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Marybeth P. Ulrich

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The Politics of Oath-Taking

Marybeth P. Ulrich

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ABSTRACT: Political and professional oath-takers are obliged to abide by their oaths. But their understanding of this obligation and the associated civil-military relations norms is uneven. This article distinguishes between political and professional oath-takers and examines how each should fulfill its obligations to uphold the Constitution.

Lieutenant Colonel Alexander Vindman, in his opening statement during the House impeachment hearings, said, “I am a patriot, and it is my sacred duty and honor to advance and defend OUR country, irrespective of party or politics.”¹ While the military institution has been increasingly caught up in the political upheaval surrounding the Trump administration, civilian control of the military and the expectation that the military institution will remain apolitical are the principal democratic civil-military relations norms that have been prevalent in the literature.² The question must be posed, however, Is participating in acts in support of democratic institutions and the constitutional process a violation of the nonpartisan professional military norm, or do such activities constitute patriotic behavior essential to upholding a military member’s obligation to support and defend the Constitution?

In response, this article maintains military officers who testify against the commander in chief in settings such as an impeachment hearing do not violate the apolitical professional norm even if the president explicitly prohibits such testimony. In fact, officers who appear on the basis of legal congressional subpoenas uphold their oaths to support and defend the Constitution and preserve the constitutional powers of their second and coequal civilian master, Congress. Such nonpartisan actions support the checks and balances fundamental to the American democratic process, essential to the preservation of democratic institutions.

1. Alexander S. Vindman, “Opening Statement of Lieutenant Colonel Alexander S. Vindman Before the House Permanent Select Committee on Intelligence, the House Committee on Foreign Affairs, and the House Committee on Oversight and Reform,” *New York Times*, October 29, 2019, <https://www.nytimes.com/interactive/2019/10/29/us/politics/vindman-statement-impeachment.html?action=click&module=Top%20Stories&pgtype=Homepage>.

2. See Marybeth Ulrich, “Civil-Military Relations Norms and Democracy: What Every Citizen Should Know,” in *Blurred Lines: Examining Civil-Military Relations in an Increasingly Complex World*, ed. Lionel Beehner and Charles Jacoby (Oxford: Oxford University Press, forthcoming).

Dr. Marybeth P. Ulrich, professor of government at the US Army War College, specializes in strategic studies, especially civil-military relations, national security democratization, and professionalism.

Constitutional Foundations

America's founders authored a blueprint for a political system Edward Corwin famously stated was "an invitation to struggle."³ The distribution of power across the presidency, Congress, and the judiciary ensured the specific and separate powers of one branch could be deployed to curb the excesses of another.⁴ The Constitution established a process through which ideas and policy proposals would be vigorously examined and debated. Various actors in any given debate might disagree on the substance of policy proposals, but the democratic process within which the debates occurred was not to have become a matter of debate. It is this process to which military members and federal office holders take an oath to:

solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office upon which I am about to enter. So help me God.⁵

Loyalty oaths were part of early American political culture. The colonists were accustomed to taking oaths pledging loyalty to the monarch. Consequently, it is not surprising the Founders incorporated oaths into the Constitution as an additional tool to safeguard democratic institutions. Article 2 of the Constitution requires the president to take an oath of office, and Article 6 requires members of Congress, the federal judiciary, and officers of state legislative, executive, and judicial branches of government to take oaths. With regard to the military, oaths had always been required at the time of enlistment in the Continental Army, but in 1789 the first Congress legislated specific text swearing to uphold the Constitution, swearing allegiance to the United States of America, and swearing to obey the orders of the president and the laws of Congress.⁶

Supporting and defending the Constitution means members of the military have pledged to protect democratic institutions and the individual freedoms of their fellow citizens enshrined in the Constitution.⁷ The Founders laid out a civil-military order subjecting the military to two civilian masters—the president and Congress. Their loyalty is not to an

3. John T. Rourke and Russell Farnen, "War, Presidents, and the Constitution," *Presidential Studies Quarterly* 18, no. 3 (Summer 1988), https://www.jstor.org/stable/40574496?seq=1#page_scan_tab_contents.

