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A Military Ethic in an Age of Terror

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N ational military forces throughout the world today are involved in combating terrorist activity, if only in terms of preparation. Capable organizations formulate and debate at length appropriate tactics and methods that will be effective in reducing the terrorist threat or in countering terrorist actions. As various headquarters and agencies examine the problem, a troubling issue arises for many. They must consider not only what they *can* do but also what they *ought* to do. Some measures that might be highly effective will also be highly questionable from a legal or moral point of view.

Inherent in most discussions are moral issues that are at least partly determined by the codes of conduct that govern the military forces involved. In particular, the range of permissible actions by American military forces is unquestionably limited by the uncodified professional military ethic that governs its members. The moral complexity of counterterrorist and other likely operational commitments of US forces provides sufficient reason to suggest that a formally codified ethic should once again be considered. In this discussion, I am primarily concerned with revealing the moral structure within which such an ethic would be developed.

When nations employ force in international relations, civilians are almost always killed and maimed, property destroyed, and children rendered homeless; the fabric of social life for noncombatants is torn apart. Because the use of military force unavoidably affects people adversely, most military decisions have moral dimensions, whether the military decision-makers are sensitive to them or not. Thus some courses of action will, on balance, be right and some will be wrong when we consider results that could and should have been foreseen.¹

The history of South Africa provides a striking example of such moral considerations and a failure to take the foreseeable consequences of a

military decision adequately into account.² The results were disastrous. At the turn of the century, Britain faced a particularly unpleasant war against the Boers in South Africa. The expected rapid defeat of the Boers had not come about, so to hasten that event Britain placed in command her most distinguished soldier, Lord Kitchener, the hero of Khartoum.

Kitchener was determined to end the war as rapidly and efficiently as possible, but he faced a most difficult situation. Many heads of Boer households and able-bodied men of the Boer families had left home to join the Boer commandos, leaving behind the wives, children, and infirm. Those remaining on the farms suffered great hardship as the war dragged on; however, they also provided logistical support and intelligence to the Boer fighters. Both for their own protection and to further Britain's war effort, Kitchener ordered all the families removed from the farms and placed in great concentration camps, the infamous *laagers*. Unfortunately, Kitchener and his staff failed to make adequate provisions for medical care, administration, or even food in the camps. Whether adequate care was even possible in view of the constrained resources and the ongoing war effort is in question. In the months that followed, over 20,000 Boer women and children died.

The brutal conditions in the camps were widely reported in British papers, and many people at home in England came to question the war and the actions of the British forces (a development which should have a familiar ring), making prosecution of the war much more difficult for the British government. Kitchener had made what he felt was a logical military decision in war, but he failed to give adequate consideration to the logistical and the concomitant moral dimensions of his decision. The moral cost of his decision was painfully high. In addition to damaging his own country's interests, he was responsible for the deaths of thousands of people. The point of this piece of history is that we still face the same kinds of problems in decisions about the actions necessary to defend our national interests. One notable contemporary arena is that of terrorist activity.

In the United States today, both within the American military and among those considering and criticizing national policy, we find extensive debate concerning counterterrorist measures. In this context, I want to consider the implications of the professional military ethic for the debate about the moral acceptability of various counterterrorist tactics and

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techniques. I maintain that specific principles that provide the foundation for the American military ethic also place limits on what US military organizations can do in fulfilling their responsibilities to defend the nation.

Fundamental Values and Ethical Conduct

Western history provides a long account of attempts to govern the conduct of military forces through means other than force alone. Custom, law, and conscience were brought into play as well. Through force and the threat of punishment, a minimum level of performance by members of a military organization can perhaps be assured, but inducing an army to fight well under difficult conditions requires more than coercion. Exceptional performance comes only under exceptional leadership and through commitment to sets of values and forms of conduct.

The codes of honor that governed the conduct of medieval knights in fighting each other, however imperfectly observed they may have been in practice, combined with another historical development to produce the basis for military codes of ethics in the 17th and 18th centuries. The other development was the secularization of the concepts *jus in bello* (law in waging war) and *jus ad bellum* (law for resort to war) developed originally by church scholastics. The result was a set of concepts about when and how wars should be fought among civilized nations.

