring the proposed action meets international law requirements of proportionality, military necessity, collateral damage, and alternatives. Examining its effectiveness, whether viewed tactically or strategically, focuses on the policy's contribution to operational counterterrorism. In distinct contrast to questions

of law and effectiveness, the morality analysis requires discussion regarding the moral legitimacy of state action, not subject to external review or minimum standards of accountability, transparency or criteria.

In this chapter, targeted killing is analyzed through the lens of morality, rather than the commonly accepted rule of law and effectiveness examination. Morality is, admittedly, more amorphous and less "grounded" than commonly accepted legal terminology and parameters. Nevertheless, its importance must not be minimized, for the decision to kill specific individuals must be subjected to an inquiry regarding the morality of state power. While morality must be an intrinsic part of any discussion regarding the use of state power, its importance is magnified when the intended target is a specific individual and the basis for the decision to kill him is, largely, based on intelligence information in the exclusive purview of the executive branch.

In the absence of external review of the decision-making process, morality can be understood as a "litmus test," extending beyond clearly articulated definitions of law and effectiveness. This chapter, then, in focusing on the morality of targeted killing, engages in a broader, more theoretical examination, going beyond articulable standards.

I. Executive Unilateralism: The Current U.S. Approach

In the U.S., the executive branch unilaterally, devoid of judicial review or legislative oversight, determines both who is a legitimate target and when that legitimate target is a legitimate target. Given the absoluteness of executive power, with respect to implementation of targeted killing, the policy *must* be subject to careful scrutiny, careful review, and public criticism. Determining the limits of state power also requires addressing the moral dilemmas inherent to the zone of combat.

One of the strongest appeals of unmanned aerial vehicle (UAV) technology is minimizing "boots on the ground." This technology, however, seemingly dangerously distances decision-makers from the risks and political consequences of casualties that result from targeted killings; the lure of technology poses significant pitfalls to decision-makers. This has produced a "moral hazard" for policymakers and politicians, who are taking greater moral risks in expanding target kill lists.[1] This allows policymakers and military strategists to become complacent and unclear in their moral decision-making, concerning who should be a legitimate target.

One of the grave concerns regarding current U.S. policy is with respect to the targeted killing of U.S. citizens.[2] The executive branch continues to operate under what may be considered a "lawless" regime when it comes to targeted killing because the decision to target an individual is made within the executive branch, exclusively and unilaterally. In addition, the current U.S. approach is far too suggestive of "guilt by association"—targeting individuals whose involvement in terrorism is broadly defined, potentially without reliance on criteria, standards, and limits. What the government must do is carefully define the limits of how force is to be applied. That is the essence, both of morality in armed conflict and the rule of law: to deliberately operate in an open-ended paradigm with opaque definitions, whereby state power is broadly defined and implemented, thereby opening the door, unnecessarily, to significant violations of morality and law.[3]

II. Morality and the Use of State Power

U.S. and Israeli security forces regularly engage in targeted killings of individuals who intend to do harm against the state.[4] Targeted killing may be considered moral, assuming that there is a just purpose for its application. Few would disagree that retaliatory targeted killing is acceptable.

The use of preemptive self-defense against a potential aggressor in anticipation of an imminent attack, however, raises moral questions. What is morally right can diverge from what is legally right.[5] In order to determine the morality of targeted killings, certain criteria should be met. The use of state power, regarding the targeted killing of individuals, must satisfy the following moral considerations:

1. a target must have made significant steps directly contributing to a planned act of terrorism;
2. an individual cannot be a legitimate target unless intelligence action indicates involvement in future acts of terrorism;
3. before a hit is authorized, it must be determined that the individual is still involved and has not proactively disassociated from the original plan;
4. the individual's contribution to the planned attack must extend beyond mere passive support; and
5. verbal threats alone are insufficient to categorize an individual as a legitimate target.

The moral dangers, inherent in the use of state power, are enormous. On the opposite side of the equation, however, is the terrible cost of terrorism because terrorists, in deliberately targeting innocent civilians, disregard both legality and morality.[6] At present, however, new conceptions of what constitutes a threat and new technological capabilities that distance decision-makers and soldiers from the targeted individual are drastically affecting the implementation of targeted killing and the application of core legal and moral principles.

Operational decision-making is thus predicated on a complicated triangle that must incorporate the rule of law, morality, and effectiveness. The essence of armed conflict is that innocent civilians are in the immediate vicinity of combatants and there is a duty to protect them, even at the risk of harm to soldiers. The burden to distinguish between combatant and civilian is extraordinarily complicated, and poses significant operational and moral dilemmas for, and burdens on, soldiers.

At the most fundamental level, operational decision-making, in the context of counter-terrorism, involves the decision of whether to kill an individual, defined as a legitimate target. That is its reality. Although some argue killing is inherently immoral, we argue that killing in the context of narrowly defined self-defense is both legal and moral—provided that the decision to "pull the trigger" is made in the context of a highly circumscribed and criteria-based framework. When limits are not imposed in defining a legitimate target, then decisions take on the hue of both illegality and immorality.

1. Israel's Policy of Targeted Killing

Learning from the Israeli experience is an important element in considering the moral efficacy of current targeted killing policy. On July 22, 2002, an Israeli F-16 dropped a 2,000-pound bomb on Salah Shehada's apartment building, obliterating it with him inside. During his last two years, the senior Hamas leader directed up to 52 terrorist operations against Israel, killing 220 civilians and 16 soldiers. Before killing Shehada, Israeli officials had first gone to the Palestinian Authority (PA) and repeatedly demanded his arrest. When the PA refused, the Israeli government went south to apprehend him directly; however, any attempt to grab him would probably have sparked a general melee.[7] After attempts to apprehend Shehada had been exhausted, Israel decided to kill him. Israel Defense Forces called off the first eight attempts because Shehada was always accompanied by his daughter. Only when Israel's domestic intelligence service learned that he would be in an apartment building alone, did the operation proceed.[8] The intelligence turned

out to be incomplete: Shehada had his daughter with him after all, and the buildings surrounding his own were occupied.[9] When the bomb demolished the target, it also damaged several other buildings. At least 14 civilians, including Shehada, his daughter, and eight other children, were killed.[10]

In 2002, Major General Menachem Finkelstein, the Judge Advocate General of the Israeli Defense Forces, issued three conditions for targeted killings. Before targeted individuals are killed: (1) the PA must ignore appeals for their arrest; (2) the Israelis must conclude that they would be unable to arrest the individuals themselves; and (3) the killing must be done to prevent an imminent or future terrorist attack.[11] The Israeli High Court has supported these conditions, rejecting petitions to end targeted killings.[12] Any use of force under international law must meet a four-part test:

1. it must be proportionate to the threat posed by the individual;
2. collateral damage must be minimal;
3. alternatives have been weighed, considered, and deemed operationally unfeasible; and
4. military necessity justifies the action.

In addition, all of these principles build on the fundamental international law principle of distinction, which requires that any attack distinguish between those who are fighting and those who are not, in order to protect innocent life. Regardless of whether a target is legitimate, if an attack fails to satisfy the requirements listed above, it will not be lawful. Thus, the Israeli Special Investigatory Commission, examining the targeted killing of Salah Shehada, concluded that although the targeting of Shehada was legitimate, the extensive collateral damage, caused in the attack, was disproportionate.

III. Checks to Ensure Legality and Morality

> Violent conflict among human beings is, unfortunately, one of the great constants in our history as a species . . . Although cultures vary widely in how they interpret death and killing from a moral and religious perspective, every human culture has recognized that taking human life is a morally grave matter; every human culture has felt the need to justify taking of life in moral and religious terms.[13]

Killing an individual the nation-state has identified as posing a danger to national security, where there is no alternative, in the name of national security, but to kill the individual, is the most aggressive form of self-defense. In a targeted killing analysis, where the deprivation of an individual's life is being considered in the absence of a neutral decision-maker outside the executive branch, the decision must reflect rigorous application of "checks," to ensure legality and morality.

From the perspective of the nation-state, the benefits of targeted killing are clear: minimal risk to soldiers. However, while the risks to soldiers are minimal, there are other risks that are not insignificant. Particularly, there is always the possibility of collateral damage, and there are also legitimate concerns regarding how a target is defined as legitimate.[14] The nation-state's decision to *kill* a human being, in the context of operational counterterrorism, must be predicated on an objective determination that the individual is, indeed, a legitimate target. Otherwise, state action is illegal, immoral, and ultimately ineffective. It goes without saying that many object to the killing of a human being, when less lethal alternatives are available to neutralize the target.

The U.S. will continue to use targeted killing as a *tool* in its counterterrorism strategy. The question is how this policy will evolve and improve through public discourse and debate. Re-articulated, will an "unfettered" executive authority continue to dramatically broaden the definition of what constitutes a legitimate target without constitutional limits or oversight?[15] The current U.S. policy raises deeply disturbing uncertainties and questions regarding the moral dangers of justifying and carrying out targeted killings.[16]

IV. The Morality Discussion: Warfare, Military Training, and Future Targeted Killing Policy

The combination of morality and targeted killing is not a natural fit; it is an awkward and perhaps forced relationship. Re-articulated, concerns are raised when morality is discussed; the discomfort in doing so suggests the rule of law is relegated to a secondary position and replaced by the inherent vagueness of morality. This concern is understandable and legitimate, given both the amorphousness of the term and its uncertain relationship to the act of killing another human being. Responses to the suggestion that morality is essential to both contemporary and future armed conflict are divided into five distinct camps:

1. morality and killing are mutually exclusive;
2. discussing morality endangers soldiers;
3. targeted killing is illegal, therefore there is no need to discuss morality;
4. international law is sufficient in addressing morality concerns, and introducing morality confuses the situation; and
5. the relationship between morality and armed conflict is more complicated than between the law and armed conflict.

The lack of clarity is largely a function of the fact that terrorists comingle among the innocent civilian population and that soldiers are hard-pressed to distinguish between a legitimate target and a noncombatant. In the traditional war paradigm, readily identifiable combatants were engaged in combat with each other. Terrorism, on the other hand, is largely defined by the amorphousness—from the soldier's perspective—of which individual poses a threat, whether to that particular soldier or larger society. That lack of clarity, with respect to *who* poses a threat, stands in direct contrast to recognizing that terrorism (in both practice and theory) poses a threat. Resolving this tension is, in many ways, the key to a counterterrorism policy, based both on the rule of law and morality. While international law imposes requirements on the nation-state, with respect to the use of state power, morality is largely self-imposed, subject to self-regulation and internal codes of conduct.

The modern nation-state has unlimited military resources available to it. From state-of-the-art fighter jets, to sophisticated and powerful nuclear submarines, to missiles with extraordinary range, the nation-state is undoubtedly far better equipped than most terrorist organizations, whose arsenal does not pose an existential threat to nation-states.

The morality discussion is extraordinarily relevant to addressing the dilemmas that squarely sit in zones, described by some as the "fog of war." It is for that reason that morality *must* be an essential aspect of armed conflict, precisely because the law does not provide sufficiently clear and concise guidance in conflicts between state and nonstate actors. Failure to both concretely address morality and impose morality requirements on soldiers is akin to a system whereby operational ambiguity, with its problematic consequences, rules the day. History is replete with tragic examples of soldiers engaged in combat, when rules and limits were not

clearly articulated and reinforced by their commanders. The fallout from a lack of clarity, regarding the limits of state power, is extraordinary.

There is naturally great discomfort for many when discussing morality in the context of targeted killing. For some, suggesting that morality and targeted killing are somehow related is offensive because of a profound belief that killing another human being is inherently immoral. That belief, predicated on both secular values and religious faith, suggests that opposition to linking morality and killing cuts across different vectors. Given the centrality of the principle of self-defense to operational counterterrorism, it is incumbent to determine the relationship between morality and killing. Failing to do so leaves the door wide open to armed conflict, devoid of moral standards, without self-imposed limits. That is a price that innocent individuals must not, under any condition, be forced to pay.

V. Risks of Imposing Morality Requirements

Considerations of morality are perceived by some as an imposition on soldiers confronting terrorists. Those who dismiss considerations of morality forcefully argue that a soldier's primary obligation is to kill the enemy and protect himself, his fellow soldiers, and society from harm. According to their argument, requiring that the soldier weigh morality before pulling the trigger is akin to guaranteeing his own death. Those who subscribe to this theory impose one obligation on the commander: to ensure the safety of his own soldiers. Nothing else (certainly not imposing standards of morality on soldiers), according to this position, is of relevance, regarding armed conflict.

Others have queried whether undue emphasis on morality comes at the expense of respect for the law. Their point, in large part, was that the law imposed clear restrictions, whereas morality was nebulous and thereby provided undue "wiggle room" for soldiers to act in. The question was posed in the following manner: Why introduce another set of rules on soldiers when existing law provides sufficient context and defines the contours of the limits of state power? Those holding this position, while respectful of the requirement to introduce considerations of morality, suggest that the law is sufficient and that imposing additional guidelines muddies the waters. This third group appreciates the importance of morality, but suggests that it is insufficiently precise, and its introduction will, unintentionally and ironically, minimize the rule of law.

These responses are understandable intellectually, emotionally, and practically. The responses reflect the controversy inherent to the discussion. Favorable public opinion polls, with respect to U.S. drone policy, are understandable, particularly as they seemingly minimize harm to U.S. military personnel. However, while emphasizing risk minimization to U.S. forces is both legitimate and understandable, additional considerations such as collateral damage and creating a negative political climate, with respect to U.S. international interests (both with respect to the host country and other nations in the immediate region), cannot be ignored.

VI. Opposition to Morality

Opponents of targeted killing, suggesting a connection between morality and targeted killing, is deeply troubling, for it reflects an effort to cast the measure in moral terminology. From their perspective—one that is understandable and legitimate—it is inherently illegal and immoral for the nation-state to function as "judge, jury, and executioner," particularly when the decision to conduct a targeted killing is largely based on intelligence information. Opponents of targeted killing correctly suggest it is preferable to detain the individual, rather than kill him. From their perspective, the decision to kill an individual who is not engaged *at that moment* in an act against

the nation-state is inherently illegal and immoral. For those opposed to targeted killing, authorizing the killing of another human being, predicated on his *expected future action* or the *future import of his present action*, violates legal and moral standards alike.

For that reason, suggesting morality be an integral aspect of targeted killing decision-making is particularly troubling for those deeply opposed to the policy. From their perspective, it is window dressing to frame targeted killing in a morality paradigm. To do so is to sanitize the act of killing another human being. While this argument is not devoid of relevance, it does miss a key point: targeted killing is a reality, and it will continue to be a reality in the future. The question is how the decision-making process can reflect and incorporate standards of morality, whereby criteria are not machine-driven, but reflect human sensitivity, awareness, and experience. To gainsay the reality of targeted killing as the means of death in future combat is akin to the ostrich, whose head is in the sand. Though hard to do, the more appropriate, relevant, and necessary discussion is how to create a paradigm, whereby the decision to kill incorporates morality standards.

It is precisely because of the dangers inherent in targeted killing that it is essential to address morality. The importance of this requirement cannot be overstated: designing, articulating, and implementing a targeted killing policy requires extraordinary sensitivity to morality dilemmas. Failure to directly confront questions of morality suggests that the decision-making process is devoid of criteria, essential to ensuring the protection of innocent individuals.

The requirement to incorporate morality in *all* use of force dilemmas is immeasurably accentuated as the warfare of the future becomes increasingly robotic. Enhanced robotic warfare significantly minimizes human decision-making and emphasizes algorithms and mathematical modeling in determining whether an individual is a legitimate target and what conditions justify killing him. The minimization of morality—if not totally ignoring its significance—poses an extraordinarily dangerous honeytrap. Robotic warfare is undoubtedly seductive, for it reduces the presence of "boots on the ground," thereby minimizing the direct placement of soldiers in harm's way. Prima facie, that is a legitimate goal; the question, however, is at what cost. It is not a zero-sum game—for the decision to minimize loss of a soldier's life, by the introduction of robotic warfare, carries a price that must not be ignored. That is not to suggest that robotic warfare is inherently unlawful or immoral; the question lies in its implementation and by which criteria, standards, and guidelines.

VII. Implementing Morality

Killing must not be reduced to absolute reliance on robotic decision-making, emphasizing machines, numbers, and models. Though tempting and arguably seductive, reliance on robotic warfare is ultimately laden with risks that outweigh perceived benefits. This is particularly the case when the nation-state is targeting specific individuals; what is essential to this conversation is the recognition that, at its core, targeted killing reflects a decision by the nation-state to bring its full weight and power to bear on the life of one individual. This is fundamentally distinct—in every means conceivable—from traditional warfare in which nation-states with similar means, abilities, and resources were engaged in war in accordance with clear rules, boundaries, and guidelines. War, as traditionally understood, was akin to a football game played on a set-piece battlefield, with clearly delineated limits, procedures, and start and end points.

Commanders must establish strict guidelines and criteria, in accordance with the rule of law and morality, in armed conflict. This responsibility is thus constant, difficult, and burdensome on commanders. Imposing on them the charge of both training and disciplining their forces, in accordance with rule of law principles, predicated on morality, in armed conflict is the reality

of contemporary warfare. Both issues may have been given lip service in the traditional war paradigm, but their importance is significantly magnified in today's armed conflict scenarios. After all, the zone of combat is ever-changing, roving from one village to another, with civilians constantly intermingled with combatants. This poses extraordinary challenges for commanders and soldiers, alike. However, that burden cannot and must not be used to justify lax standards and soft criteria in determining whether or not an individual poses a threat.

Failure to address these issues will inevitably raise consequential questions about the true mission of the United States throughout the world. If host nations come to believe that their civilian population is considered as tolerable (if not legitimate) targets by the U.S. military, then U.S. foreign policy is both deeply flawed and profoundly endangered. Teaching morality and ethics during armed conflict to combat units presents unique challenges to both military educators and commanders. However, it must be understood from the outset that the ultimate responsibility of morality and ethics is the commander's, in terms of both words and actions. If the commander is unwilling to go beyond "talking the talk," or if his actions contradict what he has instructed his forces regarding issues of morality, the potential for violations by his forces are great. The military educator, who comes from outside the unit and is therefore not a member of the immediate family (though he serves in the same army), literally and figuratively, leaves after speaking to a unit on issues of morality. The commander must be both the role model and teacher of morality and ethics; his job is to demonstrate not just a "do as I say" attitude, but rather a "do as I do" attitude. An absolute commitment on the part of the commander is the single most critical component of the teaching of morality in armed conflict.

The military culture, like any other professional culture, has its own set of rules and codes. What makes the military culture different from other professional cultures is that it is the only one that trains, teaches, encourages, and rewards the killing of other human beings. The soldier who is drafted or volunteers to serve his country will be indoctrinated immediately into a culture where the self is largely irrelevant (an oft-cited example of that is the crew cuts given to all new recruits) as the commanders, at every opportunity, emphasize the greater good. It is literally driven into the new recruit as an absolute truth. This concept is not a mere abstraction—soldiers must be able to blindly (literally) trust their comrades-in-arms, just as their comrades-in-arms must trust them. Otherwise, a combat unit will be unable to effectively perform its mission. *Esprit de corps* is not a mere phrase—it is the absolute guideline. Combat soldiers must be closer than brothers; they are brothers in arms, ready, willing, and able to kill and be killed, in order to protect each other, in order to guarantee mission accomplishment. It is truly a concept of the greater good.

VIII. The Greater Good

That greater good, implicitly and explicitly, includes the killing of the enemy, defined by the state as threatening the welfare and safety of that particular nation. A soldier must be prepared to make what is referred to as the ultimate sacrifice—his own life. In order to reach this psychological state, whereby young men and women are indeed ready to die for what someone else has defined as the "greater good," the enculturation process must be thorough, rapid, and literally, overwhelming. The commander cannot allow himself the luxury of combat soldiers unwilling to pay this price—otherwise, he will lead mutiny-ridden units on the verge of desertion. Accordingly, the military demands—rightly, from its perspective—total commitment to unit and mission, to achieve the desired victory.