4. Marybeth P. Ulrich, "National Security Powers: Are the Checks in Balance?" in *U.S. Army War College Guide to National Security Issues, Volume II: National Security Policy and Strategy*, 5th ed., ed. J. Boone Bartholomees Jr. (Carlisle, PA: US Army War College, June 2012).

5. US Air Force Profession of Arms Center of Excellence, *The Officer's Oath of Office*, n.d., https://www.airman.af.mil/Portals/17/002%20All%20Products/006%20Trifolds/Oath_Pamphlet_for_Officer.pdf?ver=2015-12-22-113949-437.

6. "227 Years of Military Oaths to 'Support and Defend the Constitution,'" *Sextant* (blog), September 17, 2014, <http://usnhistory.navylive.dodlive.mil/2014/09/17/227-years-of-military-oaths-to-support-and-defend-the-constitution/>.

7. Marybeth P. Ulrich, *Democratizing Communist Militaries: The Cases of the Czech and Russian Armed Forces* (Ann Arbor: University of Michigan Press, 1999), 8.

individual leader or even the state but to a particular form of democratic government, or rules of the game, which the Constitution established. Consequently, participating in any action that undermines constitutional norms violates the oath of commissioning, the oath of federal office holders, and the trust inherent in the civil-military bargain between the military, the political leadership, and the people.

Loyalty oaths were the only normative tool inserted into the Founders' democratic playbook. They are an important component of the civil-military norms derived from traditions and practices developed over time to supplement and reinforce the constitutional rules explicitly stated in the Constitution.⁸ The Founders' emphasis on employing tools like oaths to instill loyalty to democratic processes underlines their understanding that constitutional rules may go unheeded without socializing key actors to adhere to them.

The Impeachment Inquiry

In fall 2019, the United States House of Representatives investigated allegations President Donald Trump made the provision of military aid to Ukraine contingent on the Ukrainian government announcing it was investigating his chief political rival, former vice president and presidential candidate Joe Biden.⁹ Many members of the administration complied with the president's wishes to refrain from cooperating in the impeachment inquiry, but several key actors obliged Congress' request citing their "duty" to appear.¹⁰ These impeachment proceedings are an important case study when evaluating the responses of members of the government in support of the inquiry, with a focus on the varied understanding of professional obligation and democratic norms of former and active military officers caught up in the inquiry. To facilitate this comparison, it is necessary to distinguish between political and professional oath-takers.

Political vs. Professional Oath-Takers

Political oath-takers are political actors elected to their offices or appointed by elected officials to pursue a particular policy agenda. The president, political appointees in the administration, and members of Congress are examples of political oath-takers. Professional oath-takers hold their positions regardless of the political party in power. In the realm of policy development and implementation, military actors, as professional oath-takers, provide nonpartisan subject matter expertise and institutional know-how to political actors. Indeed, civil-military relations theory argues military actors' professional status stems from

8. See also Ulrich, "Civil-Military Relations."

9. See also *The Trump-Ukraine Impeachment Inquiry Report, Report of the House Permanent Select Committee on Intelligence, Pursuant to H.Res. 660, in Consultation with the House Committee on Oversight and Reform and the House Committee on Foreign Affairs*, 116th Cong. (December 2019), https://intelligence.house.gov/uploadedfiles/the_trump-ukraine_impeachment_inquiry_report.pdf.

10. "User Clip: John McLaughlin: Thank God for the Deep State," from *U.S. Intelligence and Election Security*, aired October 30, 2019, on C-SPAN2, <https://www.c-span.org/video/?c4826847/user-clip-john-mclaughlin-god-deep-state>.

political actors' reliance on their uniquely acquired military expertise. Regardless of affiliation professional oath-takers are required to remain nonpartisan in the performance of their duties. This apolitical ethic serves as a sort of shield protecting the professional oath-takers from allegations their motives are self-serving, political, or in some way unpatriotic.