During the 19th century, a new kind of warrior arrived on the scene, the military professional. The ramifications of being a member of a profession are prominent factors in considering the moral status of a particular group such as the military. Professionals are accorded special considerations in society as a result of their status. One such consideration is the granting of authority to act in ways legally or morally proscribed to nonprofessionals.

Members of national military organizations became professionals in a technical sense during the 19th century when they developed the three characteristics of a professional organization as described by Samuel Huntington: (1) specific expertise, gained only through extended schooling and training; (2) a sense of corporateness, largely generated through society's acceptance of the organization as a distinct body having the authority to set its own standards of conduct and performance; and (3) responsibility to society in providing the profession's expertise as required.³

Military organizations in Western Europe solidified their status as professional groups as military tactics became more standardized and complex. Even more important were the burgeoning technical requirements of weaponry and logistics that required training and experience. Western nations became dependent upon their professional military for national security, and the military organizations became institutions within their societies. In some cases, of course, they also took over the government. All

professional military organizations worthy of the name developed codes of conduct governing accession to and behavior within the professional group.

The American military has experienced the same kind of development over the last 200 years, and we have well-established standards of conduct, though a professional ethic has not been formally articulated and published. The code governing behavior has developed through custom and tradition and has been perpetuated through professional socialization and the military's schooling systems.

Because the code has not been formally articulated by the institution and because it is a product of slowly evolving custom and tradition, I can get disagreement from almost any member of the military about exactly what should be included in any fully elaborated and codified professional ethic, but reasonable agreement exists at least about the fundamental principles. Specifically, professional soldiers:

- Always do their duty, subordinating their personal interests to the requirements of their professional function. Duty here is understood both in the sense of response to immediate, specific requirements established by the organization—direct orders—and in the sense of the overarching responsibility for the security of the state under the Constitution.

- Conduct themselves as persons of honor whose integrity, loyalty, and courage are exemplary. Honesty, courage, and integrity are essential qualities on the battlefield if a military organization is to function effectively. Reports must be accurate. Actions promised must be performed. Virtues claimed must be possessed in fact. Failures in these areas mean lost battles and lost lives.

- Develop and maintain the highest possible level of professional skill and knowledge. To do less is to fail to meet their obligations to the country, the profession, and the individual soldiers they serve.

- Take full responsibility for their orders.

- Strictly observe the principle that the military is subject to civilian authority and do not involve themselves or their subordinates in domestic politics beyond the exercise of basic civic rights.

- Promote the welfare of their subordinates as persons, not merely as soldiers.

- Adhere to the laws of war in performing their professional function.

The Army is now seriously considering the formal publication of a code of professional ethics. If a code is formalized, it may not be worded just as I have presented it, but the principles above will be included. The Navy is actively engaged in formalizing a professional code of ethics, and last summer a conference in the Pentagon recommended to the Army Chief of Staff that a code common to all the services be considered. While that recommendation was apparently put on the shelf, the concerns that generated it still exist.

The existing professional military ethic, as encapsulated by the seven principles set forth above, results from the interaction of three primary formative influences: (1) the functional requirements of military activity itself; (2) requirements established by the laws of war; and (3) the enduring core values of American society. Obviously, the professional military ethic must be functional, that is, it must accommodate the features necessary for effective performance in battle. Just as obviously, the ethic must be legal, that is, it must conform to all established laws. And perhaps less obviously but no less important, the ethic must be culturally and politically acceptable, that is, it must conform to the dictates of American values. The product thus formed is a complex pattern of normative practice expressible in terms of principles such as the seven I listed above.

Enduring American Values

As we approach the 21st century, identifying those values common to all Americans becomes more and more difficult. Still, several sociological studies and analyses do point to a set of goods to which most Americans attach transcendent worth. The set includes freedom, democracy, achievement, individual worth, and equality. From these goods, or values, come constraints on the activity of the American military, constraints that have not always been properly observed, but constraints acknowledged as appropriate by both society and the military profession.

