

## TEACHING THE TEACHERS OF MILITARY ETHICS: An Apology for an Unethical Profession

### Preface

This paper is primarily written, not for the professionally trained philosopher or ethicist, but for the ethics neophyte--the practicing DoD professional (regardless of profession) turned educator who is now tasked with the additional job of ethics instructor. In other words, it is written primarily for people like me. It is offered as an approach--a reference of not only what has worked for me, but as a compendium of source material you may find interesting and beneficial. I am an Acquisition Professional specializing in contracting, not a philosopher or ethicist. If I can piece together an ethics methodology my students find valuable, take heart--you can too. Secondly, for the true philosopher/ethicist, it is written to promote discussion and as a call for help: Where am I wrong, what have I missed, and how can I improve?

### The Problem

I recently had the opportunity to participate in a facilitator training program for an executive development course. During a group activity critique session, an instructor stated the group's problem was it allowed personal values to enter into the decision making process. I naively thought he was joking, challenged him on the subject and inquired as to the role of ethics. He was deadly earnest. He categorically stated a leader should never allow people's values to enter into the decision making process because it merely "confuses the issues". He then most emphatically added that a leader's job was to do "whatever it takes to get the job done". This point was relentlessly repeated. Later, in a side discussion with other students (after a loud disclaimer of "Don't let the ethics guy hear this") he espoused his philosophy: "If its legal, its ethical". Apparently, he and those in agreement with him, were incapable of contemplating that the fair number of minorities present would have been legally barred

from the restaurant we were in at the time if this assembly had gathered three decades previous (not that they would have been invited to participate in the first place).

Imagine the joy of enforcing such a "legal ethic" with a baseball bat (whatever it takes), or even better, a century or so before, actually owning those minorities as disposable property via the "leagl ethic" of slavery. What, for me, compounded this disturbing attitude, was another instructor's statement that the decision processes being taught were designed to instruct the students in "how to survive and be successful in the Pentagon". I posit this question for the philosophers/ethicists:

Are we training future DoD executives and senior officers to become Lagerkvistian dwarfs to appointed Machiavellian princes in a Leviathanian government which, by definition, can do nothing unjust? I trust we are not. What then are the alternatives?

#### Rhetoric

I recommend ethics instructors, both new and experienced, study the writings of St. Augustine contained in Book IV of his work , On Christian Doctrine<sup>1</sup>. It discusses the study and application of rhetoric for the Christian teacher. In your study, if you secularize his writings by substituting "Ethics" for "Christian", I think you will discover our ethics uphill battle (given the problem above) is situationally similar in difficulty to

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<sup>1</sup>On Christian Doctrine, by Saint Augustine of Hippo.

what he confronted. Borrowing from Cicero, Augustine states the objective of an orator is to:

"...teach to delight, and to move. Of these, teaching is the most essential. To teach is a necessity, to delight is beauty, to persuade is a triumph. Now of these three, the one first mentioned, the teaching, which is a matter of necessity, depends on what we say; the other two on the way we say it."<sup>2</sup>

Augustine's premise is simple. Rhetoric is a tool available to both those who teach falsehoods and those who teach truth. If the former can teach their falsehoods briefly, clearly, plausibly and in such a manner that will place their audience in a friendly, receptive frame of mind, while the latter tells the truth in such a manner that is "tedious to listen to" and "hard to understand"<sup>3</sup> who shall be listened to? Additionally, the teacher should be able to "argue and speak with wisdom."<sup>4</sup> I, for our purposes, interpret this to mean the teacher should be able to readily apply his teaching to situations meaningful to both himself and his students--i.e. not instruct as an ivory tower philosopher. This is where the practicing professional turned educator (within his profession) has a decisive advantage: credibility. You have been where your students are or are going. Tailor your instruction to make it, if not personally, at least professionally meaningful and applicable for your audience. Example: Note the simplicity

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<sup>2</sup>Ibid., Chpt. 12.

<sup>3</sup>Ibid., Chpt. 2.