That having been said, there are at least two overriding principles that we seek to address: the soldier must be taught how to identify the enemy, and simultaneously distinguish combatants

from noncombatants. In addition, the soldier must understand that issues of morality are not less significant than those actions that must be taken when the gun jams. To turn a phrase, morality in armed conflict needs to be another tool in the toolbox of the commander.

Without internalizing and understanding these fundamental concepts, the soldier is being sent into today's battle unprepared. A soldier who goes into battle unprepared is literally a disaster waiting to happen. There are those who argue that a soldier's primary—if not only—task is the killing of the enemy. The increasing centrality of teaching morality in contemporary armed conflict must be understood. Contemporary combat is profoundly different from traditional warfare. Understanding and appreciating this fundamental reality is a must. Traditional warfare, as witnessed in World War I or World War II, involved large armies matched one against another on large battlefields—the overwhelming machinery available to the commander included, among others, tanks, planes, missiles, and ships, firing at each other. Soldiers were taught to operate these increasingly sophisticated weapons for the singular purpose of killing the enemy soldier; the enemy soldier was given similar instructions. On the other hand, soldiers, who were expected to defeat the enemy, were also taught that a captured enemy soldier was to be considered a prisoner of war, according to international law conventions, signed and ratified by nations, as part of the laws of war.

Nevertheless, history is replete with examples of wrongful treatment of captured enemy soldiers—egregious conduct, ranging from torture, to killing, and everything in between. Whether this is a result of the very nature of battle, insufficient training, or willful violation of international law will be left for others to comment on. What concerns us is how the contemporary army prepares itself for today's war, which is fundamentally different from yesterday's war. That difference relates to the core question of whom the soldier is fighting: who is the enemy? Contemporary armed conflict does not and will not take place on the vast battlefields of the past; rather, it will occur in the back alleys of Grozny, Nablus, and Mosul. One soldier will not be facing another soldier, wearing a uniform with insignia, carrying his weapon openly, and serving in a unit with a clear chain of command. In the contemporary combat arena, the combat is far more complicated, complex, and ambiguous than in traditional warfare for two primary reasons:

1. increasingly, combat will occur in urban centers and not on a battlefield; and
2. civilians will be present.

What complicates the modern soldier's task significantly is that the person standing next to an innocent civilian may perhaps be a terrorist, but will be similarly dressed and will look the same as the other person. Not only that, but as the soldier looks to his left and right, he will see an "arena" fundamentally different than he would have seen during WWII more than half a century ago. The virtual certainty of knowing who is the enemy is no longer present, as there are no uniforms, but the soldier knows that somewhere in that crowd of people (who speak a language he does not understand and have cultural mores alien to his), are those intent on immediately killing him. The reality, from the perspective of the soldier, is that in that crowd, there are indeed individuals who are intent on killing him and his comrades. The problem is that those individuals are largely unseen, until it is literally and figuratively too late. The phrase "unseen shadows in dark alleys" only partially explains the nature of this new combat. It must be added that when the soldier finally confronts an individual in one of those dark alleys (or on a computer screen, for that matter), it will generally be very difficult to absolutely ascertain whether that individual is friend or foe.

The effect of this reality on the soldier is critical—he is in doubt as to who is the enemy. A soldier in doubt is a scared soldier—a scared soldier armed to the teeth and trained to kill

the enemy. In modern combat, the soldier does not necessarily know who the enemy is, and therefore the training of today's soldier must—and the must cannot be sufficiently emphasized—be fundamentally different than in the past. Commanders who do not understand both this transformation and its attending responsibilities will not only be remiss in their obligations to their soldiers, but they will also be placing their nation and its leaders in situations with potentially enormous political damage, internally and externally.

A soldier's training is, in many ways, the teaching of instinctive reactions—better to kill than be killed. "Reaction time is valued," "better to be the initiator," and "take the fight to the enemy" are all phrases associated with traditional warfare, when the soldier instinctively and clearly knew who the enemy was. The challenge facing commanders and military educators today is how, on the one hand, to teach a soldier to respond instinctively and immediately, and yet (and the word "yet" cannot be sufficiently emphasized), on the other hand, to ascertain that the civilian is a foe and not a friend. In the split second that the soldier must make that distinction—one of the critical international law requirements[17]—between a combatant and an innocent civilian, the civilian clearly enjoys the advantage, since the soldier is mandated to ascertain to which of the aforementioned groups that individual belongs.

If the soldier has been properly trained, not only operationally, but also regarding issues of morality, he will know how to run through a mental checklist that, while far more complicated than in the past, is absolutely critical to contemporary armed conflict. The civilian—or at least the person dressed like a civilian—may actually be a terrorist, or he may truly be an innocent civilian who desires nothing more than to return home safely to his family. The dilemma facing the soldier, who must decide if the individual is a combatant or an innocent civilian, is literally overwhelming. A wrong decision has potentially dramatic ramifications, not only for those immediately involved in this vignette, but trickle-down effects, going far beyond the immediate confrontation.

IX. Conclusion

Teaching morality is difficult; it is amorphous, with unclear "curriculum." Nevertheless, it is essential that commanders—senior and junior, alike—actively engage in studying, training, and implementing morality. Failure to do so directly has powerful deleterious consequences from multiple perspectives, including operational counterterrorism, unit morale, public perception, and the oft-referred-to "hearts and minds" of the civilian population. The recognition that morality is essential to effective military decision-making has been increasingly recognized by commanders; however, that is not enough. The extraordinary importance of morality must be clearly articulated to nonmilitary personnel engaged in operational counterterrorism. After all, civilian agencies are actively engaged in targeting decisions and their implementation. Under no condition can their civilian status grant them a "deferment" from implementing principles of morality. To not enforce strict morality standards on *all* units and personnel involved in operational counterterrorism suggests that the light at the end of the proverbial tunnel may well be a train headed toward the nation-state. Morality is that important; not teaching it is just that dangerous.

Notes

1. Jo Becker and Scott Shane, "Secret 'kill list' proves a test of Obama's principles and will," *New York Times* (May 29, 2012): www.nytimes.com/2012/05/29/world/obamas-leadership-in-war-on-al-qaeda.html?pagewanted=all&_r=0.
2. U.S. Department of Justice, "Lawfulness of a lethal operation directed against a U.S. citizen who is a senior operational leader of al-Qa'ida or an associated force" (2013): http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf. (The White Paper sets forth a legal framework

for considering the circumstances in which the U.S. government could use lethal force in a foreign country outside the area of active hostilities against a U.S. citizen who is a senior operational leader of al-Qaeda or an associated force of al-Qaeda—that is, an al-Qaeda leader actively engaged in planning operations to kill Americans.

See also "Authorization for the use of military force" (AUMF): www.cfr.org/911-impact/authorization-use-military-force-pl-107-40/p25703. (This public law, 107-40 [S. J. RES. 23], was passed by Congress on September 14, 2001, and signed by President George W. Bush on September 18, 2001. The law authorized U.S. armed forces to use "all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001").

3. Jeff McMahan, "Target killing: Murder, combat, or law enforcement?" *Targeted Killings: Law and Morality in an Asymmetrical World*, Eds. Andrew Altman, Claire Finkelstein, and Jens David Ohlin (New York: Oxford University Press, 2012): 135.
4. Tara McKelvey, "Inside the killing machine," *Newsweek* (February 21, 2011); see also Alan Dershowitz, *Pre-Emption: A Knife That Cuts Both Ways* (New York: W.W. Norton, 2006).
5. Michael S. Moore, "Targeted killings and the morality of hard choices," *Targeted Killings: Law and Morality in an Asymmetrical World*, Eds. Andrew Altman, Claire Finkelstein, and Jens David Ohlin (New York: Oxford University Press, 2012).
6. Michael L. Gross, *Moral Dilemmas in Modern War* (Cambridge: Cambridge University Press, 2010); A. Plaw, *Targeting Terrorists: A Licence to Kill?* (London: Ashgate, 2008); see also S. Miller, *Terrorism and Counter-Terrorism: Ethics and Liberal Democracy* (Oxford: Blackwell, 2009).
7. Daniel Byman, "Do targeted killings work?" *Foreign Affairs* 85, no. 2 (March/April 2006): 95.
8. Ibid.
9. Ibid.
10. Ibid.
11. Steven R. David, "Israel's policy of targeted killing," *Ethics & International Affairs* 17, no. 1 (February 2003): 115.
12. David, supra note 11; see also "Muhammad Baraka v. the Prime Minister and the Minister of Defense," HCJ 5872/01.
13. Martin L. Cook, "Ethical issues in war: An overview," *National Security Policy and Strategy*; "U.S. Army War College Guide to national security issues, Vol. 2," Ed. J. Boone Bartholomees, Jr. (Carlisle, PA: U.S. Army War College, Strategic Studies Institute, 2008): 185–195. Publ. U413 .A66U66 2008 v.2: www.strategicstudiesinstitute.army.mil/pdffiles/PUB871.pdf.
14. U.S. Department of Justice, supra note 2.
15. To that end, recent public debates and policy discussions have suggested that a judicial review mechanism be created to implement requirements regarding criteria and guidelines and the limits of executive power. Amos N. Guiora, "Drone policy: A proposal moving forward," *Jurist* (March 4, 2013): www.jurist.org/forum/2013/03/amos-guiora-drone-policy.php; Neal K. Katyal, "Who will mind the drones?" *New York Times* (February 21, 2013): A27. www.nytimes.com/2013/02/21/opinion/an-executive-branch-drone-court.html?_r=2&.
16. U.S. Department of Justice, "Lawfulness of a lethal operation directed against a U.S. citizen who is a senior operational leader of al-Qa'ida or an associated force" (2013): http://msnbcmedia.msn.com/i/msnbc/sections/news/020413_DOJ_White_Paper.pdf.
    (The U.S. would be able to use lethal force against a U.S. citizen, who is located outside the United States and is an operational leader continually planning attacks against U.S. person and interests, in at least the following circumstances: (1) where an informed, high-level official of the U.S. government has determined that the targeted individual poses an imminent threat of violent attack against the United States; (2) where a capture operation would be infeasible—and where those conducting the operation continue to monitor whether capture becomes feasible; and (3) where such an operation would be conducted consistent with applicable law of war principles.)
17. Protocol Additional to the Geneva Conventions of 12 August 1949, and "Relating to the Protection of Victims of International Armed Conflicts" (Protocol I), opened for signature 8 June 1977: article 48.

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34

DRONES, COURAGE, AND MILITARY CULTURE

Robert Sparrow

The controversy that erupted when the (then) U.S. Defence Secretary Leon Panetta announced plans to award Distinguished Warfare Medals, which would have outranked U.S. combat medals such as the Bronze Star and Purple Heart, to the operators of drones highlighted the deep-seated ambivalence that exists within both the U.S. public and the U.S. military about the extent to which these weapons represent an honorable way of warfare.[1] On the one hand, drones—and their operators—are lauded for their capacity to find and kill those the U.S. government identifies as its enemies anywhere in the world and to do so with—at least in theory—the minimum number of civilian casualties. On the other hand, the unwillingness of the public and of at least some sections of the U.S. military to countenance awarding drone operators combat medals suggest that they do not believe that those who operate the systems are really "at war" or deserve the honor accorded to those who risk their lives in the service of their nation.

In this chapter, I will concentrate on just one of the ethical controversies that has erupted around drone warfare: the implications of remotely operated weapon systems for the future of the core martial virtue of courage.[2] Insofar as long-range teleoperated weapons, such as the United States' Predator and Reaper drones, allow their operators to fight wars in what appears to be complete safety, thousands of kilometers removed from those whom they target and kill, it is unclear whether drone operators either require courage or have the opportunity to develop or exercise it. This chapter will therefore investigate the implications of the development of teleoperated warfare for the extent to which courage will remain central to the role of the warrior and for the future culture of the armed services.

I. The Rise of the Drones

Uninhabited aerial vehicles (UAVs)—or "drones"—are remotely piloted aircraft. These systems range from small, man-portable helicopters and planes, which can operate only small distances from their controllers, to long-range surveillance aircraft such as Global Hawk, and armed uninhabited combat aerial vehicles (UCAVs), such as Predator, Reaper, and (now) Avenger, capable of carrying multiple munitions, which may be controlled via satellite links by operators halfway around the world. These latter systems, which will be the focus of my discussion here,

have (at least) two features relevant to the extent to which their operations require—or allow—courage. First, long-range UCAVs allow their operators to attack targets thousands of kilometers away from what looks to be, at first sight at least, more or less complete safety.[3] Second, despite the geographic distance between the operators of these systems and their targets, drones allow their operators a detailed knowledge of the battle space that is typically denied to those who fire other long-range weapons. As we shall see below, while the first feature calls into question the need for courage to operate the systems, this second feature of drones suggests the matter is more complex than it first appears.

The perceived success of drones in the course of the U.S. invasion and occupation of Iraq and Afghanistan has led to a flurry of interest in—and research into—teleoperated weapons for use in land and sea warfare, including robotic trucks, tanks, artillery pieces, ships, and submarines.[4] These systems are also intended to keep warfighters out of "harm's way." While they are unlikely to provide the "God's eye" view drones allow, it is likely that they will be equipped with powerful sensor suites, which will provide their operators with a rich awareness of the battle space.

There are a number of reasons to believe that teleoperated weapons will play an increasingly central role in wars over the coming decades.[5] Most obviously, the willingness of the citizenry of democratic nations to tolerate friendly casualties currently constitutes an important constraint on the capacity of such nations to assert their interests internationally through the use of armed force, especially where these interests fall short of the defense of the nation itself. By removing warfighters from harm's way, teleoperated weapons systems make it possible for governments to conduct military campaigns without risking domestic unpopularity as a result of the sons and daughters of the citizenry returning home in body bags. Insofar as governments are concerned to avoid causing civilian casualties among the *enemy* population, which may also—if the domestic population or international community becomes aware of them—undermine public support for military adventures, drones, in particular, also offer advantages over other means of waging war. Their capacity to loiter for extended periods and provide real-time imagery of potential targets means that the targets may be selected carefully and the timing and nature of the attack chosen with an eye for reducing collateral damage.[6] Finally, teleoperated systems are arguably significantly cheaper than the manned systems that would otherwise carry out the same or similar roles, which makes them especially attractive to governments in an era in which budgets are under pressure.

To this point, I have been emphasizing the political benefits to governments from investing in—and using—remotely operated weapons. However, contemporary enthusiasm for teleoperated weapons is also a product of their military utility. The comparatively low price of teleoperated systems makes them attractive to military planners, as well as governments, and allows militaries to purchase more systems and field them at a higher pace of operations than they could maintain with manned alternatives. Drones' capacity to conduct surveillance over extended periods and provide real-time video footage of the theater of operations greatly reduces the fog of war and allows commanders to coordinate the activities of their forces more efficiently and attack targets more precisely.[7] UCAVs also make a much higher tempo of operations possible by allowing enemy forces to be targeted in real time deep into enemy territory and by providing damage assessments within moments of a target being struck. This fact alone places militaries that do not possess drones at a very serious disadvantage.[8] Perhaps most importantly, teleoperated systems save lives by keeping warfighters out of "harm's way." This is an obvious moral good; it also has the military advantage of preserving those troops to be available to fight another day.[9] For all these reasons, nations that can afford drones are striving hard to acquire them as soon as possible.

II. Is "Risk-Free Warfare" Really New?

The claim that drones enable "risk-free warfare" has become a platitude in discussion of the ethics of drone warfare. Later in this chapter, I will discuss how much (if any) truth there is in this claim. However, before I do so, it is important to confront another observation often made in discussions of this topic, which questions just how new this phenomenon is. Critics have been decrying killing at a distance ever since the invention of the crossbow or the sling, and drones are hardly unique among the arsenal of modern militaries in enabling warfighters to kill from comparative safety. Long-range artillery, cruise missiles, and high-altitude bombing, especially when used against enemies without equivalent systems, all allow warfighters to attack targets with very little risk to themselves. The operators of these systems also appear to have little need for courage. Why, then, it might be asked, single out drones for critique?

There are, I think, three answers to this question, which, while individually of varying strengths, together suggest that the debate about the implications of the use of drones for the martial virtue of courage, at least, is worth having.

First, although these other long-range systems do allow killing at a distance and make doing so relatively risk-free in many circumstances, there will usually remain an element of physical risk involved in operating them. Bombers may crash or be shot down in friendly fire incidents; artillery pieces may malfunction catastrophically or become the targets of enemy shelling. As I will discuss further below, while there may well also be some risks involved in operating drones, the operators of drones are mostly immune from even those minor physical risks involved in waging war by other long-range means. Moreover, while it may be true that operators of these other systems are seldom at risk of enemy fire, it is clear that these weapons could be—and are designed to be—used in roles where the operators may well be killed and therefore where courage is required. Drone operators *cannot* fly dangerous missions, and thus will struggle to find themselves in a role where it is possible to demonstrate courage by risking physical injury or death.[10]

Second, even if many of the issues raised by drone warfare are not in fact unique to these systems, it may still be worth having the conversation about the ethical implications of their increasing use. It must be granted, for instance, that ever since the invention of the telegraph wire, there have been any number of people on the command staff of armies who have "fought" wars from more or less complete safety far from the front lines. It is also hard to see that the risks involved in ordering the launch of a cruise missile to strike a target chosen by studying satellite photographs differ much, if at all, from those involved in the firing a Hellfire missile from a Predator drone. It may be, then, that the debate about the ethics of drone warfare should prompt us to think harder about the implications of these other means of waging war, which are already, moreover, somewhat controversial.

Third, while drones may not be unique in enabling risk-free warfare, they *are* new insofar as they provide their operators with a point of view located within the battle space even while they are physically thousands of kilometers distant from it. The closest analogy among previous military technologies would be the situation of a sniper armed with a rifle with a telescopic sight. Yet although snipers can often kill people who are far away and unaware of them, they are at least physically located in the theater of combat and vulnerable to other enemy fire by virtue of being so. The combination of geographic distance from, and psychological proximity to, conflict made possible by drones is arguably unprecedented in the history of warfare, and thus the unease critics have expressed in the past about the ethics of snipers is magnified many times when it comes to UCAVs. As we shall see below, though, this feature of drones makes the argument about the extent to which their operators require courage more rather than less controversial.

III. Courage and the "Warrior Code"

Before we can address the impact of teleoperated warfare on courage and the organizational culture of the armed services, we must also provide a (brief) account of the central role that courage plays in military operations and culture. A growing body of work in military ethics argues that the best way to theorize the moral demands on the behavior of those serving in the armed forces is through the lens of a "role morality." Warfighters themselves seem to operate with a set of explicit and implicit understandings about what it is to be "a good warrior"—a "warrior code"—and thus with an implicit virtue ethics. [11] A "good warrior" is a person who cultivates and exercises a distinctive set of martial virtues.[12] Good warriors are praised and admired by their comrades and serve as exemplars to others hoping to cultivate the martial virtues, including courage.

Any account of the nature of a good warrior must begin with courage, which is the martial virtue par excellence.[13] Without a "willingness to face fear and overcome it," warriors will not be capable of confronting the challenges they face in serving their nation and (especially) in going into battle. Discussions of courage typically distinguish between *physical* and *moral* courage; the "good warrior" will need both. Physical courage involves the capacity to confront fear of bodily injury, discomfort, and death. Its value to warriors is obvious. Moral courage consists in the willingness to confront and overcome fear of making difficult moral decisions and the personal costs that may flow from doing what is right rather than what is expected, customary, or prudential. Good warriors require moral courage in order to do what is right in the difficult moral circumstances of war and (especially) to resist the social and institutional pressures that are brought to bear on them as members of military organisations.