These characteristic social values are manifested through the concept of basic rights in our society, which in turn rest upon the nation's founding documents. While I sympathize with those who say our society has become nearly paralyzed at times in our preoccupation with nebulous rights claims, the primary sources for rights conceptions are, it is important to recall, the Constitution and the Bill of Rights, which comprises the first ten amendments to the Constitution. Not coincidentally, when officers receive their commissions, they take the following oath, which provides the basis for the existing American military ethic:

I do solemnly swear 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, and 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 on which I am about to enter.⁴

This oath establishes the foundation of the concept of duty that I referred to in the first principle of the professional ethic presented earlier: a professional soldier always does his duty. In that prescription, duty means much more than following the orders of one's superiors. When we see that the duty prescribed, as the oath makes clear, is to maintain and preserve the

Constitution, we recognize that duty may well at times require that orders be disobeyed if they are illegal or if the orders clearly do not serve the larger purpose for which the profession exists. Thus the loyalty and responsibility of the professional soldier are to American society *under the Constitution*, not to any particular superior or administration.

The various political principles that are embodied in American government, such as representative legislation and the system of checks and balances, are all finally concerned with creating a system in which the rights of individuals are protected. Through his commitment to the Constitution, the American officer is firmly and unreservedly committed to the principle that individual rights are fundamental concerns of his professional role.

The commitment to the Constitution invokes the other major formative influence on the existing American professional military ethic—the laws of war. When we talk of professional military ethics, we sometimes overlook this point, but we must remember that Article VI, Clause 2, of the Constitution makes all treaties and conventions to which the United States is a party the supreme law of the land. Thus the laws of war resulting from treaties bind the American military directly and without exception. By swearing the oath, the military officer is bound morally as well as legally. Orders and actions that violate the laws of war, for example, are illegal for American soldiers, and by his personal and professional commitment to the Constitution, the military officer is morally committed to ensure that such orders are not obeyed.

Principles and Our Response to Terrorism

The laws of war today are largely contained in the two Hague Conventions (1899 and 1907) and the four Geneva Conventions of 1949.⁵ Those documents limit how wars can be fought, what weapons can be used, and what persons can be attacked. The laws of war, incomplete as they certainly are, can be explained on the basis of two humanitarian principles:⁶ First, individual persons deserve respect as persons, using the term person to refer to self-conscious, autonomous, rights-bearing individuals. Second, human suffering ought to be minimized.

These principles are accepted by the American military as further constraints on legally and morally permissible action by US soldiers, and in our tradition the first of these principles, that of granting appropriate respect to individual persons, is most clearly understood as the requirement to respect the rights of others. Thus the emphasis on rights is derived from two of the three primary formative factors that have shaped our military professional ethic: the laws of war as well as the values of American society.

In view of these boundary conditions, terrorist activity itself—that is, violence that accepts and often prefers random, innocent victims—is clearly prohibited for members of American forces.

Some suggested responses to terrorism also involve the violation or infringement of individual rights. Among those whose rights could most obviously be at risk in attacks on countries that host terrorists or on ambiguously defined targets are noncombatants, and the particular rights concerned, among the most fundamental of all rights, are the right to life and the right to security of the person. Because the American professional military ethic requires the recognition of human rights in moral terms as well as legal, the central question then becomes: Under what conditions can such rights be justifiably infringed or overridden?

In possible responses to international terrorism, the use of directed or controlled violence against the responsible terrorists seems justified when less radical means of effective response are not available. The rights of the terrorists are infringed in the same manner that the rights of a criminal before the court are infringed by carrying out the sentence imposed upon him. If violence is employed only as a last resort, both procedural and institutional justification are credible in such a situation in terms of inherent human rights. When noncombatants are knowingly endangered, however, even if such risk is necessary to permit effective response, the case becomes much less clear.