<sup>4</sup>Ibid., Chpt. 5

of the falsehoods in the problem and compare it to the "truth" as espoused by Kant in his "Preface and Introduction to the Metaphysical Elements of Ethics". Which is easier to understand? Which is more readily applicable? Which is then more readily acceptable to an unchallenging mind which wants to be taught and considered ethical? In summary, our ability to teach ethics should be judged by our ability to be understood, the students ability to apply that understanding, and finally the most difficult, our ability to instill the willingness within the student to apply it. If

"...the truth taught is one that must be carried into practice, and that it is taught for the very purpose of being practiced, it is useless to be persuaded of the truth of what is said, it is useless to be pleased with the manner in which it was said, if it be not so learnt as to be practiced."<sup>5</sup>

#### Scope

The common definition of ethics is "the study of standards of conduct and moral judgement".<sup>6</sup> Ethics instruction, at least in my profession, has been generally limited to iteration of standards of conduct. This is the legalistic or minimalist approach to ethics. People want to know what they can or cannot do--so we tell them. The implicit assumption being if they follow the conduct standards, they are ethical.

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<sup>5</sup>Ibid., Chpt. 13

<sup>6</sup>Webster's New Universal Unabridged Dictionary

The primary definition of ethical, however, is "conformance to moral standards" with the subordinate definition being "conformance to standards of conduct of a given profession".<sup>7</sup> Thus, if our instructional goal was to have ethical employees, we have probably failed, for we have only addressed half the definition--the dangerous half. Our concentration on conformance to standards breeds the "if its legal its ethical mentality". As we have discussed, following the law or standard does not necessarily make one ethical. Nazi death camp officer statements to the effect, "I was just following orders", were no defense at Nuremberg--the orders were immoral. Secondly, does following a moral law, order or standard make one ethical if it is followed only due to fear of retribution if you are caught violating it? Thirdly, what more can you do? Laws and standards are baselines--minimal levels of acceptable behavior. What of altruism, charity, honesty, integrity, and personal growth? How does the instructor impart the morals which are hopefully behind the laws and standards, and the moral judgement necessary to go beyond the standards and perhaps challenge the standards if necessary?

### Ethical Theory

The professional turned instructor turned ethicist needs to be acquainted with the basic schools of thought regarding ethical theory: Deontological and Teleological.

<sup>7</sup>ibid.

The former is based on the concept of conforming one actions to duty. This, at least at face value, would appear quite compatible with the military way of life:

"Duty, then is the sublimest word in the English language. Do your duty in all things...You can never do more, you should never wish to do less".<sup>8</sup> General Robert E. Lee

The leading proponent of this theory has already been cited, Immanuel Kant. Kant, however, stated the only duties to be followed were those based on valid moral rules. This validity is based upon "a system of pure rational concepts, independent of any condition of intuition, in other words, a metaphysic."<sup>9</sup> This leads to the generation of the principle of categorical imperatives, which is the idea of absolutes or universal law. From this discussion generates the concepts of duties, both ethical and juridical and then to virtue. If you can handle this, then you'll really have fun with The General Divisions of the Metaphysic of Morals followed by the Science of Right. Remember what Augustine said of teaching. If you can make this meaningful, applicable and acceptable to your students, congratulations. As for me, I find it interesting to contemplate but difficult to, shall we say, translate in total. There are two concepts of Kant's that I will use and return to later. The first is his test of universality:

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<sup>8</sup>Words On War, by Jay M. Shafritz

<sup>9</sup>"Preface to the Metaphysical Elements of Ethics", by Immanuel Kant

"If everyone in every case made your maxim the universal law, how could this law be consistent with itself?"<sup>10</sup>

The second is the well-being of others is a duty of the individual such that

"...he is not permitted to use either himself or others as means (which would imply that he might be indifferent to them)..."<sup>11</sup>

The problem with Kant, aside from the complexity of his discourse, is his absolute rigidity to moral duty. He appears to fail to account for situations where adherence to moral duty may lead to a physical consequence, which, in and of itself, is immoral. Enter Teleological theory.