The relationship between physical and moral courage remains contested. Peter Olsthoorn has argued that the two forms of courage are only weakly correlated—if at all—and suggested that training for contemporary military operations should emphasize moral rather than physical courage.[14] Yet despite the lack of consensus about the connection between them, military training often proceeds as though training physical courage will also promote moral courage, perhaps in the belief that both require a strength of will that is most easily trained in the context of physical hardship.[15] Moreover—and perhaps more importantly—moral courage may not be sufficient to guarantee success in war. Where one party to a dispute is willing to resort to violence, the other party may require physical courage if they are to avoid being cowed into surrender.[16] Thus, ultimately, warriors must be prepared to risk their lives for the sake of a just cause.[17] This is perhaps the most striking illustration of the fact that the connection between moral and physical courage is deeper than first appears: someone who is paralyzed with fear at the thought of suffering or (even) their own death may find it impossible to summon moral courage when they most need it. *In extremis*, then, when the price of acting rightly is especially high, moral courage will also require physical courage, and it may even be unclear which description is more appropriate. However, in more ordinary circumstances, where acting morally will result only in social or bureaucratic sanctions, it will often be worth singling out those who are willing to risk these outcomes in order to do what is right as possessing the virtue of moral courage.

It is important to emphasize that in order to be "a good warrior" and to have the virtue of courage, more is required than simply acting courageously in one or two instances. The character of agents consists in a broad set of dispositions to experience and express certain emotions and to act from particular motives, as well as to act in particular ways.[18] That is, warfighters who have the virtue of courage will not only overcome their fear, but will do so in a certain spirit, in a manner appropriate to the context, and (arguably) only in a just cause; their responses to acts of courage and cowardice by others and to courageous and cowardly people will also be shaped by, and characteristic of, the virtue of courage.[19] Like habits, virtues must be learned

through practice and maintained through their exercise. Both the development and the exercise of virtue depend, to a certain extent at least, on the existence of a surrounding community that values and acknowledges virtuous actions and individuals with the virtues, which is one of the reasons why the notion of moral exemplars plays such a strong role in accounts of the virtues.[20]

The distinction between individual acts of courage and the virtue of courage, and the importance of a moral community in the development and exercise of the virtues, will prove important for the argument that follows. It is clearly conceivable that drone operators might act courageously on occasions when they are not flying drones. As we shall see, perhaps it is even possible for them to act courageously—for instance, by refusing an immoral order—while they are flying drones. However, what is less clear is whether remote operations allow those who participate in them to develop and exercise the larger set of dispositions that the virtue of martial courage requires.

IV. Courage in Teleoperations?

We are now in a position to consider the role of courage in teleoperated warfare. The challenge drones and teleoperated weapons pose to ideas about the importance of courage as a military virtue is obvious. Courage, understood as "the ability to face fear and overcome it," requires cause for fear for its exercise. Yet the operators of long-range UCAVs control these systems from half a world away, beyond the reach of enemy fires. They will not be killed or injured if the systems they are operating crash or if the weapons they are firing detonate catastrophically. They are, at first sight at least, completely safe, and consequently have no cause for fear—or need for courage.

The case that drone operators *can* display courage has been made (to my knowledge) most extensively in a compelling paper by Jesse Kirkpatrick, and I will therefore use Kirkpatrick's discussion to frame my own discussion here.[21] Kirkpatrick accuses critics of teleoperated warfare of two failings when it comes to their understanding of the implications of these systems for the capacity of their operators to display courage.[22] First, he suggests that critics of drones are operating with a truncated notion of courage, which overemphasizes the role of the risk of bodily injury at the expense of other sorts of risk, such as the risk of psychological harms or moral hazards, which courage is also required to face. Second, he claims that critics neglect the risks that drone operators *do* face.

I will argue that while Kirkpatrick's account usefully draws our attention to the risks faced by drone operators and to the possibility that courage may be required to face these risks, he is much less successful in establishing that operators are capable of cultivating and displaying *martial* courage. The risks that drone operators face are also faced by members of other professions who are very far from being "warriors."

1. Physical Courage in Teleoperated Warfare

Before turning to address Kirkpatrick's arguments, however, it is worth observing that the fact that drone operators are physically safe is not solely a function of the nature of drones themselves, but is also due to the nature of the adversaries against which they have (thus far) been deployed. In a conflict against a well-armed and technologically sophisticated adversary, the air bases from which drone operations are conducted would likely become the targets for cruise missile strikes. In such a conflict, operating drones *would* require physical courage because the operators would be risking injury and/or death in reporting for duty; of course, in this context, the janitors and the admin personnel on base would also require courage to do their work.

Even in asymmetric warfare of the sort that the U.S. is currently engaged in, operators of drones must be presumed to be potential targets for enemy operations. It would, for instance, represent a propaganda coup if one of the armed nationalist, jihadi, and/or resistance groups the U.S. is battling in Pakistan, Syria, Afghanistan, Iraq, or North Africa carried out an attack on one of the Air Force bases in the U.S. from which drone operations are controlled. If these groups should succeed in making recruits in the U.S. or otherwise infiltrating operatives onto U.S. soil, one might anticipate that they would attempt to attack the operators of drones.[23] Thus, even those operating drones today do, it might be argued, face some (admittedly low) risk of bodily injury.

Yet it is difficult to make a case that operating drones requires physical courage—and (therefore) allows operators to cultivate and exercise this virtue—in their current role in asymmetric warfare. When the U.S.'s enemies in its current wars have managed to carry out attacks on U.S. soil, their targets have typically been civilian.[24] The bases from which drones operate are heavily guarded and the risks to operators must therefore be considered to be extremely low—arguably lower than that faced by ordinary U.S. citizens. At most, then, it might be argued that the operators of drones do face some risk of bodily injury and that this level of risk is not qualitatively different to that faced by the operators of some other long-range weapons or weapon systems, such as cruise missiles or stealth bombers. What would appear to follow from this, however—especially if we concede that civilians face similar risks—is not that drone operators need courage, but that many others currently thought of as warfighters have little—or no—need for physical courage either.

2. The Courage to Risk Psychological Injury

To return now to Kirkpatrick's arguments. Kirkpatrick rightly points out that the absence of physical risk—of risk of bodily injury—is not the same thing as the absence of risk. There is an emerging literature on the risks of psychological injury faced by drone pilots and, in particular, on the risk of post-traumatic stress disorder (PTSD). Psychological wounds may be as disabling as physical injuries suffered in combat and so to the extent that the risk of PTSD exists (and is known to exist), the operators of drones will (and presumably do) require courage to confront it.

Until recently, much of the evidence adduced for the claim that the operators of drones sometimes suffer from PTSD was anecdotal and appeared alongside accounts that suggested that operators found it all too easy to kill using these systems, suggesting that there was little trauma involved.[25] However, recently, two studies have been published that provide some data regarding the rate of psychological injuries among drone operators as compared to the civilian population, other serving military personnel, and the pilots of manned aircraft.[26] These studies show that (some) drone operators do experience adverse mental health outcomes, including symptoms characteristic of PTSD, at rates comparable to those affecting pilots of manned aircraft.[27] To date, however, the published data do *not* bear out speculations that the fact that drones provide their operators with real-time video imagery of those they are targeting and of the fate of their targets when they launch their weapons makes operators especially vulnerable to PTSD. Nevertheless, now that these risks are known, operating drones arguably requires significant courage.[28]

3. The Courage to Make Tough Moral Decisions

Kirkpatrick argues that drone operators may also be called upon to exercise *moral* courage in the course of their duties. They may need to exercise courage to risk their "reputation, financial

security, career, psychological health, personal relationships . . ." in order to do what is right.[29] A moment's thought suggests that there are actually two different cases where, it might be argued, moral courage is (or might be) required of drone operators: when they obey orders to kill; and when they disobey orders that they believe to be illegal or immoral.[30]

Kirkpatrick suggests that it takes significant moral courage to take a human life and argues that "there seems little difference between drone operators and those physically present in the battle space" when it comes to the moral courage required to do so. This latter claim is one of the key controversies in the debate about drone warfare. The idea that killing requires moral courage relies crucially upon a folk-psychological belief in an innate human reluctance to kill, which is most plausible in the context of personal violence. The notion that it takes moral courage to launch a missile at—and kill—a person thousands of kilometers away, whom one has only ever seen in images on a computer monitor, is precisely what critics of drones contest.[31]

Kirkpatrick cites the fact that (some) drone operators experience PTSD as evidence that it requires moral courage for them to kill. Yet the fact that operators sometimes regret what they have done or suffer psychological injury after doing it does not establish that they require moral (as opposed to psychological) courage to kill. One can, for instance, be traumatized by something one had no moral qualms about doing at the time. Indeed, one suspects that this is reasonably common when warfighters develop PTSD; the memory that they were untroubled about what they were doing at the time is part of what makes the memory of what they did so traumatic. Unless it can be shown that operators of drones are typically reluctant to kill and are fully conscious of the moral seriousness of killing when they do it, the argument that it requires moral courage to operate the systems will be unconvincing.

However, there are now a number of publicly available accounts, both by and about drone operators, which report that operators are in fact acutely aware of the moral consequences of their actions and struggle with them. Indeed, because they may spend weeks watching the people they are ultimately ordered to kill and witness the aftermath of the attacks they carry out in vivid detail, courtesy of the powerful spy cameras on their drones, drone operators arguably have a much better sense of the moral reality of killing than do the pilots of manned aircraft or those who launch cruise missiles or fire long-range guns.[32] On the other hand, it must be acknowledged that a number of media stories suggest that those who fly drones are typically eager to attack targets and are excited when they do, and that an important task in training the operators of Predator and Reaper drones is reminding them that they are not just "shooting electrons," and that real people die when they carry out an attack.[33] The evidence available (to people outside of the U.S. military at least) on this question is mixed, then, but it seems pretty clear that at least some drone operators do kill reluctantly and exercise moral courage in doing so—and therefore that drones allow, even if they do not necessarily encourage, the cultivation of moral courage.

The other circumstance in which drone operators may be called upon to demonstrate moral courage is when they are ordered to do something that they believe to be immoral or illegal, such as fire on a group of people they believe to be civilians. Refusing to carry out an order may have dire consequences for the career, reputation, and well-being of operators. The institutional culture of the armed services typically emphasizes and reinforces discipline, loyalty, and solidarity, which means that it can require extraordinary strength of character to stand out from the crowd by refusing to obey an order; these pressures are especially strong in close-knit communities of the sort that the operators of remotely piloted aircraft often become.

There are, admittedly, some reasons to believe that drone operators have *less* need of moral courage to disobey illegal or immoral orders than combatants physically located in the area where combat operations are occurring. Because the telemetry to and from drones is

recorded, commanders are likely to be cautious about the nature of the commands they issue. A number of authors have argued that drone operators are less likely to experience strong emotions such as terror or anger, which may cloud the judgment of those engaged in combat, and thus are better situated to consider the ethics of their actions.[34] Finally, as I have argued elsewhere, the demands of loyalty are likely to be weaker on drone operators than on combatants physically located in the theater of operations so, even given the strong social bonds between them, they are much better placed to resist peer pressure to carry out immoral acts than, for instance, members of a squad of Marines.[35]

Despite these observations, Kirkpatrick's claim that drone operators may require moral courage to disobey illegal or immoral orders—and therefore can exercise it by doing so—seems right. Indeed, given that the immediate consequences for the operators of drones of disobeying rather than obeying orders to kill are likely to be more severe, this would appear to be the epitome of moral courage among this cohort.

V. Courage, Yes, but Martial Courage?

Thus, Kirkpatrick is correct in claiming that teleoperated weapons still require their operators to be courageous and offer them opportunities to cultivate and exercise the virtue of courage. Yet intuitively there still seems to be something different about the opportunities to exercise courage available to drone operators—and the sorts of courage they may exercise—as compared to (some) other warfighters. The absence of physical risk matters. Indeed, the arguments I adduced above about the extent to which drone operators are or might be at risk as a result of enemy action are telling by virtue of the way they struggle to establish that the operators of drones are subject to any more risk of bodily injury as a result of enemy action than civilians or nonmilitary personnel co-located on their bases. While drone operators may fight wars, they do not "go to war," and while they may kill people, they do not engage in combat.[36] For this reason, the courage they display does not appear to be an especially "martial" courage.

A similar dialectic is present in discussions about the courage required to confront the risk of psychological injury. Medics, chaplains, and military psychologists are often exposed to stressful and traumatic experiences, and may suffer psychological harms as a result, but we would hesitate to characterize them as displaying martial courage in these roles. Moreover, when drone operators *do* suffer psychological injury, it is not the case that they are injured by enemy action. Thus, the courage displayed by the operators of drones when they carry out their duties in the face of the known psychological risks of doing so looks more like the courage, both physical and mental, displayed by people working in other demanding or dangerous, but non-martial, professions.

The role and nature of the moral courage required by drone operators is more complicated. The operators of drones are hardly alone in needing moral courage in wartime. Members of other professions, such as doctors and aid workers, do often have to make life-and-death decisions. However, while those working in these roles may sometimes decide to let someone—or even a whole group of people—die, they do not have to be able to make the deliberate choice to kill, which drone operators must be able to make to carry out their duties.[37] Thus, the moral courage required of drone operators to kill people *is* arguably distinctively "martial."

However, as we saw above, moral courage will mostly be required of drone operators to *refuse* to kill—or at least to refuse to obey orders they believe to be immoral or illegal. Once more, drone operators are not the only military personnel who might receive immoral or illegal orders and need courage to disobey them. Lawyers, accountants, and supply officers may encounter circumstances where their conscience requires them to disobey orders. Indeed, arguably people in these professions are *more* likely to find themselves in these situations than

drone operators given the incentives for—and, consequently, prevalence of—corrupt or immoral activities in large bureaucracies. On the other hand, members of these professions are unlikely to be commanded to kill someone and to require moral courage in order to refuse to do so, which suggests that moral courage of this sort in drone operators is also more martial.

Yet emphasizing the moral courage required to refuse to kill has a paradoxical implication, which unsettles this conclusion: it suggests that those who refuse to kill—or who even leave the military or refuse military service—demonstrate the most courage. To become a conscientious objector or a deserter on moral or political grounds does, I strongly suspect, require great moral courage but it stretches the imagination to call this martial courage.

While Kirkpatrick succeeds, then, in demonstrating that the advent of teleoperated weapons need not prohibit the development and exercise of the virtue of courage per se in those who operate them, it still seems likely that these weapons constitute a significant threat to the virtue of martial courage that is currently at the heart of the self-conception of warriors. At most, the operators of these weapons may require a distinctively martial moral courage when they kill in full awareness of the moral significance of this act. Just how many operators exercise this virtue and how often is likely to remain controversial until we have a better understanding of the impact of teleoperation on the experience of war.

VI. The Future of Courage in the Military

How serious the threat to martial courage posed by the development of drones is will depend—at least in part—on how pervasive the impact of teleoperated weapons is on the way wars are fought in the future and also on the ways in which military organizations respond to the challenge of remote operations.

1. Teleoperated Weapons and the Future of War

All the various factors outlined at the beginning of this chapter suggest that teleoperated weapons are likely to play an increasingly important role in future wars. However, the idea that we could ever be confident about our capacity to fight wars without placing warfighters in situations where they would be likely to require martial courage may appear far-fetched for at least two reasons.

First, the success of drones to date has arguably been a product of the fact that they have overwhelmingly been used in conflicts where the enemy has very limited—if any—capacity to contest the airspace in which the drones have operated or to attack the communications infrastructure upon which they rely. It remains to be seen how effective teleoperated systems will be in conflict between adversaries that are even roughly matched in technological capacity and/or material. It would therefore be very premature indeed for any nation to rely too much on remote-controlled weapons.

Second, teleoperated weapons can make only a limited—albeit valuable—contribution toward two objectives that are likely to be central to achieving victory in asymmetric wars, which are widely predicted to constitute the majority of future armed conflicts. In order to secure a lasting peace at the end of a conflict, or even to be able to exit a conflict without political and strategic embarrassment, the "victorious" nation must be able to dictate terms to (or at least negotiate them with) the political forces ruling over the enemy's territory. This in turn means that the victor must wield significant influence in the political and economic affairs of the enemy state. In the worst case, this will necessitate occupying the enemy's territory; at the very least, it will require the capacity to install a friendly government or impose terms on

an unfriendly one. Occupying territory will always require sending in ground troops. Installing a friendly government and defending it from its domestic enemies will often require winning the "hearts and minds" of the civilian population, which is again hard to do without the capacity to carry out operations, including "nation building," on the ground.

Given these limitations of teleoperated systems, it seems likely that most wars will, for the foreseeable future, continue to involve soldiers being placed "in harm's way" in the theater of operations. To the extent that this is the case, it may seem as though we have little reason to fear that a distinctively martial conception of courage, emphasizing the courage to confront physical risks, will not continue to be central to the identity—and essential to the role—of the modern warrior.

2. Martial Courage in Military Culture

Yet the argument that physical courage will always be necessary in war does not establish that teleoperation does not pose a profound threat to the extent to which martial courage remains central to the cultures of high-tech militaries. If UAVs render martial courage mostly irrelevant and difficult to exercise in their operations, then when such courage is required of their operators, they may be found lacking. This possibility is especially threatening given that drones are already the weapon of choice for governments who wish to continue to fight wars in the face of decreasing public support for their military adventures and without risking the politically dangerous prospect of television pictures of soldiers returning from war in body bags. The resulting public expectation that wars can be fought without any danger of friendly casualties may eventually effectively force governments to use drones wherever possible. Even if it is only the operators of teleoperated weapons who have no need for courage, then, this may have profound implications for the culture of the armed services, if this cohort comes to form a large proportion of those at the "sharp end of the spear."

It may also be difficult to confine the cultural impact of teleoperated weapons to those who operate them. The more the militaries of industrialized societies aspire to risk-free warfare, the harder it may be to convince those anywhere in the armed services that they should aspire to the martial virtues. Importantly, when it comes to the role of courage in the armed services, what matters is not just opinion on the topic within the services themselves, but also the perception of the broader society. If the public believes that the military no longer values martial courage or offers the opportunity to develop and exercise it, those who might otherwise prize this virtue may no longer be attracted to military service. Moreover, because individuals' development of the virtues depends upon the social support of a community, a public perception that warfighters neither have nor need martial courage will make it harder for warriors to develop and maintain it.[38] For these reasons, any threat to the virtue of martial courage among drone operators, who now figure prominently in the public perception of war, may have broader consequences for military culture and the place of martial courage within it.

VII. Conclusion: The Virtues (and Vices) of Post-Heroic Militaries?

As I acknowledged at the outset of this discussion, the implications of the use of teleoperated weapons for the martial virtue of courage is only one of the many ethical issues raised by this new and powerful technology. Even if I am correct in my argument that these systems pose a profound threat to the martial virtue of courage among their operators—and perhaps even to the culture of the armed services more generally—there is a very large gap indeed between *this* claim and any conclusion that the use of drones is unethical or should be abandoned.[39]

Although martial courage is central to the mythos of war today and to the self-conception of warriors, the nature of war has changed over the millennia, especially as a result of the impact of new technologies, and military cultures have changed along with it, without obvious catastrophe. If the use of teleoperated weapons will save the lives of those combatants who would otherwise be placed in harm's way, then those individuals, at least, may think that missing the opportunity to display martial courage is a price worth paying. The civilians living in the territories in which battles are fought may also prefer that decisions about the use of lethal force be made by diligent—and, where necessary, morally courageous—technicians operating remote-controlled weapons systems rather than warriors wielding less accurate weapons for the sake of the opportunity to display martial courage.[40] If martial courage comes to play less of a role in military culture, moral courage—and the courage to perform psychologically difficult tasks—may still be valued, applauded, and rewarded.[41]

Before concluding, though, let me suggest two reasons why we should, perhaps, be reluctant to see an emphasis on martial courage disappear from the organizational cultures of modern militaries. First, like skills, virtues involve distinctive ways of seeing the world as well as dispositions to act in certain ways. Consequently, warriors with martial courage may understand truths about war that those lacking this virtue do not. A decline in martial courage within the military therefore risks a loss of knowledge of the nature of war and its consequences, which we may ultimately regret. Wars fought by industrious technicians, even morally courageous technicians, might look very different—and not necessarily in ways that we would prefer. Second, as long as wars require physical, as well as moral, courage, people are likely to be at least somewhat reluctant to fight them. Obviously, the fact that soldiers (as well as civilians!) are maimed and killed in war has not halted them to date. Yet one cannot help but worry that if it should ever become possible to fight—or at least start—wars without martial courage, still more wars would be fought for less reason.