Military actors have a privileged voice in the national discourse because of their perceived unique expertise and the elevated status of the military institution in society.¹¹ Polls in recent years have consistently placed the military atop American institutions in terms of public trust.¹² The military's status as the most trusted national institution stems at least in part from the public's perception of its apolitical nature.¹³ Scholars have warned politicization and loss of institutional trust go hand in hand.¹⁴ The Ukraine scandal has also highlighted that the public notices when officials who leverage their military experience to gain political offices commit ethical lapses, indicating the public expects more of former professional oath-takers.¹⁵

Professional Oath-Takers

The Ukraine scandal revealed a political climate where political oath-takers were caught up in the polarization of the times, which limited the objective functioning of the checks and balances so fundamental to American democracy. The scandal also highlighted the role oaths played in motivating some participants to adhere to professional norms developed in their experience as national security professionals. The next section presents the examples of a former military officer and an active military officer who honored their oaths while participating in the impeachment inquiry.

Ambassador William Taylor

William Taylor graduated from West Point in 1969 and went to war as an infantry officer in the 101st Airborne Division. He remained in government service for the next 50 years as a military officer, Department of Energy employee, Senate staffer, and Foreign Service Officer. A diplomat at the center of the Ukraine inquiry, his media profiles invariably include the term "patriot" and link his military service to his integrity

11. Risa A. Brooks, "Perils of Politics: Why Staying Apolitical Is Good for Both the U.S. Military & the Country," *Orbis* 57, no. 3 (Summer 2013).

12. "Confidence in Institutions," Gallup Poll, accessed April 20, 2020, <https://news.gallup.com/poll/1597/confidence-institutions.aspx>.

13. Leo Shane III, "Survey: Public Confidence in the Military Is High, Especially among Older Generations," *Military Times*, July 22, 2019, <https://www.militarytimes.com/news/pentagon-congress/2019/07/22/survey-public-confidence-in-the-military-is-high-especially-among-older-generations/>.

14. David Barno and Nora Bensahel, "The Increasingly Dangerous Politicization of the U.S. Military," *War on the Rocks*, June 18, 2019, <https://warontherocks.com/2019/06/the-increasingly-dangerous-politicization-of-the-u-s-military/>.

15. Scott Simon, "Opinion: Did Secretary Pompeo Forget his West Point Pledge?" *Weekend Edition*, National Public Radio, October 5, 2019, <https://www.npr.org/2019/10/05/767383696/opinion-did-secretary-pompeo-forget-his-west-point-pledge>.

and commitment to American ideals.¹⁶ Taylor retired from the Foreign Service and was working as executive vice president of the United States Institute of Peace when Secretary of State Mike Pompeo tapped him to come out of retirement to take the top diplomatic post in Kiev, Ukraine, a position previously held by Ambassador Marie Yovanovitch. (He previously served as ambassador to Ukraine from 2006–9.) Both were political appointments making him a political oath-taker more recently, but a professional oath-taker formerly.

Taylor testified before the House impeachment inquiry despite White House orders not to cooperate. His opening statement made his motivation clear. Taylor was concerned the strategically important US-Ukraine relationship “was being fundamentally undermined by an irregular, informal channel of US policy-making and by the withholding of vital security assistance for domestic political reasons.”¹⁷ Timothy O’Brien of *Bloomberg News* opined that Taylor put his career on the line and defied White House orders not to cooperate because he thought members of the administration were undermining the national interest. O’Brien wrote Taylor’s testimony stood apart from others in the administration who were:

opportunists . . . perverting the wheels of government to feather their own nests. Taylor is a person of purpose, integrity and decency, and his testimony before legislators exploring impeachment has been one of the most devastating and consequential episodes of the Trump presidency.¹⁸

Former Undersecretary of State Nicholas Burns told the *New York Times*: “Ambassador Bill Taylor is a person of integrity with a strong, ethical base. I would also describe him as a true patriot. His entire professional life has been in service to the U.S.”¹⁹ Burns’ comments track with the sort of deference professional oath-takers earn from a career of staying true to their oaths. Lieutenant General Karl Eikenberry, US Army retired, a former ambassador to Afghanistan, added: “Ambassador Taylor represents the best of our Department of State. His integrity and courage are the true marks of patriotism, loyal to an oath of office and never to be corrupted or intimidated by those seeking personal gain at our Nation’s expense.”²⁰

16. Michael Crowley, “William Taylor, ‘Model’ Diplomat, Is at Center of Impeachment Inquiry,” *New York Times*, October 22, 2019, <https://www.nytimes.com/2019/10/22/us/politics/william-b-taylor-diplomat.html>.