Teleological theory focuses on the physical consequences of actions and favors those which produce the greatest good for the greatest number. It is also referred to as Utilitarianism, which was also the title of a book by its most famous proponent, John Stuart Mill. Whereas a Kantian's devotion to ethical duty might be used by an unscrupulous individual to produce an immoral end, a Utilitarian would be free, indeed compelled, to consider the ends (consequences) and then to choose competing ethical values in order to produce the greatest good and thus thwart the unscrupulous. The heart of this consequentialist philosophy is that if there is an absolute moral duty, it is

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<sup>10</sup>Ibid.

<sup>11</sup>"Introduction to the Metaphysical Elements of Ethics", Chpt. IX, by Immanuel Kant

only that of weighing the good and bad "utilities" of any action and choosing the course of action which will produce the greatest good (or least harm) for the greatest number.

This philosophy can be divided into two competing sub-philosophies: act v.s rule utilitarianism. Forgive my oversimplification, but "act" philosophy seeks maximum utility for each segregative action, while the rule utilitarian seeks maximum utility in the long run. Thus, while both would agree it is bad to lie, an act utilitarian would do so if it produced the "greatest good for the greatest number" in that situation. (Example: Lying on progress reports to obtain further funding/program approval). The rule utilitarian, however, would examine the long run consequences (say the possible damage to the credibility of his program/organization) and determine the "rule" of telling the truth should not be violated in this situation because the possible benefits (short term) would not outweigh the potential long run cost. Kant, remember, would say its your duty to tell the truth regardless of the consequences.

The utilitarian philosophy suffers the same problem as economic utility theory: quantification of cost & benefit, good & evil. The "tyranny of the majority" may be an outcome as well. It can also be easily bastardized by the unscrupulous as supporting the "ends justify the means"



philosophy: they conveniently forget the underlying premise of utilitarianism is the benefit of the greatest number of people-- not of oneself.<sup>12</sup>

### Ethical Quagmire

Well, what benefits has this discussion brought? Ethics is both the study of standards of conduct and moral judgement. There are two basic schools of thought regarding moral judgement, one of which has two competing views arguing whether utility should be "measured" in the short or long run and neither of which provide a means of quantifiable measure. Are we then to teach the military & other apropos standards of conduct along with these theories and allow the students to pick the best application? If you're a Kantian, these standards are absolute, follow them without regard to consequences. If you're an act utilitarian, consider them, but only follow them if they provide benefits in the immediate situation, however, if more benefits are available by disregarding them, by all means do so. Finally, if you're a rule utilitarian, follow the standards, but if long term benefits prevail by their violation, disobey them. One can teach standards of conduct and ethical theory, but how does one instruct moral judgement?

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<sup>12</sup>A source for further discussion of these ethical theories is Ethical Theory and its Application to Business, by Thomas Beauchamp and Norman Bowie.

### Ethical Baseline

It appears what is needed is an ethical or moral baseline which will provide a common point of departure for both the instructor and students. Once established, as in a logic problem, it would provide the universe of discourse for all discussions. But remembering Augustine, it must go beyond theory and be readily understood, applicable, and acceptable so as to be utilized by the students in life and practice beyond the mere classroom environment.

A technique exceeding this criteria, to which I was fortunate enough to be referred from a contact I made at my first JSCOPE last year, is that created and instructed by the Joseph & Edna Josephson Institute of Ethics. Basically the approach is a type of "ethics simplified"---as diametrically opposed to a "simplification of ethics". The non-profit institute offers four day interactive instructional seminars for ethics educators inclusive of instructor background and presentation material. The material provided is more than adequate for utilization as a stand-alone, off-the-shelf presentation. However, one of its many assets is its flexibility for incorporation into existing material. Indeed, instructional techniques and creative ethics curricula design are a part of the course. What is offered is a type of abridged ethics, both obeisant

to its theoretical foundations and designed for application.<sup>13</sup>

The historical/theoretical foundations are cited, but not intensely discussed. However, the background reading material provides further detail and reference cites (though general, not "chapter and verse" specific) for those inclined to do further research. My "Ethical Theory" section above utilized sources referenced in this material.