These speculations are far from settling the question of the ethics of teleoperated warfare. There is, clearly, much to be said for—and against—teleoperated weapons on many other grounds. However, my modest hope is that this chapter has succeeded in demonstrating that the implications of teleoperated weapons for the future of martial courage and the "warrior culture" of the armed services are a not insignificant consideration in this larger debate.

Notes

1. For an account of the controversy surrounding this decision, see: "Medals for drone pilots? The fraught debate over how to honour cyber-warriors," *The Economist* (March 29, 2014): www.economist.com/news/united-states/21599785-fraught-debate-over-how-honour-cyber-warriors-medals-drone-pilots; E. Londono, "Pentagon cancels divisive Distinguished Warfare Medal for cyber ops, drone strikes," *Washington Post* (April 15, 2013): www.washingtonpost.com/world/national-security/pentagon-cancels-divisive-distinguished-warfare-medal-for-cyber-ops-drone-strikes/2013/04/15/62335492-a612-11e2-8302-3c7e0ea97057_story.html.
2. This chapter draws upon and expands ideas first developed in my chapter "War without virtue?" in B. J. Strawser, Ed., *Killing by Remote Control* (Oxford and New York: Oxford University Press, 2013): 84–105. I have surveyed and discussed the other ethical issues raised by the development and use of teleoperated weapons in: R. Sparrow, "Predators or plowshares? Arms control of robotic weapons," *IEEE Technology and Society* 28, no. 1 (2009): 25–29; R. Sparrow, "Building a better warbot: Ethical issues in the design of unmanned systems for military applications," *Science and Engineering Ethics* 15, no. 2 (2009): 169–187; R. Sparrow, "'Just say no' to drones," *IEEE Technology and Society* 31, no. 1 (2012): 56–63; and R. Sparrow, "Robotic weapons and the future of war," in P. Tripodi and J. Wolfendale, Eds., *New Wars and New Soldiers: Military Ethics in the Contemporary World* (London: Ashgate, 2011): 117–133.

3. These systems are typically flown by one person while another operates the sensor suite and/or weapon systems. For this reason, I prefer to write of the "operators" of drones rather than their pilots.
4. I say "perceived success" because the precise extent of the contribution of these systems to achieving the U.S.'s goals in Afghanistan and Iraq remains contested, with some critics arguing that they make more enemies than they kill. See, for instance, D. Kilcullen and A. M. Exum, "Death from above, outrage down below," *New York Times* (May 17, 2009): "Week in Review," WK13. For an overview of the current state of the art and prospects for teleoperated weapons, see Office of the Secretary of Defense, *Unmanned Systems Integrated Roadmap FY2013–2038* (Washington, DC: U.S. Department of Defense, 2013).
5. The reasons surveyed below are also reasons to believe that "unmanned systems" more generally—including "autonomous weapon systems" capable of identifying and attacking targets without human oversight—are likely to play an increasingly important role in war in the future. I have confined my discussion here to the implications of teleoperated systems for courage simply because this is where the popular debate is currently located. I have discussed the ethical questions raised by the development and use of autonomous weapons systems elsewhere, in: "Robotic weapons and the future of war"; and R. Sparrow, "Killer robots," *Journal of Applied Philosophy* 24, no. 1 (2007): 62–77.
6. In another context (Sparrow, "Predators or plowshares?"), I have argued that these "advantages" of drones also have the consequence that governments are more likely to resort to violence. Thus, any overall assessment of the impact of drones on casualty levels (both combatant and noncombatant) must take into account the possibility that deaths caused by drones would not have occurred except for the fact that drones allow governments to deploy violence without risk of friendly casualties and the argument that these weapons are more precise than the alternatives.
7. Of course, the fact that drones make it possible for force to be used more precisely does not necessarily mean that it will be. For a sophisticated analysis of the impact of the use of drones on civilian casualties and discussion of the factors determining the number of casualties, see: L. Lewis, *Drone Strikes in Pakistan: Reasons to Assess Civilian Casualties* (CNA Analysis and Solutions, April 2014). My thanks to Mark Gubrud for correspondence on this matter and for directing me to this source.
8. T. K. Adams, "Future warfare and the decline of human decision-making," *Parameters: U.S. Army War College Quarterly* (Winter 2001): 57–71.
9. B. J. Strawser, "Moral predators: The duty to employ uninhabited aerial vehicles," *Journal of Military Ethics* 9, no. 4 (2010): 342–368.
10. With the possible exception, as I discuss below, of circumstances in which the bases from which drones are operated come under enemy attack.
11. Shannon E. French, *The Code of the Warrior: Exploring Warrior Values, Past and Present* (Lanham, MD: Rowman & Littlefield, 2003); R. Moelker and P. Olsthoorn, "Virtue ethics and military ethics," *Journal of Military Ethics* 6, no. 4 (2007): 257–258; Peter Olsthoorn, *Military Ethics and Virtues: An Interdisciplinary Approach for the 21st Century* (London and New York: Routledge, 2011); B. C. S. Watson, "The Western ethical tradition and the morality of the warrior," *Armed Forces and Society* 26, no. 1 (1999): 55–72.
12. Perhaps the most explicitly "virtue-ethical" "warrior code" of a contemporary armed service is the value statement of the US Marine Corps at: www.marines.com/history-heritage/principles-values. For similar statements of sentiments, see the U.S. Army page at: www.army.mil/values/; and the British Army page at: www.army.mod.uk/join/25736.aspx.
13. H. Aronovitch, "Good soldiers: A traditional approach," *Journal of Applied Philosophy* 18, no. 1 (2001): 13–23, at p. 17.
14. Peter Olsthoorn, "Courage in the military: Physical and moral," *Journal of Military Ethics* 6, no. 4 (2007): 270–279. It is not entirely clear how one *would* train moral courage en masse without deliberately putting trainees in situations of the sort that it would be unethical to actually contrive.
15. J. Yi, "MCMAP and the marine warrior ethos," *Military Review*, no. 846 (2004): 17–24.
16. Olsthoorn, "Courage in the military," p. 274.
17. R. R. Gorman, "War and the virtues in Aquinas's ethical thought," *Journal of Military Ethics* 9, no. 3 (2010): 257–258, at p. 254.
18. R. Hursthouse, *On Virtue Ethics* (Oxford: Oxford University Press, 2001): 10–12.
19. The literature on courage is divided on whether it is only possible to exercise the virtue of courage in a just cause. The idea that virtues contribute to human flourishing—and especially the idea that they contribute to the flourishing of human communities—suggests that "brave" acts only exemplify courage when they are done in the service of a just cause (J. Kirkpatrick, "Drones and the martial virtue of courage," *Journal of Military Ethics*, 2015, in press). On the other hand, it is intuitively plausible

to think that warriors fighting in an unjust cause might nevertheless display courage, especially as those fighting in wars typically have little choice as to which side they fight on (Olsthoorn, "Courage in the military," p. 277). I do not need to resolve this controversy, which is independent of my argument, here—although it is worth noting that given that both the United States' invasion of Iraq and Afghanistan were arguably unjust by virtue of failing both the "reasonable chance of success" and the "proportionality" criteria within *jus ad bellum*, the conclusion that courage requires a just cause might be bad news for U.S. drone operators.

20. R. M. Adams, *A Theory of Virtue: Excellence in Being for the Good* (Oxford: Oxford University Press, 2006): 144–170. I would like to thank Justin Oakley for alerting me to Adams's work on this topic.
21. Kirkpatrick, "Drones and the martial virtue of courage."
22. My own discussion of the implications of drones for the martial virtues in "War without virtue?" is a particular target of his criticism.
23. I owe this point to a conversation with David Blair.
24. Possible exceptions here are the September 11, 2001, attack on the Pentagon (arguably a legitimate military target according to just war theory) and the Fort Hood shooting carried out by Major Nidal Malik Hasan.
25. For different treatments of the topic, see, for instance: Peter W. Singer, *Wired for War: The Robotics Revolution and Conflict in the 21st Century* (New York: Penguin Books, 2009): 346–347; B. Bender, "Attacking Iraq, from a Nev. computer," *Boston Globe* (April 3, 2005): A6; and Noah Shachtman, "Drone school: A ground's-eye view," *Wired Magazine* (May 27, 2005): http://archive.wired.com/science/discoveries/news/2005/05/67655?currentPage=all.
26. J. L. Otto and B. J. Webber, "Mental health diagnoses and counseling among pilots of remotely piloted aircraft in the United States Air Force," *Medical Surveillance Monthly Report* 20, no. 3 (2013): 3–8; W. Chappelle, T. Goodman, L. Reardon, and W. Thompson, "An analysis of post-traumatic stress symptoms in United States Air Force drone operators," *Journal of Anxiety Disorders* 28, no. 5 (2014): 480–487.
27. M. D. Matthews, "Stress among UAV operators—post-traumatic stress disorder, existential crisis, or moral injury?" *Ethics and Armed Forces* 1, no. 1 (2014): 53–57, notes that it is arguable that because UAV operators do not directly experience a traumatic event such as "a violent crime, serious bodily injury, or threat of death or serious bodily injury," they cannot, strictly speaking, suffer from PTSD. Nevertheless, Matthews acknowledges that operators may experience psychological distress as a result of a loss of meaning in life or "moral injury." However, if we interpret "traumatic event" more widely, to include witnessing such episodes, then it is clear that drone operators are exposed to such trauma and might be expected to experience stress-related symptoms as a result.
28. Kirkpatrick, "Drones and the martial virtue of courage."
29. Ibid.
30. In fact, it is possible to imagine a situation where moral courage was required to disobey an order *not* to kill (for instance, in order to defend a comrade one's commanding officer was willing to sacrifice to achieve some trivial military goal). However, I take it that the discussion below will also deal adequately with this case.
31. For useful discussions, see: David Whetham, "Remote killing and drive-by wars," in David Lovell & Igor Primoratz, Eds., *Protecting Civilians During Armed Conflict: Theoretical and Practical Issues During Violent Conflict* (London: Ashgate, 2012): 199–214; and J. Sparrow, *Killing: Misadventures in Violence* (Carlton, Victoria: Melbourne University Publishing, 2009).
32. See, for instance: M. Power, "Confessions of a drone warrior," *GQ* (October 23, 2013): www.gq.com/news-politics/big-issues/201311/drone-uav-pilot-assassination; and Peter Lee, "Remoteness, risk and aircrew ethos," *Air Power Review* 15, no. 1 (2012): 1–20.
33. See, for instance: Bender, "Attacking Iraq, from a Nev. computer"; Noah Shachtman, "Attack of the drones," *Wired Magazine* 13, no. 6 (2005): http://archive.wired.com/wired/archive/13.06/drones.html; and Shachtman, "Drone school: A ground's-eye view."
34. See, for instance: Whetham, "Remote killing and drive-by wars"; and J. Kaag and S. Kreps, *Drone Warfare* (Cambridge: Polity Press, 2014): 115. It is worth observing that this argument, often deployed to assert the moral benefits of using drones, cuts against the claim that operators experience strong and troubling emotions when they kill.
35. Sparrow, "War without virtue?" pp. 96–97.
36. Shane M. Riza, *Killing Without Heart: Limits on Robotic Warfare in an Age of Persistent Conflict* (Dulles, VA: Potomac Books, 2013): 86–95.

37. Police officers must sometimes make this decision, but arguably do so in a much less contested moral and political context than warfighters; nor is killing people the defining task of their profession, as it is for warfighters.
38. Lee, "Remoteness, risk and aircrew ethos," p. 12.
39. Which is not to say that I do not think that there are powerful arguments that can be made against the development and use of drones. See, for instance, Sparrow, "Predators or plowshares?" and Sparrow, "'Just say no' to drones."
40. See, for instance, sentiments quoted in P. Z. Shah, "My drone wars," *Foreign Policy* (March/April 2012): www.foreignpolicy.com/articles/2012/02/27/my_drone_war?page=full.
41. For a compelling account of how such a culture is already developing among the community of those who fly drones, see: Lee, "Remoteness, risk and aircrew ethos."

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35

NON-LETHAL WEAPONS AND RULES OF ENGAGEMENT

Pauline Shanks Kaurin

While unmanned aerial vehicles (colloquially referred to as drones) and cyber warfare have garnered much of the press and attention related to the "changing nature of war" and emerging technologies with important ethical implications, the increased availability and use of "non-lethal weapons" (NLWs) raise just as serious ethical issues for how we conduct and think about warfare.

Since their introduction in Somalia in the 1990s, NLWs have been regularly employed and have become an important tool in counterinsurgency and counterterror actions, as well as in multidimensional conflicts such as Iraq and, to a lesser degree, Afghanistan. Although NLWs are more frequently used in domestic law enforcement at present than in combat, nonetheless the increased prospects for their use internationally in armed conflicts raises the following question: To what degree does the use of NLWs change the requirements of *jus in bello*? In particular, what is their impact on our conventional understanding of the principle of discrimination ("distinction," or "noncombatant immunity") and of proportionality (that is, the proportionality of means, or the "economy of force")?

I propose in this chapter to examine the moral implications of NLWs for both of these aspects of the just war tradition (JWT). I then consider challenges to my own interpretations raised by the work of Jeff McMahan and other scholars, who argue that we must consider whether the threat posed is justified or not, inasmuch as (they argue) not all harms done in war are necessarily *moral* wrongs. This kind of view may open the door to argument that the traditional moral restrictions on warfare need to be reassessed with respect to NLWs, given that they are most typically used in non-conventional or asymmetric contexts, in which the question of who poses a threat may not break down along the conventional lines of "combatant" versus "noncombatant." Finally, I will discuss the implications of the increased reliance on NLWs for traditional military virtues, such as honor, courage, and loyalty, and to what degree non-lethal weapons might change how the military conceives and inculcates these concepts, which are otherwise found essential to the just conduct of war.

I. Understanding Non-Lethal Weapons

Non-lethal weapons are not intended to kill, permanently injure, or maim. Any effects NLWs cause or produce are intended to be temporary, minor, and reversible. An alternative perspective on NLSs is that they are intended to have one or both of the following characteristics:

1. they have relatively reversible effects on personnel or material; and
2. they affect objects differently within their area of influence.[1]

While some kinds of non-lethal weapons have been in existence for quite some time, the current generation of NLWs were first tactically employed by U.S. Marines in Somalia in the 1990s. The "United States Directorate on Non-Lethal Weapons" was established in 1996 in order to head up efforts by the Department of Defense to develop, evaluate, and employ NLWs in U.S. military operations. Current NLWs include everything from low-impact bullets, foams, nets, and lights, to noise and gas grenades. Currently in development and testing are a variety of other kinds of weapons: directed energy systems, lasers, electromagnetic power pulses (EMPs) that degrade equipment, light weapons, sticky foams, pheromones, and vinyl nets deployed by mines that are capable of stopping vehicles. Of particular interest for the future are systems that can disable or neutralize vehicles, optical distracters, focused acoustics, Active Denial Technology (ADT), and laser-induced plasmas.[2]

According to their proponents, the aim of all these weapons is to provide increased flexibility and response time on the part of troops and to find ways to neutralize a battlefield threat without having to resort to lethal force. The benefits of their use are highlighted in environments such as Iraq; that is, in which military units are obliged to operate in urban or mixed areas, or wherever else it migh prove difficult to distinguish combatants from noncombatants. NLWs can also be used at vehicle checkpoints, where it is advisable to be able to assess the intent of individuals and vehicles from a safe distance (given the prevalence of IED and suicide bombing tactics), or in areas where one wants to lessen the impact of war on noncombatants, in order to help "win hearts and minds" so as to facilitate the restoration of the peace and foster long-term stability in the region.

However, from the standpoint of the troops involved in these conflicts, there is another set of considerations. Col. George Fenton, Director of the U.S. Joint Non Lethal Weapon Directorate, observes that he "would like a magic dust that would put everyone in a building to sleep, combatants and non-combatants."[3] In reference to Vietnam and Somalia, John Alexander, arguably one of the most vocal proponents of NLWs, argues that "non-lethal weapons offer a chance for soldiers to avoid facing such dilemmas in the future. The psychological burden of killing the innocent or even tacitly supportive civilians should not be thrust upon young troops when viable alternatives are available."[4]

In all such cases, the argument being advanced, whether directly or indirectly, is that there may be good reason to think that the use of lethal or deadly force per se is not the *raison d'être* of the military or of military operations. If one can achieve the same ends through resort to non-lethal force, then resort to NLWs ought to be considered, and might even be superior for moral and practical, as well as strategic, reasons.

II. NLWs and the Principle of Discrimination

The principle of discrimination in *jus in bello* requires that, in the conduct of warfare, those waging war must discriminate between combatants and noncombatants. There are, however, a variety of ways to think about how to discriminate between the two.

One route is to argue that certain persons are noncombatants in virtue of belonging to a certain class, or by fulfilling certain roles: that is, simply by being a child, a female, elderly, or, for instance, belonging to a putatively exempt group such as the clergy. Combatants, in contrast, are typically those who wield force by virtue of belonging to a recognizable military organization, and often (though not always) wear uniforms. This seems to be the approach of

the medieval Peace of God and Truce of God movements,[5] and often seems to be the approach toward the combatant-noncombatant distinction taken in international humanitarian law. This is, for example, arguably part of the rationale behind the definition of "combatancy" in the "1977 Protocol Additional to the Geneva Conventions of 1949," which stipulates membership in certain armed forces (or related groups), membership in other groups who meet certain criteria (related to uniforms, carrying arms openly, and obeying laws of law), and regular armed forces professing allegiance to a non-recognized government.[6]

Another perspective is simply to recognize that those who are directly involved in war may therefore be targeted, while those who are not directly and actively involved may not. In this way of thinking about discrimination, those who are combatants (directly involved in combat) may be targeted along with those who directly contribute to the war effort. It is possible to conceive accordingly that those who only contribute indirectly (such as a military chaplain) may be "less legitimate" targets than putative "noncombatants" who aid the war effort more directly by, say, working in a munitions factory or providing human intelligence (HUMINT) to a military force.[7] Michael Gross takes a modified version of this latter view in his discussion of "associated targets" in asymmetric conflict. He argues that we need to think in terms of "participants" rather than of the conventional categories of noncombatant and combatant.[8]

A third option is to see "distinction" or discrimination in terms of rights and consent. In Michael Walzer's language, noncombatants have not consented to be treated as objects of war, and are therefore not to be targeted. In this view, combatants are "dangerous individuals": they carry weapons, they can/will inflict this harm on others.[9] They are dangerous, precisely because they can inflict harm and put others in dangerous situations. They can cause others to have their rights violated, especially their right to life, but also their rights to autonomy or to non-interference with their livelihood. On this view, combatants on some level have consented to being treated as objects of war: that is, they recognize that the rights they may claim are modified or altered by the function they perform, the danger they pose, and the activities they engage in. Anyone who does not fall under this description, and accordingly has not consented to this arrangement that Walzer terms a provision of "the War Convention," must accordingly be treated as a noncombatant.

Finally, we might see the distinction between combatants and noncombatants in terms of the fact that certain persons pose certain kinds of threats. While this view has similarities to Walzer's view, it focuses less on rights, and more on the activities and actions of the person in question. Roughly speaking, combatants pose a certain kind of threat, while noncombatants do not.[10] More recent work (which I will discuss in my final section) takes up the issue of whether the threat that is posed is *justified* or *unjustified*, and uses that rather than the traditional categories of combatant and noncombatant to decide whether targeting is permissible. For present purposes, however, I focus on the level and the nature of the threat (in terms of lethality), not upon whether that threat itself is *justified*. This is, in my view, the most plausible way to understand the principle of discrimination. Indeed, this functional approach provides a foundation for a more nuanced understanding of "distinction" that allows us to discriminate, not just between two stark categories, but between multiple *kinds* of combatants and multiple *kinds* of noncombatants, based more specifically upon the nature and severity of the threat that they might pose.[11]

The most externally accessible fact about warfare is the power differential between combatants and noncombatants. Combatants are armed, and can be a threat to others; noncombatants are not armed, and are vulnerable to those who are. In short, combatants have a kind of power—a more imminent ability to pose a threat, or to be "dangerous." The different actions and abilities of the persons in each category justify their different treatment. These are not just different administrative categories, but different categories of activities and capabilities, and different levels

of force—multiple ways to be/act like a combatant, if you will, and multiple ways to be/act like a noncombatant. While there are many important differences between combatants and noncombatants that constitute the basis of the moral requirement for discrimination and noncombatant immunity, there are also important differences—largely in terms of power and vulnerability—*within* these categories as well. If there are these differences within the categories, then it also follows that there could be different types of *rights within* these categories that ought to be taken seriously.