17. William B. Taylor, “Opening Statement of Ambassador William B. Taylor, October 22, 2019,” *Washington Post*, October 23, 2019, <https://www.washingtonpost.com/context/opening-statement-of-ambassador-william-b-taylor/6b3a6edf-f976-4081-ba7f-bce45468a3ff/>.

18. Timothy O’Brien, “A True Public Servant Deals Trump a Crushing Blow: William Taylor Demonstrates How to Stand Up for Integrity and National Purpose,” *Bloomberg News*, October 23, 2019, <https://www.bloomberg.com/opinion/articles/2019-10-23/bill-taylor-s-testimony-deals-trump-a-crushing-impeachment-blow>.

19. O’Brien, “True Public Servant.”

20. Jake Tapper and Kate Sullivan, “Bill Taylor, Now Dodging Trump Attacks, Defended as a ‘Man of Honor’ by Three Veterans Who Served With Him,” CNN, October 27, 2019, <https://www.cnn.com/2019/10/27/politics/bill-taylor-vietnam-bob-seitz-robert-st-onge/index.html>.

Lieutenant Colonel Alexander Vindman

Commissioned in 1999 as an Army infantry officer, Vindman is a combat veteran who was wounded in Iraq in 2004. He subsequently became a Eurasian foreign area officer and was assigned to the National Security Council staff.²¹ Like Ambassador Taylor, his testimony focused on US interests and the impropriety he witnessed as the senior National Security Council Ukraine expert on the presidential call in question. “I was concerned by the call. . . . I did not think it was proper to demand that a foreign government investigate a U.S. citizen, and I was worried about the implications for the U.S. government’s support of Ukraine.”²² His credentials as a professional oath-taker were evident in his opening statement.

I have a deep appreciation for American values and ideals and the power of freedom. I am a patriot, and it is my sacred duty and honor to advance and defend OUR country, irrespective of party or politics. For over twenty years as an active duty United States military officer and diplomat, I have served this country in a nonpartisan manner, and have done so with the utmost respect and professionalism for both Republican and Democratic administrations.²³

Vindman’s actions were particularly courageous because he is still an active duty Army officer. He came forward knowing he would implicate the president, his commander in chief, in wrongdoing.

Yet some questioned his patriotism and adherence to civil-military relations norms. An active duty officer stationed at the Pentagon likened Vindman’s appearance before the committee in uniform to “the Army pushing a coup.”²⁴ A veteran who is a lawyer writing for the Federalist website characterized Vindman’s decision to testify in uniform as a “partisan move” akin to attending a political rally in uniform in violation of civil-military relations principles.²⁵ His testimony was also criticized as “open insubordination” for questioning the commander in chief.²⁶ Some even challenged his loyalty to the United States due to his immigrant status.²⁷

21. Sheryl Gay Stolberg, “Meet Alexander Vindman, the Colonel Who Testified on Trump’s Phone Call,” *New York Times*, October 29, 2019, <https://www.nytimes.com/2019/10/29/us/politics/who-is-alexander-vindman.html>.

22. “Read Alexander Vindman’s full opening statement on Trump and Ukraine,” PBS, October 28, 2019, <https://www.pbs.org/newshour/politics/read-alexander-vindmans-full-opening-statement-on-trump-and-ukraine>.

23. *Opening Statement of Lieutenant Colonel Alexander S. Vindman Before the House Permanent Select Committee on Intelligence, the House Committee on Foreign Affairs, and the House Committee on Oversight and Reform October 29, 2019*, in “Statement on Trump and Ukraine.”

24. Russ Read, “Pushing a Coup’: Fellow Soldiers Slam Vindman for Testifying in Uniform,” *Washington Examiner*, November 8, 2019, <https://www.washingtonexaminer.com/policy/defense-national-security/a-bad-look-vindmans-testimony-while-in-uniform-divides-military-community>.

25. John Lucas, “Alexander Vindman’s Impeachment Testimony Displays his Open Insubordination,” *The Federalist*, November 22, 2019, <https://thefederalist.com/2019/11/22/alexander-vindmans-impeachment-testimony-displays-his-open-insubordination/>.

26. Lucas, “Vindman’s Impeachment Testimony.”

27. David Leonhardt, “Who Alexander Vindman Really Is: ‘A Great American Patriot,’” *New York Times*, October 30, 2019, <https://www.nytimes.com/2019/10/30/opinion/alexander-vindman-trump-ukraine.html>.