All moral dimensions of military decisions must be considered carefully in such cases. Military officers must ensure that actions undertaken are in accordance with the professional military ethic, which includes the commitment to individual human rights. In addition, officers must be fully aware of the consequences of contemplated actions, which must be examined both in terms of furthering national interests and in terms of effects upon the status and welfare of the persons involved. The moral rights of persons are not limited by national boundaries or ethnic origin, and, under the American professional military ethic, military decision-makers must include such considerations in their reasoning.

The nature of such considerations is hardly new, needless to say. Hamburg, Dresden, Hiroshima, Nagasaki, and other experiences in our recent past have made the issue of noncombatants and noncombatant immunity a continuing subject of concern, but the spotlighted, photographed, and media-covered stage on which counterterrorist actions are performed prompts us once again to insist on moral clarity with respect to those actions.

Under the murky moral conditions of counterterrorist activity and the prosecution of low-intensity warfare—the most likely forms of commitment for American military forces in the near future—the moral dimensions of military activity become hard to discern. We may very well have reached a point at which a formally published professional ethic would benefit the military services and the country. If a formal code were to provide a focal point for teaching and an effective guide in situations requiring difficult decisions, it would indeed be a benefit.

As a final point, consider this brief argument: To fight for freedom means to fight against oppression; oppression means violation of man's rights; hence to fight for freedom means to oppose such violations.⁷ In considering this argument, if we define terrorism as "the deliberate and systematic murder, maiming, and menacing of the innocent to inspire fear for political ends,"⁸ one who fights for freedom cannot with logical consistency commit such violations himself, for he would become a terrorist in the name of fighting terrorism.

To these basic arguments, the American professional military ethic provides a comprehensive reinforcing structure rooted in cultural and social values that limit in principle what is permissible in any activity that the military undertakes, including counterterrorist operations.

Having focused on limitations on counterterrorist activity in my discussion, however, let me also note that those actions against terrorism that are appropriate for our government should be carried out with maximum force and efficiency, for international terrorism is indeed a growing threat to legitimate governments—a threat more dangerous than many appreciate. Paul Johnson calls it "the cancer of the modern world."⁹ If we are to prevent it from destroying the societies it attacks, we must apply drastic and radical treatment to what clearly is a malignancy. At the same time, we must ensure that our responses to terrorism do not injure the moral fabric of our society. A clear understanding of the moral structure within which we operate constitutes the most effective means to that end.

NOTES

1. A decisionmaker's act may have two moral dimensions, the interior (relating to the motivation or intent behind the act) and the exterior (relating to the consequences of the act). Thus a good decision in terms of consequences can have been made from a morally reprehensible motive. A hasty, ill-planned attack, for example, might win a battle, but if the commander ordered it primarily to make himself look good, most would agree that his character merits criticism from a professional as well as a moral point of view. The reader should be mindful of both moral dimensions during the discussion that follows.

2. Thomas Pakenham, *The Boer War* (New York: Random House, 1979), pp. xxi-xxii, 521-24. See also Edgar Holt, *The Boer War* (London: Putnam, 1958), ch. 21.

3. Samuel Huntington, "The Soldier and the State in the 1970's," in *The Changing World of the American Military*, ed. Franklin D. Margiotta (Boulder, Colo.: Westview, 1978), p. 16.

4. The oath taken by enlisted members imposes a similar duty to defend the Constitution.

5. Field Manual 27-10, *The Law of Land Warfare* (US Department of the Army, 18 July 1956), and Air Force Pamphlet 110-31, *International Law—The Conduct of Armed Conflict and Air Operations* (US Department of the Air Force, 19 November 1976), identify additional treaties and agreements that contribute to the law of war and to which the United States is a signatory.

6. Anthony E. Hartle, "Humanitarianism and the Laws of War," *Philosophy*, 61 (January 1986), 109-15.

7. Benzion Netanyahu, "Terrorists and Freedom Fighters," in *Terrorism: How the West Can Win*, ed. Benjamin Netanyahu (New York: Farrar, Straus, Giroux, 1986), p. 27.

8. *Ibid.*

9. Paul Johnson, "The Cancer of Terrorism" in *Terrorism: How the West Can Win*, p. 31.