With this revised idea of discrimination in hand, we can turn to clarifying some of the key moral questions that arise when applying this principle of noncombatant immunity with respect to the use of NLWs. Chris Mayer, for example, maintains that the chief moral issue that ought to be considered in the NLW context is not so much "harm" (as in the resulting harm from an attack or violence), but in the very *targeting* of noncombatants. Noncombatants have a right to self-defense, they do not constitute a threat (at least not in the same way that a combatant does), they do not consent to take part in war, and therefore have not abdicated their right to life or autonomy.[12] Not allowing noncombatants to make choices or exercise their own autonomy is a serious matter and is *harm* in itself. Targeting noncombatants with NLWs—even if doing so to save them from a presumably "greater" harm—is a violation of their inherent immunity, and thus can be said to do them harm. Soldiers, specifically, are prohibited from targeting noncombatants encountered in their battle space merely because they happen to be in the way.

In such cases, Mayer observes, any targeting of noncombatants with NLWs is really done for the convenience of the military. Such targeting is not justified for any morally significant reason. He writes:

> Even if using NLWS against the non-combatants saves more lives in the long run, something, specifically a military action, is being done to the non-combatants for military purposes. It makes the idea of [noncombatant immunity] meaningless because the restrictions can be set aside anytime a military force can show that less harm will occur if it is permitted to use NLWs against non-combatants.[13]

The prohibition here is not simply on the intentional *killing* of noncombatants, but on the intentional *targeting* of them.

This concern was illustrated quite clearly in the case of the Moscow theater hostage crisis in 2002, in which a presumably "non-lethal" gas was used to incapacitate the hostage-takers, but ended up killing both hostage-takers and hostages alike. Even had no one been killed, this would have still been problematic (according to Mayer's position) as the hostages (noncombatants) were targeted in the same way as the hostage-takers (combatants). In the final analysis, all were treated equally as targets in war, in clear violation of the principle of discrimination.

We might say here that attempting to mitigate the *effects* of war (as laudable a goal as that might seem) does not excuse or permit the violation of the principle of discrimination. Likewise, it appears that some of the arguments favoring the use of NLWs primarily boil down, in fact, to a simple matter of military convenience—namely, reducing or eliminating physical risk (and, in the Moscow case, even inconvenience) to combatants. Even if no discernable harm came about as a result of the intentional targeting (that is, neither physical harm, nor adverse psychological impact), one would still be obliged to conclude that moral harm of a sort was committed, in that noncombatants were treated in an unjustifiable manner—one that constituted a violation of basic justice and of their inherent rights.

III. NLWs and the *Jus in Bello* Principle of "Proportionality of Means"

Adopting my preferred "functional" or "threat approach" to thinking about discrimination allows for the recognition of gradations of power and threat *within* the categories of both combatant and noncombatant. This requires in response that one use only enough force to prevent or to ameliorate that threat, thereby avoiding the infliction of unnecessary suffering.

The most pressing moral question then becomes, "How much force is necessary to deal with this threat?" rather than the question, "Is the use of (usually lethal) force justified or not?" Indeed, I would argue that while a focus on the *degree of threat posed* makes the most sense generally when talking about noncombatant immunity and distinction, it makes even more sense to employ this approach when it comes to thinking about NLWs. The principle advantage in using NLWs is that they involve less use of force, and inflict less damage, and thus, perforce, conform more readily to the second requirement of proportionality of means. Therefore, it makes sense to have NLWs as one of the range of options for employing force of any kind in the midst of an armed conflict. Given that, in general, NLWS tend to inflict less harm and less severe harm—and provided that they are not employed more indiscriminately than conventional weapons—their use could be justified on the grounds that NLWs inflict less overall harm than conventional weapons used under otherwise similar or identical circumstances and constraints.

As soon as NLWs are actually deployed and used in conjunction with traditional lethal weaponry, this justificatory stance may quickly become problematic. It is critical to recognize these problematic features of NLWs, since many proponents *do* see them being used in conjunction with conventional lethal weaponry, as a kind of "force-multiplier." If NLWs, for example, are used to "soften up" targets prior to the application of lethal force, this could and probably would result, finally, in more rather than less damage being inflicted. In fact, we might reasonably foresee that the use of NLWs—especially as a force-multiplier in conjunction with conventional weaponry—could lead to inflicting unnecessary and disproportionate suffering, even if the additional non-lethal weapons in the overall arsenal do not themselves kill.

Consider an example of weapons designed to have effects on the nervous system, to disorient and incapacitate an adversary. For combatants, their use could lead to more serious injuries and higher casualties than were either necessary or justified in terms of the military objective at stake. In the case of noncombatants, moreover, this additional availability and use of NLWs could actually cause the conflict itself to escalate faster (as people become disoriented and panic), and thus end up actually requiring the use of even greater lethal force than would have originally been required.

The proportionality of means requirement in *jus in bello* requires that the weaponry used and the resulting harms inflicted must not outweigh the good (in this case, the necessary military objective) to be achieved. This requirement is rooted in the idea that an otherwise justifiable war itself ought not to inflict disproportionate suffering (especially on noncombatants, but also on opposing combatants), and should especially avoid inflicting harm or damage that is otherwise unnecessary relative to the justified ends or goals of the war itself. In sum, the use of only as much force as is needed to achieve the military objective can be morally justified. Phrased in this matter, "proportionality of means" is often referred to alternatively as the principle of "economy of force."

With regard to the use of NLWs: to the degree they can achieve military objectives by inflicting less harm or damage, they must be judged superior from a moral standpoint to the use of conventional lethal force. This presumed moral superiority, however, requires that we be able to assess accurately exactly what kind of harm and impact specific NLWs will actually have or inflict. With some NLW systems (especially chemical and biological agents), this accurate and requisite assessment of impact can prove to be notoriously difficult.

Michael Gross, for example, calls attention to the difficulties of asymmetric conflicts, including that one quickly runs short of unambiguously legitimate military targets. Accordingly, he argues, we need to look at weakening restrictions against the doing of certain kinds of harm, or, alternatively, consider broadening our definitions of what we think as constituting permissible and proportional harm.[14] One problem he cites is that, in asymmetric conflicts, it is often difficult to achieve certain kinds of ostensibly reasonable and otherwise justifiable military advantage without harming large numbers of noncombatants. He examines the use of human shields, for example, as well as the recourse, driven from necessity or resource scarcity, to the use of less accurate weapons systems by the weaker side in an asymmetric conflict. He also invokes examples of military actions undertaken in areas with high noncombatant populations that cannot be evacuated easily. In his view, standard judgments of proportionality fail to take into account the asymmetry of weapons, and the risks that an otherwise necessary and even justifiable resort to guerilla tactics tends to impose on the noncombatant populations.[15]

If Gross is correct that we need to rethink proportionality more generally in asymmetric conflicts, NLWs will obviously become an important part of any consequent transformation of attitudes toward, or approved tactics employed in the midst of, such asymmetric armed conflicts. Quite obviously, NLWs hold the potential, at least, for altering the conventional calculus regarding both the amounts and the kinds of harm that must be factored into any moral considerations of proportionality. This does raise serious questions about "gray areas" (such as the targeting of dual-use facilities and infrastructure) focused on persons or objects and institutions that are, or could be, indirectly linked to participation in the conflict at hand. The new dilemmas would arise in these cases insofar as use of NLWs might permit or make feasible actions against those ambiguous (and morally troublesome) targets in ways would result in much less harm or damage, in accordance with the requirements of proportionality. I tend to agree with Gross that such factors may change the calculus of harm, and the degree of harm we are willing to consider morally justified. This would not address or resolve the independent questions regarding *targeting* raised in the previous section, however.

Finally, with respect to NLWs and the calculus of *in bello* proportionality, we should consider the problem of whether the availability or use of these weapons during armed conflict might actually serve to *lower* the threshold for permissible use of force (as has already been witnessed with respect to the use of NLWs in domestic law enforcement) and so lead to increased conflict. NLWs, that is to say, might have fairly serious implications for *jus ad bellum* proportionality considerations, judging whether the very entrance into a state of conflict is justifiable. NLW, precisely because of the promise they hold for lowering noncombatant casualties in the short-term, might paradoxically render the recourse to war itself more plausible, feasible, and morally acceptable.

IV. Other Moral Challenges Posed by NLWs

The standard accounts of just-war reasoning generates the position currently enshrined in international law: questions regarding the decision to use armed force (*jus ad bellum*) are the domain of the state and its representative authorities. It is they who bear the moral responsibility and any legal consequences ensuing for any decision to use armed force in international relations. The state's military, by contrast, and its individual military personnel, are responsible solely for undertaking legally compliant and morally justified conduct of hostilities (*jus in bello*). Combatants, in this conventional or standard view, are largely instruments or agents of the state, and carry out its behest (rather than acting on their own, individual desires) in engaging in armed conflict with the combatants of other states.[16] Importantly, combatants on all sides of an

armed conflict, under international law, are "equivalent" under that law in being exempt for individual responsibility for their country's decision to engage in hostility, and are themselves responsible, legally and morally, only for the manner in which they conduct themselves during hostilities. Accordingly, it cannot generally be accorded a "war crime" simply to fight on one side in a war. Crimes are committed by individual combatants in the midst of war only by violating international norms constraining their behavior and their use of force, such as those of discrimination and proportionality discussed above. This is the principle that Walzer labels "the moral equality of soldiers."[17]

McMahan's line of argument is critical of this collectivist view, and of the "moral equality" doctrine in particular. He argues instead that we need to think about the use of force in war in terms of the broader debates about the right and justification to use force in self-defense more generally. Accordingly, the proper way to think about whom one is entitled to use force against is not in terms of whether or not that person poses a threat, "nor even pos[es] an unjust threat, but [rather, in terms of the accompanying] moral responsibility for an unjust threat."[18]

McMahan argues that a person is liable to attack if he or she is morally responsible for a wrong that could itself constitute a just cause for war, or morally responsible for an posing an unjust threat within the context of a war. What this could mean is that a noncombatant who poses no "active threat," but who bears (or shares) moral responsibility for bringing about the war itself, may be liable to attack. McMahan's view also entails that not every combatant is morally justified in their use of force, while others may be entirely justified and, accordingly, may be immune from attack. As a relatively straightforward example: soldiers engaged in protecting their nation and its citizens from a wholly unjustified and illegal invasion, for example, are not thereby engaged in any kind of wrongdoing that would make them personally liable to attack, while those engaged in the illegal invasion are "unjustified combatants," fully engaged in the kind of wrongdoing that renders them justifiably liable to attack (for example, by the military forces of the victim of their unjust aggression).

Specifically, in what has come to be labeled the "revisionist" view of just war theory, there is in this case no "moral equality" among the combatants involved. The combatants of the victim state are justified combatants, fully entitled to all the rights and protections afforded them under morality and international law. The military forces of the invading state are "unjustified combatants" or "unjust warriors," neither fully entitled to moral and legal protection themselves, nor, more importantly, entitled to attack or harm the justified combatants of the victim state.

While this specific line of argument is recent, it reflects an older idea within the just war tradition that not *all* harms inflicted in war constitute morally wrong actions. One familiar instance of the older view is the doctrine of double effect, according to which harm or injury to noncombatants is permissible, or morally excusable, under certain restrictive circumstances. Specifically, those restrictions demand that the harm actually inflicted was not intended, but was an unavoidable consequence of an otherwise morally or legally permissible action, intended to have a good effect.[19] In the present instance, however, McMahan's argument seems to hold an even more complex implication: namely, that one is justified (that is, does nothing that is morally wrong) in using force against an aggressor who poses an *unjustified* threat. Individual "unjust" combatants from the aggressor state in the example above, however, would *not* be justified (that is, they would be doing something morally wrong) in using force against an adversary (for example, one of the defending soldiers in the victim state) who posed a *justified* threat.

How might this provocative claim affect my overall conception, above, that grounds justified use of force against combatants or noncombatants according to the nature and degree of the threat each poses? In particular, one might think about the question in the following way: *Under what conceivable circumstances could noncombatants ever pose an unjustified threat to a combatant, such*

that the combatant would be justified in using force against them? This is especially important to consider, in light of proposals that NLWs might justifiably be used against noncombatants during wartime.

There seem to be three categories of circumstances or instances we should consider, in light of McMahan's arguments. *First*, it may be that a noncombatant is somehow morally responsible for a wrong that would constitute a just cause for the war. Presumably, McMahan has in mind noncombatant leaders or others that are directly (or at least in some morally relevant way) promoting or contributing to an unjust cause for armed conflict, even if they do not themselves pose an active threat. This might include, for example, civilian leaders of the political order engaged in mass genocide, or in advocating or supporting a war of territorial aggression. Both of these instances would count as unjust causes, and both would result in courses of action representing an unjust threat to others, even if the individuals themselves do not pose an "active threat" to specific combatants (by virtue of being armed or otherwise directly engaged in hostilities).

Second, we might imagine a case in which a noncombatant is somehow connected with the unjust side in a conflict, as above, *and* is also posing a lethal or potentially lethal threat in an active way that the opposing combatant's right to self-defense kicks in. (This case combines McMahan's idea of involvement in or support of an unjustified cause with my conception of posing an "active" threat.) However, in this instance, it seems to me that the consideration of McMahan's "unjust cause" proves irrelevant, since the individual already somehow poses the level of active threat required for self-defense. The woman, clergyman, or child residing in the aggressor state might not be guilty of complicity in that state's unjust actions of invasion and aggression. But if they were to take up a knife or a frying pan and attempt to launch an attack against a soldier who was a justified combatant from the victim state who had managed to turn the tables and launch a counterattack against the aggressor, then, whether or not they were morally guilty in McMahan's sense, they would nevertheless be liable to attack in any case, on account of their posing an active threat to the justified combatant (even though they themselves were technically noncombatants). What additional, non-redundant "work" would McMahan's conception do for us in such a case?

Third, one might interpret the case solely in terms of the (justified or unjustified) *cause* with which a noncombatant might be associated, or might otherwise advocate or support. Here, our problem might become: "What particular cause for which a justified combatant might be fighting could itself be so just that consideration of it would warrant overriding the general principle of noncombatant immunity (NCI)—especially since this principle is thought to apply, not on a case-by-case basis, but to war in general? NCI is, in fact, rooted in the right of self-defense (which noncombatants have neither ceded nor forfeited), together with considerations of justice related both to avoiding unnecessary suffering and to facilitating the restoration and keeping of peace following armed conflict. How likely is it that any specific instance of just cause alone could rise to the level that would justify setting aside or undermining a general moral principle that applies to the most vulnerable victims during warfare in general?

It seems difficult to argue persuasively that there will be a sufficient number of exceptional cases in which a noncombatant will pose an *unjustified* threat to a combatant. Hence, it is difficult to imagine circumstances in which a decision to deliberately target such noncombatants (even with NLWs) could by justified in light of the general principle of NCI.

What finally becomes of the presumed "moral equality" of combatants? McMahan himself seems much more interested in making the argument that not all combatants are justified in using force, especially if they are fighting on behalf of an unjust cause. While this has proven to be a provocative and controversial claim, the most basic objection to it remains epistemological, especially in the case of irregular or asymmetric warfare. How is the individual soldier

in the field to evaluate the justness of the cause of an opposing soldier in the midst of a complex asymmetric conflict? On what basis, using what evidence, is the solider to make these judgments?

NLWs might actually help with this problem by allowing individual soldiers more options, and hence more latitude, to exercise their individual moral agency. To the degree that NLWs impede the use of lethal force, they might afford more time for sorting out legitimate from illegitimate targets. I do not foresee this prospect resulting, however, in any abandonment of the principle of discrimination in favor of targeting noncombatants justifiably with NLWs. Instead, the primary advantage of NLWs really seems to remain their prospects for greater compliance with the demands of proportionality by serving to inflict increasingly less severe harm on those who are targeted. It is not clear to me that McMahan's position affords us any better account than we had previously of whom might constitute an appropriate and justifiable target of such weapons, particularly in respect to his category of potentially liable (unjust) noncombatants. His position might be clarified and somewhat strengthened, were he to give additional consideration to what types or degrees of lethal (or "non-lethal") force might be justifiable used against whom.

V. Conclusions

Given the foregoing arguments, the use of NLWs in asymmetric conflicts does not fundamentally alter the underlying and continuing moral requirement for discrimination. There may be reasons, in light of increased use of NLWs, for reassessing our approach to *jus in bello* proportionality, but this cannot be achieved merely by looking at proportionality calculations in the short-term or on a case-by-case basis. Instead, the broader and long-term implications of precedents that might be set in the short-term must also be factored into any such reassessment.

One final consideration remains: namely, the implications of the increased availability and use of NLWs for the future cultivation of otherwise essential military virtues, such as honor, courage, and loyalty. Engaging in the morally justified conduct of warfare is not simply a matter of following rules or orders, or even complying with the statutes of international law. Rather, the habits and dispositions that inspire right action and provide a foundation for morally consistent action are rooted in these essential virtues. We are thus obliged therefore to consider the ramifications of NLWs on the future formation and inculcation of such virtues.

First, the use of NLWs (especially in asymmetric conflicts) in accordance with the moral requirements of *jus in bello* will likely require considerable courage—both physical and moral—as well as prudent judgment on the part of individual soldiers and Marines. The use of NLWs is *morally desirable* in certain contexts, in order both to reduce intentional harm against combatants as well as to avoid inflicting unacceptable collateral damage against noncombatants. This involves an even greater assumption of risk on the part of combatants, at least if they are determined to use such options in accordance with the current principles of *jus in bello*, and not merely (as in the Moscow theater example) simply using them to subdue everyone indiscriminately, leaving the "sorting out" for later. It will take great courage and moral resolve, as well as the cultivation of sound judgment, to encourage "just combatants" to use these new weapons justly, and simply as a means for more rigorous force protection that shifts all the risk of harm to noncombatants.

Second, in terms of loyalty, it will be tempting to see the use of NLWs, not only as a tool for increased forced protection rather than a means toward greater proportionality and distinction, but also (and perhaps even more gravely) as a move toward the *criminalization* of the adversary. The latter danger is explicitly mentioned by Michael Gross, and is clearly implicated in the kinds of arguments that McMahan is making, regarding whether the threat posed by adversaries (whether combatants or noncombatants) is morally justified or not. It is important to note that

loyalty as a moral virtue does not just include loyalty in a narrow sphere of connection (that is, one's own combat group or citizens), but may and should include a broader conception of loyalty that includes wider spheres and multiple objects of loyalty—including loyalty to one's own guiding cardinal principles within the profession of arms itself.

Third, NLWs provide the opportunity to slow the escalation of resort to force generally, while reducing the amount of harm to combatants and inadvertent collateral damage done to noncombatants. The underlying issue of refraining from inflicting unnecessary suffering is especially critical. It is possible, somewhat paradoxically, that NLWs could actually end up causing *more*, rather than less, long-term harm in two ways:

1. by reducing the seriousness with which combatants regard the resort to force, and thereby eroding (as has occurred in domestic law enforcement) the threshold required to resort to force; and
2. undermining the ability on the part of justified combatants to "win hearts and minds," in turn making the restoration of the peace even more difficult or impossible.

NLWs are still "force" of a kind, and one is still using them to target others and inflict harm. In assessing the moral impact of using NLWs, one must therefore consider the long-term implications of those changes, both in terms of the precedent they set for future conflicts, as well as the extent to which adversaries will be led to adapt and thereby continue to "up the ante" on questionable targeting decisions by all parties to the conflict. All such developments would put more and more pressure on the opposing parties to the conflict to further and further erode, in turn, the protections that the principle of proportionality is designed to achieve. One might thereby win the battle, but lose the war—or, more likely, prevail in the present war, only to incur and lose the next.