Such criticism failed to acknowledge Vindman's accountability to Congress to respond to lawful subpoenas and to offer testimony as a fact witness. In addition, his advice as a professional military expert on national security processes and policies in question was also relevant. Indeed, as a military professional, he had a professional responsibility to share expert knowledge that would enable members of Congress to make political judgments that were theirs uniquely to make. Vindman also acted to preserve the office of the president by supporting Congress' constitutional remedy to hold individuals who abuse the office accountable through the impeachment power.

Other observers lauded Vindman's decision to testify before the House impeachment inquiry citing the unique professional ethic of military oath-takers. Former assistant secretary of defense Evelyn Farkas noted: "Military officers stress the duty to speak out and report up the chain if they see something awry. This is something that we don't drill into civilians. But in the military they are not expected to resign but to speak up the chain."²⁸ Tiana Lowe of the *Washington Examiner* wrote, "it shouldn't have to be said, but Lt. Col. Alexander Vindman, the National Security Council officer testifying in the House impeachment proceeding, is a great American patriot."²⁹

Conclusion

This article has discussed the need for new norms in civil-military relations theory, obligating citizens entrusted with positions of national responsibility to uphold oaths they take to the Constitution of the United States. The case considered—the Ukraine scandal and the subsequent impeachment inquiry—simply asked, to what extent does the traditional apolitical civil-military relations norm require or forbid the involvement of military officers in such activities as testifying in an impeachment hearing?

Exploration of constitutional foundations and civil-military norms found that appearing before congressional committees carrying out their constitutional powers of impeachment does not violate civil-military relations norms. On the contrary, such acts are consistent with the primary civil-military norm of professional militaries to remain subordinate to civilian control, in this case the control of Congress using its constitutional power of impeachment to investigate the president. Such acts preserve the powers of Congress and protect the office of the president from office-holders who might abuse their power. Professional oath-takers commit themselves to putting America first in terms of preserving its democratic institutions. Political oath-takers take the same oath. But in the current political climate many value their partisan

28. MSNBC, "Army Officer Who Heard Trump's Ukraine Call Voiced His Concerns to Superiors," *The Last Word with Lawrence O'Donnell*, MSNBC, October 28, 2019, <https://www.msnbc.com/the-last-word/watch/army-officer-who-heard-trump-s-ukraine-call-voiced-his-concerns-to-superiors-72223301604>.

29. Tiana Lowe, "Vindman is a Patriot, Not a Ukrainian Spy," *Washington Examiner*, October 29, 2019, <https://www.washingtonexaminer.com/opinion/vindman-is-a-patriot-not-a-ukrainian-spy>.

identification over their oaths. Their fellow citizens are taking note; many are grateful, but others are critical due to a narrower understanding of democratic and civil-military relations norms.

Effective practices may include better socialization into the meaning of the oath similar to the military's tradition of making the readministration of the oath the center of promotion ceremonies. More *robust education* in professional military education highlighting the fact that the executive and Congress are coequal branches would help to dispel the prevailing view that loyalty to the president trumps the professional responsibility to appear before Congress.

Benjamin Franklin, when asked what sort of government the delegates to the Constitutional Convention of 1787 had created, replied, "a republic, if you can keep it."³⁰ This theme is on the minds of citizens today. History may record that present-day professional oath-takers were the critical keepers of the republic. Commenting on the role that a range of oath-takers played in the impeachment inquiry, journalist Jonathan Alter predicted, "history will look back and call this the 'patriotic surge' when people did their constitutional duty."³¹

30. Richard R. Beeman, "Perspectives on the Constitution: A Republic, If You Can Keep It," The National Constitution Center, n.d., <https://constitutioncenter.org/learn/educational-resources/historical-documents/perspectives-on-the-constitution-a-republic-if-you-can-keep-it>.

31. See Benjamin Siu and Anne Flaherty, "Key Players in the Trump Impeachment Probe and What They Testified to Congress," ABC News, December 4, 2019, <https://abcnews.go.com/Politics/trump-ment-inquiry-testified-congress/story?id=66763043>; and MSNBC, "Concerns to Superiors."