Notes

1. John Alexander, *Future War: Non Lethal Weapons in the Twenty-First Century* (New York: St. Martin's Press, 1999): 5.
2. Joint Non-Lethal Weapons Program: www.jnlp.com/Technology.
3. David Fidler, "Non lethal weapons and international law: Three perspectives on the future," in *The Future of Non-Lethal Weapons: Technologies, Operations, Ethics and Law*, Ed. Nick Lewer (London: Frank Case, 2002): 36.
4. Alexander, *Future War*, p. 24.
5. For a brief account of both movements, consult *Encyclopedia Britannica Online*: www.britannica.com/EBchecked/topic/236624/Peace-of-God.
6. 1977 Protocol Additional to the Geneva Conventions (12 August 1949), and "Relating to the Protection of Victims of International Armed Conflicts" (Protocol I) I art. 44. 3. Sean D. Murphy, "Decision not to regard persons detained in Afghanistan as POWs," *American Journal of International Law* 96, no. 2 (April 2002): 476. See also K. M. Watkin, "Combatants, unprivileged belligerents, and conflict in the 21st century" (2003): www.hpcrresearch.org/sites/default/files/publications/Session2.pdf.
7. This issue is raised by Michael Walzer in *Just and Unjust Wars* (New York: Basics Books, 1977): 145–146.
8. Michael Gross, *Moral Dilemmas of Modern War: Torture, Assassination and Blackmail in an Age of Asymmetric Conflict* (Cambridge: Cambridge University Press, 2010): 202–204.
9. Walzer, *Just and Unjust Wars*, p. 145.
10. For the full argument, see my *The Warrior, Military Ethics and Contemporary Warfare: Achilles Goes Asymmetrical* (London: Ashgate Press, 2014): Chapter 4.
11. Ibid.
12. Walzer, *Just and Unjust Wars*, especially Chapter 9.

13. Chris Mayer, "Non lethal weapons and non-combatant immunity: Is it permissible to target non combatants?" *Journal of Military Ethics* 6, no. 3 (September 2007): 228.
14. Gross, *Moral Dilemmas of Modern War*, pp. 163–166.
15. Ibid.: 173.
16. McMahan considers Michael Walzer's account a collectivist account. For more on this debate, see Helen Frowe, *The Ethics of War and Peace: An Introduction* (New York: Routledge, 2011), especially Chapters 1 and 2.
17. Walzer, *Just and Unjust Wars*, p. xxx.
18. Jeff McMahan, "The morality of war and the law of war," in *Just and Unjust Warriors: The Moral and Legal Status of Soldiers*, Eds. David Rodin and Henry Shue (Oxford: Oxford University Press, 2010): 22.
19. Alison McIntyre, "The doctrine of double effect," *Stanford Encyclopedia of Philosophy* (2011): http://plato.stanford.edu/entries/double-effect/.

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CAPTAIN AMERICA AND IRON MAN

Biological, Genetic, and Psychological Enhancement and the Warrior Ethos

Maxwell J. Mehlman

The United States military, led in large part by the Defense Advanced Research Projects Agency (DARPA), has evinced a strong interest in employing biomedical and genetic/genomic technology to improve the ability of warfighters to carry out their missions with greater safety and effectiveness.

The use of biomedical enhancements outside of the military is highly controversial, but since enhancements potentially could enable warfighters to achieve their missions more safely, effectively, and economically, it is not clear that objections to enhancements in other contexts apply to the military, or that they could not be overcome by the special nature of military service and the exigencies of military operations. Still, the military would be wise to tread carefully in this area to avoid causing unnecessary or excessive harm to warfighters by subjecting them to unethical experimentation or by requiring them to use unjustifiably dangerous or ethically objectionable enhancement technologies. In addition, inappropriate decisions by the military could provoke a negative public reaction that would impair recruitment and ability to fulfill legitimate military responsibilities.

This chapter begins by defining what counts as a biomedical enhancement and then describing current and historical uses of enhancements by the military. It then identifies the broad ethical, legal, and policy issues that would be raised if military research on these technologies were conducted with human subjects, and the issues raised by giving these technologies to warfighters in the field. Next, the chapter establishes an ethical framework for resolving these issues. Finally, the chapter proposes a set of guidelines for military use of biomedical enhancements.

I. What is a Biomedical Enhancement?

A working definition of a biomedical enhancement is "an intervention that employs medical and biological technology to improve performance, appearance, or capability besides what is necessary to achieve, sustain or restore health."[1] Since an enhancement, by this definition, does

not aim to prevent, treat, or mitigate the effects of a disease or disorder, immunization, which makes individuals' immune systems better than normal, would not qualify as an enhancement. Similarly, a drug to improve cognitive function in persons with below normal cognitive ability ordinarily would not be considered an enhancement. But a pharmacological agent that improved cognitive function in someone with a cognitive deficit to such a degree that the individual exceeded population norms for cognitive functioning clearly would qualify as an enhancement. An intervention also might be regarded as an enhancement if it improved the cognition of someone with normal cognition to start with, even though the resulting cognitive performance remained within population norms.

The concept of normality, of course, is elusive. In some cases, it refers to the frequency with which a trait or capability occurs within a population. In regard to height, the convention is to regard individuals who are more than two standard deviations below the mean height of the population as being of short stature.[2] In other circumstances, what is considered normal may have no relationship to the distribution of a trait. Normal eyesight is deemed to be 20/20, but only about 35 percent of adults have 20/20 vision without some form of correction.[3] The 20/20 standard of normality stems from an eye chart created by a nineteenth-century physician; 20/20 vision means a person can read a character of a certain size (approximately ⅜ of an inch high) on the chart from 20 feet away. Standards of normality also may vary from place to place and time to time, and can be expected to change as the use of enhancements increases. Furthermore, the concepts of disease and disorder themselves may be hard to pin down. Before 1973, the American Psychiatric Association regarded homosexuality as a mental disorder.[4] Finally, there is a tendency to regard more and more health states as diseases and more and more interventions as treatments.

In short, the distinction between health-oriented and enhancement interventions will not always be clear, and invariably there will be borderline cases. The difficulty of clearly identifying what counts as an enhancement complicates the task of determining the conditions, if any, in which it would be ethical to research or use enhancements in the military. Nevertheless, the above working definition is sufficient to allow some conclusions to be drawn about the appropriate use of enhancement in the military enhancement.

II. Military Interest in Biomedical Enhancement

The U.S. military's interest in biomedical enhancement is a logical corollary to its objective of maximizing the performance capabilities of its members. This performance imperative is reflected in the goals of military training.

The use of biomedical enhancement by the military is not new. Amphetamines were used widely by American, German, and British forces in World War II, and again by the U.S. in Korea.[5] Beginning in 1960, the Air Force sanctioned them on a limited basis for the Strategic Air Command, and in 1962 for the Tactical Air Command. The Vietnam War sparked large-scale amphetamine use, with Air Force and Navy pilots using them to extend their duty day and increase vigilance while flying. According to one Cobra gunship pilot, "uppers" were available "like candy," with no control over how much people took. During the invasion of Panama (Operation Just Cause), the drugs were administered in smaller doses under much more careful medical supervision, and in contrast to Vietnam, where pilots who used them frequently suffered from nervousness, loss of appetite, and inability to sleep, fewer side effects were reported during Operation Just Cause.[6]

The Air Force continued to dispense amphetamines during Desert Shield and Desert Storm. A survey of 464 fighter pilots in the First Gulf War found that, during the six-week operation,

57 percent reported that they took Dexedrine at least once, with 58 percent saying they used it occasionally and 17 percent admitting that they used it routinely. Sixty-one percent of those who took the drug felt that it was essential to enable them to complete their missions.[7] In 1991, the Air Force Chief of Staff, General Merrill A. McPeak, banned the use of amphetamines because, in his words, "Jedi Knights don't need them."[8] The ban lasted until 1996, when Chief of Staff John Jumper reversed the policy when missions were being flown in Eastern Europe.[9] In 2002, the Air Force was dispensing 10 milligrams of amphetamines for every four hours of flying time for single-pilot fighter missions longer than eight hours and two-pilot bomber missions longer than 12. Asked why military pilots were permitted to use amphetamines when they were prohibited by commercial airlines, Colonel Peter Demitry, chief of the Air Force Surgeon General's Science and Technology division, explained: "When a civilian gets tired, the appropriate strategy is to land, then sleep. In combat operations when you're strapped to an ejection seat, you don't have the luxury to pull over."[10]

Amphetamines became controversial in 2002 when four Canadian soldiers were killed and eight wounded in a friendly fire incident in Afghanistan. They were hit by a 500-pound laser-guided bomb dropped from an Air Force F-16 being flown by pilots who, returning at 18,000 feet from a 10-hour mission, thought they were attracting small-arms fire.[11] When they learned of their mistake, the pilots claimed that they had been jittery because they had taken Dexedrine for so many hours.[12] Amphetamines continue to be approved for military use, however; a 2005 article by research scientists at the Air Force Research Laboratory states that "the U.S. Air Force has authorized the use of dextroamphetamine in certain types of lengthy (i.e., 12 hours or more) single-seat and dual-seat flight missions. A recent NATO Research and Technology Organization publication discusses amphetamines' significant value as an anti-fatigue measure for aviation personnel."[13]

In an effort to find a safer alternative to amphetamines, the military is reported to be turning to modafinil, a drug originally used to treat narcolepsy that is sold under the brand name Provigil. According to Jonathan Moreno, U.S. troops first used modafinil during the 2003 invasion of Iraq. The British press reports that the U.K. Ministry of Defense purchased 24,000 modafinil tablets in 2004.[14] Research has shown that the drug improves the performance of helicopter pilots in flight simulators.[15] Moreno reports on a modafinil study that the Air Force's Office of Scientific Research conducted in 16 volunteers who, over a four-day period, stayed awake for 28 hours, then slept from 11:00 a.m. until 7:00 p.m.; afterwards, the modafinil group did significantly better on cognitive tests than subjects who took a placebo. Other research showed that modafinil enabled pilots to remain alert for 40 hours, and experiments at Walter Reed Institute of Research have been carried out on soldiers who were sleep-deprived for as long as 85 hours.[16] The moral and legal propriety of doing this research on the military (also discussed in companion chapters by M. Gross and N. Coleman in this volume) will be considered in more detail below.

While the military is actively investigating new alertness drugs such as modafinil, it continues to employ the old standby, caffeine. New U.S. army "first strike" rations contain caffeine-laced chewing gum, with each stick providing the equivalent of a cup of strong coffee.[17]

A long-standing practice among members of the military in an effort to enhance performance has been to take dietary supplements. As reported in the journal *Military Medicine*, "a recent worldwide survey showed that over 60 percent of service members are regularly taking some type of dietary supplement. Usually supplement use is at the advice of the sales clerk or by getting information from magazines or peers. Evidence based information is rarely available or rarely translated into a form that can be properly used by the warfighter or their commander."[18] Despite the limited amount of scientific evidence, the military recognizes the potential value of supplements: "Nutritional supplements may indeed be beneficial in certain circumstances.

For example, caffeine may provide advantages in military jobs and duties where attentiveness is necessary (e.g., aviators, sentry duty)."[19]

In 2008, an article Peter W. Singer wrote for the Brookings Institution described an ambitious DARPA goal presented by DARPA program manager Michael Callahan at the agency's 50th anniversary conference in 2007: "making soldiers 'kill-proof.'"[20] Callahan described research that would enable soldiers "to bring to battle the same sort of capabilities that nature has given certain animals," and a long-term, $3 billion initiative entitled the "Metabolically Dominant Soldier," which bioethicist Jonathan Moreno claims is aimed at developing a super-nutritional pill that, in DARPA's words, would permit "continuous peak performance and cognitive function for 3 to 5 days, 24 hours per day, without the need for calories."[21] At the same time, however, the military remains dead set against the enhancement use of steroids. DOD Directive 1010.1, originally issued in 1994, states that "the illicit use of anabolic steroids by military members" is an offense under the Uniform Code of Military Justice.[22]

In 2008, the JASONs, a group of scientific advisors to the military, issued a report on "Human Performance" that discussed several types of biomedical enhancements, including the potential use of a class of compounds called ampakines to enhance cognition.[23] A central point in the report was that the benefits from military enhancement were not similar to the benefits from performance enhancement in elite sports: "The consequences of gaining a small performance advantage, even if it is highly statistically significant, are likely quite different as regards force-on-force engagements than as regards Olympic competition. In brief, a small performance advantage in force-on-force should generally result in a *small* change in the outcome, while in Olympic competition it can result in a *large* change in the outcome."[24] At the same time, the report acknowledged that a major change in human performance, giving as an example a reduction in the need for sleep, could have a "dramatic effect" on the "balance of military effectiveness."[25] However, this dramatic effect would only occur if the adversary did not have access to the same benefit, leading the report to emphasize the need to monitor and be prepared to counter enhancement use by potential enemies.

Lately, the military has extended its interest in performance enhancement to genetic technologies. In December 2010, the JASONs issued a report entitled "The $100 Genome: Implications for the DOD," which outlined an ambitious plan to employ genomic technologies to "enhance medical status and improve treatment outcomes," enhance "health, readiness, and performance of military personnel," and "know the genetic identities of an adversary."[26] The report also recommended that DOD "determine which phenotypes that might reasonably be expected to have a genetic component have special relevance to military performance and medical cost containment. These phenotypes might pertain to short- and long-term medical readiness, physical and mental performance, and response to drugs, vaccines, and various environmental exposures, all of which will have different features in a military context. More specifically, one might wish to know about phenotypic responses to battlefield stress, including post-traumatic stress disorder, the ability to tolerate conditions of sleep deprivation, dehydration, or prolonged exposure to heat, cold, or high altitude, or the susceptibility to traumatic bone fracture, prolonged bleeding, or slow wound healing."

III. Key Concerns

One important consideration in determining the appropriate use of enhancements in the military is the risk or other adverse consequences associated with the use of enhancements. There may be physical or mental health risks, such as those attributed to anabolic steroids. A drug may be addictive. In contrast to the U.S., for example, the Danish military does not give amphetamines

to its combat troops; not only do the Danes question the use of a drug that can impair judgment, but they are concerned about the potential for addiction.[27] The degree of health risk may depend on whether the enhancement effect is permanent, long-term, or temporary, and on whether or not it can be reversed.

Enhancement use also may impose risks on third parties, such as family members who are impacted by the warfighter's adverse health effects, and may harm family and other relationships. One factor in terms of relational effects is likely to be how significantly the warfighter's characteristics are altered by the enhancement, and how perceptible the enhancements are. A radical change in someone's appearance or behavior could have serious social consequences, and the negative effects would be even greater if the change were so extreme that it provoked repugnance or horror.

Another harmful enhancement effect could be the reaction of adversaries. The more far-ranging the change brought about by the enhancement, the greater the risk that an enemy might view enhanced warfighters as no longer really "human," and therefore treat them worse as prisoners. Adversaries also might use harmful methods to combat or reverse enhancement effects on prisoners.

A final element of risk is uncertainty. The less that is known about an enhancement, the less it has been properly studied, the more difficult it is to engage in the key ethical and legal process of balancing risks and benefits.

At the same time, it is important to understand that no biomedical intervention is completely safe. A substance as safe as pure water can be deadly, as a Sacramento radio station learned when a participant died after drinking too much of it during a contest called "Hold your pee for a Wii," in which a Nintendo console was awarded to the person who could consume the most water without going to the bathroom.[28] The question is not how safe an intervention is, but whether its risks are outweighed by its benefits. When the FDA approves a new drug or device as "safe," for example, what the agency really is saying is that it considers the health hazards of the product to be acceptable in view of the potential health benefits. In the case of civilian medical care, the benefits that must be balanced against the risks for the most part are benefits that accrue to the patient. (The main exception is medical interventions to promote public health.) In the case of the military, on the other hand, there are potential benefits not only to the warfighter, but to the warfighter's unit, mission, service, and nation. One of the major challenges presented by military enhancement is determining how to balance the benefits to these third parties against the risk of harm to warfighters themselves.

Another consideration is the legal status of the enhancement. Is it a drug, medical device, or some other technology, such as a behavioral or psychological intervention? From a legal standpoint, these are subject to very different regulatory schemes, with drugs and devices governed by complex FDA rules, and behavioral and psychological interventions essentially unregulated. A product that the FDA has approved for enhancement use may be deemed to present fewer ethical concerns than a product that is unapproved or still experimental, since its approval status bears on what is known about its safety and efficacy, as discussed later in connection with the administration of pyridostigmine bromide (PB), botulinum toxin (BT), and anthrax vaccine to combat troops during the Gulf War.[29]

Another important regulatory issue for enhancement drugs is whether they are controlled substances or otherwise illegal when used for non-medical, enhancement purposes. As noted earlier, the DOD prohibits the use of anabolic steroids by warfighters; accordingly, a commander who ordered her subordinates to take steroids would raise different ethical and legal concerns than one who ordered them to use a product that was not known for being subject to abuse, such as modafinil. Another variable is whether the enhancement product is supplied by the

military or, like many dietary supplements, purchased privately by the warfighter. In the former case, the issue is whether warfighters need protection from their superiors; in the latter, the issue is whether the military ought to protect warfighters from their own poor choices.

An additional concern is whether there should be restrictions on the type of characteristic or sets of characteristics sought to be enhanced. For example, a drug that altered certain aspects of a person's mental state, such as mental acuity, personality, or emotions, might be deemed more problematic than a drug that increased strength or endurance, on the theory that the mental enhancement was more fundamental or more likely to affect the person's sense of self. Problems also would be raised by drugs that altered or blocked a person's memory or reduced their capacity to make moral judgments, which have been raised as objections to the proposed prophylactic use of beta blockers such as propranolol to prevent post-traumatic stress disorder in combat troops.[30] Finally, one of the most important factors is whether warfighters are serving as human subjects in formal research projects, in which case the warfighters may be entitled to refuse to participate as human research subjects, or if instead the warfighters are given the enhancement to enable them to carry out their mission more successfully in the course of deployment, in which case a refusal to cooperate is likely to be viewed as disobeying an order. The experience with PB and BT during the First Gulf War demonstrates that the distinction is not always clear.

The use of biomedical enhancements raises ethical and legal issues about the role of consent, specifically whether warfighters should be asked to give informed consent to the use of the enhancement, and the corollary, whether they should be able to refuse without being subject to punishment. In civilian settings, the requirement to obtain a patient or experimental subject's consent is relatively clear-cut, but the value of consent in the military context is less certain. For one thing, the limitations on voluntariness and understanding required for truly informed consent that have been well documented in the literature on human subjects research in general are even more evident in the military, making it doubtful that warfighters can give true informed consent, and therefore whether a requirement of obtaining the warfighter's consent can adequately protect the warfighter's welfare.

Other issues include whether the use of enhancements should be taken into consideration for purposes of commendation, promotion, and access to specialized training on account of aptitude, and whether the use of biomedical enhancements would be deemed to violate any of the treaties or conventions pertaining to warfare, such as the Biological Weapons Convention.

Given the hostility toward the use of performance-enhancing substances in sports, a further concern is whether their use by the military would provoke a negative public or political reaction that would undermine military recruitment, retention, or funding, or otherwise interfere with the mission of the military. If so, then the question is whether the benefits from the use of enhancements would be outweighed by these consequences.

A final issue is how to consider the potential for military technology to migrate to the civilian sector. Enhancements developed by the military might be problematic for civilians because of their risks, and yet it may be difficult to prevent their proliferation.

To begin to address these questions, the first step is to identify the ethical framework that ought to govern military use of bioenhancements. Once this framework is established, it can be used to respond to specific cases.

IV. Governing Ethical Norms

In the years since World War II, the fundamental ethical principles of beneficence, autonomy, and justice have been developed to govern civilian biomedicine, based on the core civilian values of individualism, equality, self-rule, and freedom of action. Different core values apply in the

military, however, focusing on selflessness, the duty to obey orders, accountability, and the obligation to look out for the welfare of subordinates. The differences in core values require a different set of principles to govern military bioethics: "proportionality" instead of "beneficence"; "paternalism" in place of "autonomy"; and "fairness" rather than "justice."

1. Proportionality

In the military, the welfare of the individual warfighter is important, but it is subordinated to the needs of the unit, mission, and state. These competing interests can be balanced by applying the ethical principles that the international community has developed to determine when it is ethical to impose a risk of harm on persons other than one's own troops, the principles of just warfare (*jus ad bellum*),[31] military necessity,[32] and the concept of proportionality embodied in *jus in bello*.[33]

Applying these principles to the imposition of biomedical risks on one's own troops, a biomedical risk can be imposed, first, only when it is *necessary*;[34] that is, when no less risky alternative is available to accomplish the mission.[35] Second, the mission sought to be accomplished must be a *legitimate* military objective;[36] it would be unethical, for example, to seek to enroll a warfighter as a subject in a risky medical experiment to develop a banned form of torture or solely to benefit a private drug company. Third, the nature and degree of the risk must be *proportionate* to the military advantage to be gained; the more important the objective, the greater the risk that ethically may be imposed. For the sake of brevity, these maxims will simply be called the bioethical principle of *proportionality*.

Proportionality in military bioethics incorporates three other aspects of military life. First, judgments about whether a risk is proportional must be made at the appropriate level of command; the greater the risk, the higher the level of command at which a decision must be made. Second, the commanders who order warfighters to assume risks are accountable if their orders are unethical. Finally, the nature and amount of risk from biomedical enhancements that may be imposed on a warfighter depends on the expected benefit, if any, to the warfighter, whether the nation is at war or at peace, and the warfighter's role; a risk might be proportionate for combat troops but disproportionate for non-combat troops.

2. Paternalism

In civilian bioethics, autonomy helps competent individuals protect themselves. However, the duty to obey orders and the command culture that it fosters restricts the freedom of warfighters to make voluntary choices, which in turn limits their ability to protect themselves by withholding their consent to exposure to an enhancement risk. The civilian emphasis on voluntary choice therefore must be replaced in the military by *paternalism*. Combining the principles of paternalism and proportionality, commanders have a duty to ensure that the enhancement risks that they impose on their subordinates are proportionate to the benefits to be gained.

3. Fairness

The military analogue to the principle of justice in civilian bioethics is *fairness*. In terms of warfighters' exposure to risk, fairness may sound like an odd principle; the risk of injury or death in the military is hardly "fair," varying widely depending on the warfighter's branch of service, rank, location, and job.[37] Nevertheless, it is appropriate to include a principle of fairness in military bioethics to deal with situations in which commanders impose a biomedical

risk only on a subgroup of their subordinates. Commanders may impose enhancement risks on a subset of subordinates only when doing so can be rationalized on the basis of the requirements of the mission. In other cases, if the risk is dire enough, the subordinates should be asked for their consent. In view of the lack of autonomy within the military, however, consent cannot fulfill the protective function expected of it in civilian life. Therefore, a requirement of consent can never override the need for paternalism and proportionality.

V. Applying the Principles

In applying the foregoing principles to military enhancement, an initial question is whether military enhancement should be thought of as similar to doping in sports, which many believe is impermissible. Even if doping in sport is unethical, which some doubt,[38] the analogy is erroneous. Enhancements in sports may confer benefits on individual athletes and teams, but do little for society. In the military, on the other hand, safe and effective biomedical enhancements could produce significant societal benefit by promoting the welfare of our warfighters and accomplishing missions in the national interest. As Hilary F. Jaeger states:

> In the case of sports, the benefit sought is victory, symbolized by the awarding of a medal or trophy . . . In military operations the reward, on the collective level, is also victory—but a victory of far greater importance than any sporting trophy. On an individual level the reward is survival, ideally survival without injury . . . One does not normally think of performance enhancement as "cheating" in a military operational context; rather, the search for asymmetric advantages, within the bounds of the Law of War, is both good strategy and sound tactics.[39]

The use of biomedical enhancements to improve warfighter performance therefore cannot be ruled out as a priori unethical or illegal. At the same time, military use of enhancements must conform to ethical norms and values. What follows is a summary of appropriate rules for use.

1. Legitimate Military Purpose

Enhancements in the military must be used for legitimate military ends. In the first place, the purpose must be military. For example, it would be unethical to give warfighters enhancements to enable them to excel at activities while on leave, assuming that this could not be justified as boosting warfighter morale or self-confidence. Furthermore, the military purpose must itself be legitimate. So it would be unethical to give a warfighter an enhancement to increase the effectiveness of the unit if the unit's mission is illegal.

2. Necessity

The enhancement not only must be used to help achieve a legitimate military objective, but it must be necessary to its achievement. There must be no other means of achieving the objective that offers a better ratio of risks to benefits.

3. Risks are Proportional to Benefits

Not only must the use of an enhancement be necessary in the sense that there are no less costly means of achieving the legitimate military objective, but the benefits of giving the enhancement

to warfighters, which can accrue to the unit, the mission, and the state, as well as to the warfighters themselves, must outweigh the risks *to the warfighters*.

Should there be a limit on how great the individual risks from enhancements can be? Some risks may be so dire that warfighters might have to consent to bear them even if the risks were shared by everyone. But should certain kinds of enhancements be out of bounds for the military even if warfighters were willing to take or use them voluntarily?

In the wider debate on performance enhancement in general, three types of enhancements cause particular concern: enhancements that blend human and animal DNA; germ line changes, that is, enhancements that would be passed on genetically to the warfighter's descendants; and enhancements that diminish an individual's capacity to make moral judgments. With today's technology, it is not possible to manipulate an adult's germ line intentionally, but, as technology improves, this is an issue that deserves further discussion. Given the importance of individual moral reasoning in ensuring that warfare conforms to ethical and legal norms, it does not seem appropriate to give warfighters preparations that reduce their moral sensibilities even, for example, as part of an effort to prevent them from suffering PTSD.[40] A ban on blending animal and human DNA seems less compelling. People worry about creating creatures that are more than animals but less than human, but this would be diminishment rather than enhancement, and, in any event, the military's interest is likely to be met by the use of robots. On the other side of the equation, the benefits from giving warfighters an eagle's daytime vision, an owl's night vision, a dog's sense of smell, a gorilla's strength, or a cheetah's speed might be so great that they should not be ruled out of the question.

4. The Warfighter's Dignity is Maintained

Michael Gross emphasizes the need to avoid humiliating warfighters.[41] He is addressing the treatment of prisoners and enemy combatants, but his admonition applies to our troops as well. Biomedical enhancements that seriously compromised the user's dignity therefore should be avoided. This would bar enhancements, for example, that produced bizarre or repugnant effects.

5. Burdens are Minimized

The burdens that an enhancement imposes on the warfighter must be minimized. If possible, therefore, any effects likely to cause the warfighter discomfort or distress should be temporary or readily reversible. Reversibility is especially important if the adverse effects, unless reversed, would continue to affect the warfighter after leaving the military and would also impact people outside of the military, such as family members and other civilians who do not volunteer for military service. As one group of experts in military training observes, "optimal performance during battle and deployment must be balanced against health and sustainable social functioning upon re-entry."[42]

6. The Role of Consent

As noted earlier, autonomy in the military is limited, and therefore individual consent cannot be relied upon to protect warfighters from inappropriate enhancement use. The limits of consent are especially noteworthy in the case of special operations personnel, who may be willing to take large risks to give themselves a performance edge. Here, civilian bioethics takes an interesting turn. Bioethicists generally maintain that there is no need to be concerned about the consequences of harmful decisions that are motivated by internal rather than external pressure.

This position stems, it seems, from the recognition that, with the exception of decisions that are purely random, every decision we make is a function of internal motivations, and, in many cases, these motivations can be so powerful that the decision-maker may not feel that there is a realistic alternative. Take, for example, seriously ill cancer patients contemplating whether or not to undergo harsh chemotherapy regimens. Bioethicists worry that, if we focused on the pressures and lack of options created by the patients' dire condition, we might not let these patients agree to accept the risks of the treatment, or, in the guise of protecting the patients from harm, we might create procedural hurdles that would rob them of their decision-making autonomy.

But even if we accept this argument, it does not mean that we should be indifferent to the dangers that warfighters may face because they feel overwhelming pressure to consent to use risky enhancements. Whether because of the internal pressures that warfighters experience, external pressures, or simply the practical realities of military operations, consent in the military cannot eliminate the need for the ethical and legal oversight mandated by the principle of paternalism. Oversight can be provided in part by military physicians, who, as medical professionals, are in the best position to appreciate enhancement risks and give due regard to the welfare of the individual warfighter. As Hilary Jaeger recommends, "the military physician must act as a counterweight, by being the voice of caution."[43] Another option is to establish an independent group of experts in law and bioethics, similar to the NIH's Recombinant DNA Advisory Committee (RAC), with the necessary security clearances and the responsibility to review and approve formal military enhancement research programs and proposed deployment uses of enhancements.

Fitzpatrick and Zwanziger propose that before people enlist, they should be given a general idea of the types of risks that they may encounter in the military, including the risk of being given experimental drugs, and if they do not want to accept these risks, they should decline to enlist.[44] Conversely, by enlisting, they can be deemed to have consented to the risks. This notion of "anticipatory consent" is interesting, but it falls short, since there would seem to be no limit to the dangers that warfighters could be exposed to by their superiors so long as the dangers were generally described to them before enlistment. Per N. Coleman's discussion of "unlimited liability" above, telling recruits in advance that they might lose their lives in combat, for example, does not seem to justify ordering them to undertake a suicide mission.

7. Fair Distribution of Risks and Benefits

As discussed earlier, ethical objections can be asserted against singling out a few warfighters to bear the risks of enhancements. In addition, questions arise if enhancement benefits are not available to all. For example, what if the supply of enhancements is limited, for example, because of manufacturing difficulties or regulatory obstacles? Arguably, commanders should be allowed to distribute enhancements only to certain individuals for good reason, for example because their inherent talents made them less able than others or because they were going to be placed in harm's way. If there were no valid substantive reasons for selecting one individual to receive enhancements over another, the fairest method of distributing scarce supplies would be by lot.[45]

Another concern raised by selective distribution of enhancements is the unfairness that would result if the improved performances that they made possible led to promotions or other advantages for the users. If everyone cannot have access to beneficial enhancements, a strong argument can be made that accomplishments produced in large part by enhancements should not count favorably. On the other hand, if the enhancement in question is accompanied by significant risks, those who volunteer to accept the risks may deserve the resulting career benefits as recompense.

8. Superiors are Accountable

The system by which the military holds superiors accountable for unreasonable acts must apply to unethical or illegal command decisions concerning enhancement use.

VI. Enhancement Research

Members of the military might be given biomedical enhancements as part of a formal research study. Formal research studies conducted on military personnel are subject to a reasonably well-defined set of ethical and legal rules derived from the so-called Common Rule (32 C.F.R. §219.101 ff). The rule recognizes a number of specific vulnerable populations, including children, pregnant women, and prisoners, but not members of the military. Nevertheless, the individual services have the discretion to establish their own special protections. The U.S. Army, for example, requires most human subjects research to go through two layers of IRB review, one by the IRB at the institution that actually conducts the experiments, and the second by the Human Subjects Research Review Board, a unit under the command of the Army Surgeon General.

Federal law stipulates that research using military subjects, like civilian research, ordinarily cannot take place without the informed consent of the subjects,[46] and the military recognizes the importance of insulating soldiers being solicited to participate in experiments from undue pressure from their superiors. For example, both service and Department of Defense regulations provide that "[u]nit officers and non-commissioned officers (NCOs) are specifically restricted from influencing the decisions of their subordinates to participate or not to participate as research subjects," and add that "[u]nit officers and senior NCOs in the chain of command are required to be absent during research subject solicitation and consenting activities."[47] Service regulations also require that informed consent forms include a statement that "participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time . . ."[48]

The experience with PB and the BT vaccine suggests that it may be difficult for warfighters to determine if they are being given biomedical enhancements as part of a formal research study. During the First Gulf War, the military wanted to give troops PB and BT vaccine to protect them against nerve agents and botulism. The FDA had approved PB for myasthenia gravis, but not for protection against nerve agents,[49] while BT vaccine was produced by the Centers for Disease Control and Prevention under an experimental Investigational New Drug exemption.[50] In those instances, commanders simply ordered troops to take a pill or receive an injection, the same way they ordered them to go certain places, take rests, or engage the enemy. Even if the commanders had informed the troops that the pills and injections were experimental, as a practical matter, the troops may have felt constrained to obey the commanders' orders. Finally, even if they were permitted to decline to give their consent to participate in an enhancement research study, the instinct for self-preservation is likely to lead warfighters to grasp at any means of improving their chances of surviving battle, including exposing themselves to the risks of experimentation in order to gain access to experimental enhancements.

If it is proposed to give warfighters biomedical enhancements as part of a formal research study, the question arises whether the fact that the study is on an enhancement rather than on a health-oriented intervention should affect the analysis of the ethical and legal appropriateness of the study. This question was the subject of a series of papers flowing from an NIH-funded research project on human subjects protections for genetic enhancement research,[51] and the reader is referred to those papers for a fuller discussion of the issues. In essence, the papers argued

that there is no need to employ a significantly different approach in balancing risks and benefits in enhancement research than in non-enhancement research.

VII. Conclusion

Biomedical enhancements may offer significant benefits to individual warfighters and increase their ability to successfully accomplish their missions. The guidelines proposed above would help insure that the use of enhancements comports with ethical standards.

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JUST WAR UNDER CYBERGAIA

Colonel James Cook

Robert Gates, a former U.S. Secretary of Defense to two Presidents, recounts his frustration over his department's anemic legal and ethical understanding of cyberwar. "Soon after my arrival in office, I asked the department's deputy general counsel for a memo on what kind of cyber attack—by us or on us—would constitute an act of war justifying a response in kind or conventional military retaliation. I was still waiting for a good answer to that question three years later."[1]

This chapter attempts to answer the former secretary's query, albeit in a roundabout fashion. Gates does not say why his advisors in the Department of Defense were stumped for so long. Perhaps they got hung up on the definitions of concepts such as cyberattack, cyberwar, and the like. A comprehensive response to Gates's challenge would require a significantly longer treatment than a chapter in this compendium allows. So a sketch will have to suffice. In the very near future, distinctions between cyberwar and non-cyberwar will be even harder to draw than they presently are. By trying to define cyberwar, we will discover a paradoxical but cogent response to the former secretary's question: that an ethics of cyberwar has almost nothing to do with the fact that it is *cyber*war rather than another kind of conflict. What we should care about is what cyberattacks do and what they are intended to do—the proper concerns related to any kind of war.

I. War Through and in the Internet of Things

The late German philosopher Hans-Georg Gadamer suggested that insight depends on asking the right questions.[2] Three inquiries in particular seem crucial to understanding the ethics of cyberwar:

1. What *is* cyberwar?
2. Is cyberwar so radically different from non-cyberwar that we must radically revise the just war tradition to accommodate this new means of wielding violent force?
3. Even if we decide the just war tradition suffices as a normative framework for evaluating cyberwar, as well as non-cyberwar, does cyberwar differ from other kinds of war in a way that requires a practical response?

Most of what follows addresses the first of these three questions by interrogating the common distinction between cyberwar and non-cyberwar. The significance of the second and third questions will become clear near the end of the chapter.

A reasonable first step toward defining cyberwar is to locate it with respect to other kinds of conflict. War pursued in and through the relatively new medium of cyberspace might at first glance seem to differ qualitatively from conflict that plays out in long-familiar kinetic contexts. Closer examination may reveal the distinction to be porous in fact or useless in practice, but we can entertain at least the possibility of a sharp and useful contrast. Considering how quickly cyber has emerged as a partitive concept, however, the distinction may be unstable even if it is apparently real and currently useful. With that in mind, we should ask ourselves how the concept of cyber might evolve in an ethically interesting way, one requiring us to apply just war principles differently than we have in the past.

Evolution implies a certain instability. How stable is the distinction between cyberwar and non-cyberwar? A phenomenological answer to the question would be: not very. Consider, for example, the now 15-year-old concept of the "Internet of Things" attributed to Kevin Ashton. Ashton reports he coined the phrase when reflecting on the way machines assimilate data, or fail to,[3] but for our purposes a more germane sense of the Internet of Things is the *blending* of cyberthings with the rest of our world. This blending occurs when formerly dumb artifacts become to some extent digitally networkable or otherwise connectable (for lack of more elegant terms). These real or potential connections allow artifacts to share data with each other and influence one another's behavior. "We live in the age of what I once called 'the Internet of Things,' where everything from cars to bathroom scales to Crock-Pots can be connected to the Internet . . ."[4] On this account, cyberwar could perturb a Crock-Pot cooking tonight's dinner as well as a centrifuge purifying fissile material. Ashton might have gone a step further and said that cars and bathroom scales and Crock-Pots are not just able to connect to the Internet; once connected, they *are* the Internet, or at least they are part of it.

For at least three reasons, war in and on the Internet of Things may come as a surprise to some of us. First, it will remind us that the virtual-real distinction is often overdrawn. Cyberwar is physical insofar as it deploys its arsenal—permutations of binary charges—through the atmosphere, troposphere, cables, routers, hubs, servers, industrial control systems, and so on. In other words, physical things traverse physical things to affect other physical things. Admittedly, whooshes and bangs and booms may be less frequent in cyberwar than other kinds of war. Or at least they have been in the few documented cyberattacks to date, though I would prefer not to stand next to a centrifuge spinning out of control.

Second, cyber may supplant more venerable tools of war, and military personnel may end up contributing to cyberwar efforts in ways they never expect. Perhaps there is little new in that, since the same dissonance is prominent—even foremost—in the imaginations of those who have thought deeply about past U.S. wars.

Herman Wouk's novels *The Winds of War* and *War and Remembrance* are cases in point. Wouk's Second World War-era hero, a dinosaur surface warfare officer named Pug Henry, spends little time doing what he thought his wartime job would be—captaining a vessel better suited to an earlier era of warfare. He contributes most in two other, unexpected ways. First, he is liaison to the Soviet military, encouraging tenacity that will buy time for the U.S. and other Western powers to bring their industrial-technological might to bear. Second, he is liaison to the Allied industrial-technical sector, where his romantic rival and future son-in-law also work. Dinosaur or not, his accomplishments at least match the wartime contributions of his two sons who, though wielders of direct violence, also fight with relatively new technologies. The moral of the story is that the means of warfare change while the intentions and effects remain essentially the same. To win is to find means to so demoralize the enemy that he capitulates.

Third, we may be surprised at how industrialized and resource-intensive future cyberwar will become. The genius computer geek who can take down an enemy nation with just a laptop,

a few gallons of Pepsi, and several bags of Cheetos might really exist. She might even do her work in a single all-nighter. But we should not confuse the potential speed of execution in cyberspace with the rate of planning and development that will go into some of the best cyberweapons. Of course, we would like to believe in the potency of the Lone Geek. She shows us that we are not doomed to deal with the enormous industrial and technological capacity that is impossible to leverage without a big, slow bureaucracy. One of former U.S. Defense Secretary Robert Gates's laments in his recently published memoirs, *Duty*, is just that—the ponderous pace at which the stuff of war is developed.[5] Maybe we think cyber agile because it need not rely on the physical things that kinetic warfare does. Hence, we can skip the slow business of turning aircraft carriers and leveraging industrial-technical might. We might hope cyber is all about brainpower, writing some code, and pushing a button. Whisk! From gray matter to effect without the extraordinary exertions of Robert Gates or Pug Henry.

But will that be how cyber works? Maybe every now and then. But even Stuxnet apparently required a full-scale mockup and help from major institutions. Cyberwar will be a contest between offense and defense, with cyber offense facing something akin to the art of Renaissance fortification. This will be an enormously resource-intensive business despite occasional Lone Geek triumphs.

This transition to defense is already under way on a number of fronts. In U.S. law, for instance, the development of cyber defenses enjoys a somewhat special legal status under the rubric of insider information. "In a new policy document describing their stance, the [Justice Dept and Federal Trade Commission] regulators outlined ways in which the sharing of cyberthreat information differs from the sharing of competitive information, like pricing data and business plans."[6]

Arguably cyber is in its Archean era, the analog of when life on earth began about 3.5 billion years ago. The ongoing increase in the number of information-sharing artifacts is at once amazing and barely noticeable—amazing compared to the relatively unconnected world of just a few years ago, yet barely noticeable, because many of these mundane but suddenly digitally networkable things look very much like their recent ancestors. Alarm clocks that receive information from bureaus of standards seem ancient, but many of us have already stopped marveling at home thermostats, too, and never mind that they can learn the residents' patterns of living and communicate with smartphones. Talking cars no longer impress many of us as they communicate their positions while receiving digital information from a computer server. And many a consumer has no concept of warehouses in which tens of thousands of products communicate with inventory-keeping systems. Perhaps "these are the days of miracles and wonder,"[7] as Paul Simon sang, but a surfeit of miracles starts to look anything but wondrous.

Let us assume that even if we do not pause to notice the upward trend, the number of actually and potentially networked artifacts is growing rapidly in proportion to the number of unconnected man-made things. Cyberation—defined as military or nonmilitary movement through cyberspace for whatever purpose[8]—already overlaps much of navigation, aviation, ground transport, and even our leisure activity. Consider my colleague, Mark, who dutifully jogs each day for health, exercise, and the sheer enjoyment of running amidst the stunning mountain scenery of Colorado. Mark tracks his distance, speed, and other metrics through a GPS-enabled system on his smartphone, which periodically and automatically uploads the data to his home computer. All this takes place in the background, as it were: a remarkable and transformative feature of human life now so commonplace as to seem unremarkable.

In like manner, as I look around my office, I cannot see any artifacts that are not already in some way part of the Internet, broadly conceived, or likely to become so in the near future. It is easy to imagine the descendant of that small refrigerator contacting a smartphone if the

power goes out, the lamp calling my phone when its bulb is statistically likely to burn out, and so on. Just outside the window, a small all-terrain vehicle, blade mounted in front, pushes around an early April snow that covers the walkways. Perhaps the ad hoc plow already has a tracking beacon that allows a command post to follow its movements, pinpoint its location, and schedule it for an oil change.

This evolution from isolated to connected artifacts seems to be approaching something—a state of affairs, a *telos*, or perhaps what futurist and inventor Ray Kurzweil terms a "singularity."[9] Of course, the trajectory need not be purposive for it to be teleological. Whatever the end state might be, it will exist within a broader context that includes non-cyberthings and in which cyber and non-cyber elements will influence each other. But is the intuition of a future end state an illusion? Why should we think that the *telos* will be more or less stable?

Let us assume we humans like our relatively newfound digital connectivity so much that we want more of it. Then, given our druthers, we will have more and more networked artifacts. There are two reasons why the trend would not reverse itself. First, we already appreciate how connectivity enhances the functionality of a single artifact. I would use my laptop computer even if there were no "Internet" to which it could connect. The computer's numerous software applications beat a typewriter, a slide rule, a shoebox full of Arabic vocabulary cards, and any number of other, older tools. What might be called internal connectivity makes the laptop better than a DVD player because it is easier to take notes on a movie when the video and notepad are on the same screen. But the individual thing—in this case, the computer—is far better than the sum of its internal parts because it can network with a broader community of similarly capable devices.

The increase in cyberartifacts seems irreversible for a second reason, too. Anthropopathically stated, the "Internet of Things" may come to resist the loss of one of its members to the degree that the member is well or poorly integrated. In other words, the Internet of Things will resist decrease just because it *is* a network. An assault on an element of a network is an assault on the network as a whole.

But stability born of irreversibility lies in the future. For now, the "Internet of Things" is still growing. Just how big will this cybersphere, embedded in a larger cosmos, become? Perhaps the best guesses quantify in comparison with us humans rather than in terms of absolute numbers. "Today, in the 2000s, we are heading into a new era of ubiquity, where the 'users' of the internet will be counted in billions and where humans may become the minority as generators and receivers of traffic. Instead, most of the traffic will flow between devices and all kinds of 'things,' thereby creating a much wider and more complex 'Internet of Things'. . ."[10]

That is not to say the growth will be simply linear until it reaches its end state. Another colleague of mine, Bill, now wears a biometric device that looks something like a wristwatch. He bought it because he had wondered about the causes of his increasing blood pressure and what he suspected was his decreasing quantity of sleep. He thought that by tracking relevant data, he might find patterns that would help him change habits and improve his quality of life. After a few months of use, he is uncertain whether he will continue to wear the device and scrutinize the data it provides, though he thinks he will probably give it at least a few more months. But he is certain that he will continue to use his smartphone and several other connected devices he now owns. The more "capable" these devices become, the more he seems to like them. He defines capability largely by the degree to which they can connect with other cyberthings. Presumably, his future plans—maintaining lots of cyberartifacts but possibly jettisoning one or two—reflects the broader technological future. That future is one of growth, but there may be fits and starts reminiscent of biologist Stephen Jay Gould's concept of evolution itself, as "punctuated equilibrium."[11]

Fast-forward a decade or four, and imagine that the cybersphere comprises a huge number of artifacts. Suppose further that the trend toward cyber ubiquity is slowing or nearly stopped even though the units that interconnect continue to evolve as individual artifacts. For instance, voice- and handwriting-recognition software on PCs and tablets might continue to improve, but computers themselves already exist as a stable feature of the cybersphere. Perhaps the slowdown or full stop will occur because almost *all* of our artifacts interconnect, or maybe because there is simply no payoff in connecting certain traditionally "dumb" artifacts. "Some artifacts are stand-alone by nature," a cyber-savvy Aristotle might have said.

II. CyberGaia

Arguably, we would then live under a "CyberGaia," consistent by analogy with James Lovelock's famous Gaia hypothesis.[12] Substituting our terms for his: "The notion of the [cybersphere] as an active adaptive control system able to maintain the Earth in homeostasis we are calling the [CyberGaia] hypothesis . . . Hence forward the word [CyberGaia] will be used to describe the [cybersphere] and all of those parts of the Earth with which it actively interacts to form the hypothetical new entity with properties that could not be predicted from the sum of its parts."[13]

Suppose the homeostasis of CyberGaia parallels that of Lovelock's Gaia. In the original hypothesis, the biosphere does not continue to exist merely because of happy coincidence. Life needs certain conditions and, according to the hypothesis, life takes a metaphorical hand in fashioning and maintaining the conditions that are most conducive to itself. The biosphere and the larger environment influence each other. Could the cybersphere, already enlarging steadily as an Internet of Things, relate similarly to its environment?

Why not? The ontogeny of influence matters less than that there *is* influence, that the cybersphere of networked artifacts influences its larger environment in order initially to expand and later to maintain itself. An observer such as Richard Dawkins might insist that human (and other) genes work their will—again metaphorically, just for the sake of the model—by causing us to make things.[14] These artifacts would include cyberthings. Does it matter if we say that humans shape their environments or that a special, growing class of artifacts, the cybersphere, returns the favor, influencing how we think and act? But Dawkins's approach is just one way of making sense of what is happening.

So the conservation of networked artifacts in the Internet of Things, alias the cybersphere, brings about a kind of homeostasis that could affect what we mean by cyberwar in the future. At present, high-profile cyberattacks (the ones we know about, at any rate) tend to focus on *major* components of a rather sparsely networked society. For instance, Stuxnet attacked an industrial control system (ICS) at Iran's enrichment facility at Natanz. ICSs are common in industry, but for some industries an ICS is hardly required. For other industries, a general ICS is not even practically feasible yet. An industrial process made up of many complicated sub-processes might require humans working in a semi-automated way—to manually advance an assembly line, for instance. Think of automobile production: the trend is toward increasing automation with decreasing human participation. But automobile production is a long way from being fully automated. In 2007, a barrage of denial-of-service attacks targeted large processes in non-manufacturing sectors of Estonian society, including government, banking, and higher education sites.[15] In the cases of both the Stuxnet attack in Iran and the DoS attacks in Estonia, greater, more carefully guarded isolation might have prevented the damage. Presumably, the Iranians had tried to isolate the ICS governing the centrifuges at Natanz, albeit unsuccessfully. The Estonians had gone in the opposite direction, trying to ensure the openness of their government websites, banking system, and higher education resources. They managed to stop the attacks

by cutting off connectivity and effectively isolating the sites that hackers, presumably Russian, had targeted.

Under CyberGaia, defense by isolation would be a near technical and political impossibility. If a network comprised most of our artifacts large and small, how would we go about setting up quarantine zones? The very number of artifacts and the fact of their interconnectedness make the overall cybersphere, and therefore society at large, vulnerable. That is obvious if we attend just to the numbers. A massive electromagnetic pulse resulting from a nuclear detonation would not do much to, say, communities relying on few electronic devices. Blast and radiation might savage an Amish community or a so-called primitive society in the undeveloped world—that is, a culture defined in part by its lack of high-tech gizmos—but the EMP would not. Interconnectedness might seem less of a vulnerability until we reflect that the built-in cyber-compatibility of everyday artifacts will become part and parcel of their overall utility. We will not want to turn them off or do without them. Few of my acquaintances bother putting maps in their glove compartments because every one of them has a smartphone and probably a built-in or portable navigator in the car. Disrupt satellite communications, and many of these people would quickly lose their way in all but the most familiar geography. Could they compensate? Of course—they could buy maps, if any were to be had, or ask directions. But they might get more completely lost just trying to find a person to ask or a store that sells those ancient things called maps. Most would not turn off their Bluetooth links even if there were a clear danger of getting hacked.

At some point, our networked artifacts may come to seem as essential as a car is in rural areas of Australia or the American West. A weekend camping trip with sporadic cell coverage is one thing, but how many industrial nations could comfortably go back to a pre-cyber world? Life among natural (read: "unnetworked") artifacts would seem to most of us solitary, poor, nasty, and brutish, if not short. At that point of cyber habituation, networking would have become a necessity rather than a luxury across myriad aspects of life, just as it is now in, say, those large swaths of aviation and navigation that cyberation already encompasses.

Arguably, the sheer size of the cybersphere and the ubiquity of cyberartifacts will narrow the distinction between cyberwar and non-cyberwar. Any attack, whether in or through cyberspace or in or through more traditional media, will destroy or otherwise render ineffective many networked artifacts. At present, we wrestle with how cyberwar might look in comparison with non-cyberwar. In the future, it may be hard to imagine a war that is *not* largely a cyberwar in the sense that many of its tools and targets will be cyberartifacts. High-tech societies may become so fragile that proportionality calculations predict catastrophic results in almost any war using almost any means.

That conclusion seems less controversial when we think of current dependencies—on electricity and other forms of power, for example, in a society that increasingly lacks wells, septic systems, real fireplaces, and so on. This is not to say defensive strategies are impossible. A larger cybersphere will challenge strategists in the military, police agencies, and spy shops to make it difficult to take down key segments of the Internet of Things let alone the entire cybersphere. But it seems obvious that as the number of networked artifacts increases, each being a potential portal to the network as a whole, vulnerability also increases. Herd immunity works to some extent in biological epidemiology, but cyberartifacts are, by virtue of being networked, more intimately associated than individuals in a herd.

Another fact of life under CyberGaia may be an inability to evaluate the ethics of war because of a lack of transparency. It will be much more difficult for a democratic public to observe and therefore to control its government's uses of cyberattacks. In accordance with the just war tradition, a society might have carefully codified its process for going to war. It sought to pay

special attention to the *jus ad bellum* principles of legitimate authority, proportionality of ends, and aim of peace, for instance. But under CyberGaia, it would conceivably be even harder than it is now for the public to know what various parts of the government are doing in and to the Internet of Things before it is too late. The current dust-up between the U.S. Senate and the CIA over cyber-meddling gives a hint of things that might be to come.[16] Similarly, some in the U.S. lament our ignorance of the basic facts of attacks by remotely piloted vehicles—for example, how much collateral damage they cause.[17] Many a cyberattack will be even less visible than drone strikes in Pakistan's tribal areas. Besides the lack of transparency, the temptation of wielding force in target-rich CyberGaia might exacerbate the situation. It is one thing to operate covertly and without transparency or accountability when the cybersphere is relatively tiny and sparsely populated, but quite another when societies are hugely networked.

For cultural rather than strictly military reasons, cyberattacks themselves may be much more potent under CyberGaia than they are now. Following Jean Baudrillard's sense of postmodern society as a "simulacrum,"[18] in which a constructed reality determines self-perception and the apprehension of "facts," democratic leaders might be hard-pressed to gain an *informed* public's support for war. Where will the voting public get its information if the market and the cybersphere's seductions determine what information most people ingest? This is hardly a new problem, of course, as Walter Lippmann's *Public Opinion* (1922) demonstrates.[19] Baudrillard updates the conflation of the real and the virtual by focusing on semiotics in technological means of representation. "Today, the history that is 'given back' to us (precisely because it was taken from us) has no more of a relation to a 'historical real' then neofiguration in painting does to the classical figuration of the real. Neofiguration is an *invocation* of resemblance, but at the same time the flagrant proof of the disappearance of objects in their very representation: *hyperreal*. Therein objects shine in a sort of hyperresemblance (like history in contemporary cinema) that makes it so that fundamentally they no longer resemble anything, except the empty figure of resemblance, the empty form of representation."[20] Presumably, the evolution of the cybersphere since Baudrillard's death seven years ago would only strengthen his conclusion that our time and attention are lavished on representations of things and events rather than on the things and events themselves. We live increasingly in a particular kind of simulacrum—the cybersphere. We are easy to fool because we are in the habit of fooling ourselves even when outsiders do not try to manipulate our perceptions and reflections.

Since artists are quick to comment on changes in the human condition, including ones caused by technology, we might expect art to confirm a trend toward CyberGaia. So-called locative media artists work in a way that contemplates the blending of human and cyber realms:

> Locative media emerged over the last half decade as a response to the decorporealized, screen-based experience of net art, claiming the world beyond either gallery or computer screens as its territory . . . Emerging out of a do-it-yourself punk culture, projects such as the London-based "Consume the Net" sought to build a nation-wide peer-to-peer infrastructure of free wireless nodes throughout the United Kingdom. Similar grassroots projects helped catalyze communities of artists from Berlin to San Francisco. In suggesting that ubiquitous Internet access would change our relationship with place by overlaying a second virtual world over the physical one, the free wireless movement was a seminal source for locative media's ambitions.[21]

If these locative artists—along with Lippmann, Baudrillard, and any number of other commentators—are correct, the ethics of cosmopolitan war envisioned by thinkers such as Cécile Fabre will be very difficult to evaluate. We hope the leaders who currently constitute legitimate

authority are smart and experienced—wise, in other words—and therefore able to peer most effectively into their crystal balls before taking us to war. One might hope that Everyman as the hero of democratic theory will be even better equipped to make decisions in a world where the cybersphere is enormous. Would a more networked world not provide riches of data to inform Everyman's every decision?

Perhaps. Baudrillard's darker vision foresees citizens drunk on pseudo-representation. On this account, a larger cybersphere might not mean better fidelity. It could instead mean we see the outcome of possible war through a crystal ball darkly, unable to understand the ramifications of our decisions.

Perhaps the distinction between cyberwar and non-cyberwar will not exhaust the taxonomic possibilities. Sometimes we pigeonhole things by knowing lots about them through experience, as when someone who grew up on a farm has known cats and dogs, chickens and ducks, cows and horses, since she was a toddler. She knows each kind and what makes each different from the others.

But we pigeonhole things on other bases, too, such as when we come to know enough about something to say what it is *not*. Lewis Carroll's Jabberwock may be many things or even *sui generis*, but we can be pretty sure it is not a manatee. We might also pigeonhole things in a priori fashion, as when a theologian such as Maimonides concludes that God is *not* merciful—if by that attribute we mean a quality belonging to God and human beings univocally.[22]

So perhaps we can approach cyberwar along a *via negativa*, characterizing this allegedly special sort of war in terms of what it is not. If so, we no longer have a dichotomous, but instead a three-part taxonomy of war: cyberwar, non-cyberwar, and *not*-cyberwar. What will war be if some of its agents and victims are enhanced humans—people whose former "exobrain" (what a friend calls his smartphone) is now embedded? What will war be if it destroys artifacts that were not yet networked but could have been?

"Cyber" derives from the Greek *kybernetes* (κυβερνήτης), a steersman. The concept is reflexive: someone who steers a ship *and* himself because he, too, is aboard the ship he steers. This sense of cyber is quite consistent with the overall notion of a CyberGaia. There, homeostasis will result when the Internet of Things influences the larger cosmos, which includes us humans, to maintain the cybersphere. Perhaps this *kybernetes* will be a bit different from many a steersman, however, consistent with Descartes' observation from the Sixth Meditation that the mind is not in the body as a steersman is in the ship.[23] The Internet of Things need not be steered moment by moment at the hand of an external entity such as a human being; the Internet of Things can be at least partly self-navigating. In this, the Internet of Things is inseparable from its motive principle in the same way the human mind is inseparable from the body of which it has privileged perceptions. What will be the difference between cyberspace and the Fulda Gap, or the plain of Marathon, or any other real or potential battle space?

III. Answering Secretary Gates's Question

Which brings us back to an answer to former Secretary Gates's question, the point at which we began. Arguably, there is no difference between the kind of *cyber*attack one may ethically launch, and the kind of *generic* attack one may ethically launch. Cyber is only a means; the just war tradition cares almost solely about effects and intentions (with weapons *mala in se* being of rare concern).

It might seem that defining cyberwar is a prerequisite for ethical evaluation. How could one know whether the just war tradition can accommodate cyberwar issues unless one knows what cyberwar is? Similarly, how could one know if an undefined concept has any unique moral

character? In fact, however, we need not know much about a *means* of war to feel certain that just war principles will suffice to evaluate the morality of its effects and intentions.

That, after all, is what the just war tradition does. Except in those relatively rare instances when tools of war are judged to be *mala in se*, the just war tradition does not have much to say about means. Effects and intentions are the desiderata for moral evaluation of cyberwar as well as non-cyberwar. It is hard to imagine cyberweapons as a general class being declared *mala in se*. They are, after all, just one aspect of what I have called "cyberation," as military aircraft and ships are respective subsets of aviation and navigation.

Nor do we need to know much about cyberwar per se to recognize that we increasingly fear it. We hear dire predictions of a coming "cyber Pearl Harbor," in Secretary of Defense Leon Panetta's 2012 phrase,[24] of wrecked power plants and savaged banking systems, and so on. These dark visions evoke the Cold War and its constant threat of nuclear attacks, nuclear winter, and other ills. The very *threat* of either cyberwar or nuclear war is harmful and therefore requires a moral response—an ethics of threat.[25] In that respect, cyberwar is somewhat unique, morally speaking, but it is not unprecedented.

What we do need to keep in mind is that the cybersphere is rapidly expanding, and that an Internet of Things apparently will maintain itself consistent with a CyberGaia variant of Lovelock's famous Gaia hypothesis. That new world will blur the distinction between cyberwar and non-cyberwar. What will become an enormous cybersphere could prove a refuge of scoundrels able to do large-scale violence without anyone—even a democratic public—knowing. Enemies will likewise be able to operate under cover, perhaps before anyone even knows they are enemies. This state of affairs will require special vigilance on the parts of legislatures, the press, and citizen watchdog organizations. But to do their work consistent with the just war tradition, these groups must guard against the potential of self-delusion facilitated by the cybersphere as simulacrum.

Notes

1. Robert M. Gates, *Duty* (New York: Alfred A. Knopf, 2014): 449.
2. Hans-Georg Gadamer, *Wahrheit und Methode*, Collected Works, vol. 1 (Tübingen: Mohr Siebeck, 1960/1990): 375. "Whoever wants to understand must go back inquiringly behind what has been said. He must understand it as the answer to a question, to which it is the answer."
3. Kevin Ashton, "That 'Internet of Things' thing," *RFID Journal* (June 22, 2009): www.rfidjournal.com/articles/view?4986.
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