The premise of the institute's technique is there exist critical core ethical principles. These are fundamental ethical values which people will, themselves, identify and agree if adhered to, would make one an ethical human being. Since the students have "bought-in" to the key variables, what remains is the creation of an understandable algorithm that will allow and ensure the application of these variables.<sup>14</sup>

#### Ethical Decision Making Model

They call their model, Golden Kantian Consequentialism or GKC. The title is meant to be "whimsical", not

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<sup>13</sup>The Joseph & Edna Josephson Institute of Ethics  
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<sup>14</sup>Please refer to Attachment #1.

pretentious, and I find it diffident to its cited theoretical parameters. The first is simply the application of the Golden Rule. The second substitutes the previously identified ethical values for Kant's absolutes, or categorical imperatives while retaining the two "duties" also previously cited. Lastly, unlike Kant, it recognizes the potential for conflict between ethical values and therefore establishes a means by which consequences are to be considered before any action is taken.

The model is easily applied, but exceedingly demanding on the decision maker because it invokes the discipline required to adhere to the Kantian ethic of duty (metaphysic) while recognizing and considering potential implications (Utilitarian consequence) of decisions. The principles are simple. First, a decision maker must demonstrate consideration for the interest of others (Golden Rule/Kant/Utilitarianism). Second, the agreed to ethical values (Kant metaphysic) must always take precedence over nonethical values (Kant physisic). Lastly, when confronted with an ethical dilemma (ethical values in conflict) the decision maker may only violate an agreed to ethical principle when it is "clearly necessary to advance another ethical principle" (rule utilitarianism) "which, according to the

decision maker's conscience, is more important under the circumstances"<sup>15</sup>(act utilitarianism).

Again, this process places great demands upon the decision maker. It is accepted that any decision which effects people has an ethical dimension. Furthermore, those people so effected (stakeholders) have a moral claim on the decision maker to protect their interests and well being. This means the decision maker cannot cause unintended harm to innocent stakeholders. (It is recognized it may be necessary to cause intended harm to stakeholders, say, for example, a Reduction In Force (RIF) action, but it should be confined and minimized). Anticipation of all possible consequences is difficult. Rejection of a "workable" solution due to the possibility of harming an innocent stakeholder in a worst case scenario (hence an unethical solution) may prove more difficult for some. Expediency is often easier than ethics. More difficult still, is the rejection of a goal or mission, because no ethical means of implementing a solution can be found. The goal itself must then be rejected out right or modified to allow for an ethical resolution.

What must be emphasized is this model is a prescriptive tool. It is to be utilized before any action is taken. It

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<sup>15</sup>Ibid. Note: The Principles are the Institute's, however, the insertions of the theoretical underpinnings and any subsequent errors in application are my own.

is not a rationalization device to be backed into after the fact in an attempt to justify an action. Additionally, it places the emphasis of any decision or action on its ETHICAL DIMENSION and subordinates goal attainment to ethics: An unethical solution is never acceptable--all decisions must advance ethical principles.

Now, a cynic may counter since this model allows the decision maker to use his own conscience to guide his decision dependent upon the circumstances, that this is nothing more than situational ethics. This argument is erroneous. The model recognizes that all situations are not equal: It is the situations which are different, the ethical baseline (the agreed to ethical values), does not change. This recognition that all problems or actions are not equal is an accepted management principle. The first action taken in accordance with contingency management theory is situational analysis. The purpose being to discover all the variables which affect the fact situation. This recognizes even slight differences in circumstance must necessitate differences in implementation if the goal, an ethical solution, is to be successfully attained. This art of decision making was recognized, and even discussed, by our rhetoric mentor, Saint Augustine:

"Yet the art itself...had not different principles for these different cases, but comprised all in one. ...and in no part varied; although in varying times it prescribed not

everything at once, but apportioned and enjoined what was fit for each."<sup>16</sup>

Now, it must be understood, ethics is not a factor for consideration in decision making, it is a "ground rule".<sup>17</sup> An ethical analysis must be accomplished prior to making every decision. Only ethical solutions must be selected and implemented. If we can establish ethics as a ground rule for our organizations, then the credo of the problem resolution zealot "do whatever it takes to get the job done" becomes acceptable: An ethical solution is the only way to get the job done--by definition. News reports indicate, at present, this is not the case. Example: A survey conducted at the Naval Academy by a Marine officer indicated ninety percent of the midshipman responding believed "something is only wrong if you get caught".<sup>18</sup>

The Military & Ethics IAW GKC:  
Is it applicable?

During class discussion in the Institute's course, the instructor hesitated as to the applicability of the model to the military. This was due to the military's function in war. He admitted not having an understanding of the military. Personally, I feel the model does apply, but perhaps needs to be embellished to cover certain military responsibilities. Prior to discussing the model's relevance

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<sup>16</sup>The Confessions, Book III, Section VII, paragraph 14, by Saint Augustine of Hippo.

<sup>17</sup>Josephson Institute.

<sup>18</sup>"Ethics Journal", a publication of the Ethics Resource Center. January/February 1991, page 2.

to the military's function in diplomacy by other means, let's examine it in general.

The virtues of duty and honor are tradition in the military. Loyalty and the obedience to one's superiors with the subsequent following of orders given are unquestioned expectations of its members. Does the fact we are an arm of the government entrusted with its defense imbue us with a different ethical criteria than that of the society it was created to serve? I hope this is not the case. The moment we feel our positions give us a different set of ethics, or worse, a higher or superior ethic, is the moment we lose touch with our purpose and lose legitimacy. The question becomes how long can, in our case, a governmental organization survive whose ethics are "different" than that of the society which created it to serve them?

One of history's most famous military orders was the Order of the Knights Templar. Now, whether you believe, as did Saint Bernard, they were "worthy of all the praise given to men of God" or were "horrible, wicked and detestable" as stated by Pope Clement V, is irrelevant.<sup>19</sup> The fact remains they lost touch with the political realities of their time: their purpose became an anachronism and their legitimacy negated. The source of respect for their considerable

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<sup>19</sup>The Knights Templar, by Stephen Howarth.



financial power and military might changed from one of awe and admiration to that of awe and fear. The entire Templar Order was destroyed, not in the single evening in which kingly intrigue culminated in the arrest of virtually the entire Order, but by the slow disintegration of their legitimacy in the eyes of those they "protected". Today, the lack of legitimacy is causing governmental changes across the globe. The concept that power, and the authority to use it, does not in and of itself constitute legitimacy is an ancient one:

"To rule at all costs, not only justly but unjustly, that is simply non-legal, and merely to have the power is not to have the right."<sup>20</sup>

This question of legitimacy is two fold for the military: internal and external. For the internal military, it becomes a question, not of the right of a superior to give an order, but of the superior's right to expect it to be unquestionably obeyed. Laws, regulations, orders, in accordance with our ethical model, are to be obeyed. The ethic, or virtue, of duty is recognized, as is loyalty. It is also well known in the military, that an illegal order has no authority, and the culpability standard is not only "what did you know" but the additional "or have reason to know". This, however, is for an ILLEGAL order, not an immoral/unethical order. It is interesting to note the military statute governing this topic used to state

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<sup>20</sup>The Politics. Book VII, Chapter 2, by Aristotle.

"immoral" but was changed to "illegal". Does the implication of this change lend statutory credence to the position: A legal order is an ethical order and must be obeyed? If the answer to this question is "yes", are we not then potentially requiring all members of the military to sacrifice their ethics?<sup>21</sup> This, by definition, would make the military's ethics (or lack of) different than that of society's. What is the moral legitimacy of the military?

Now, our model provides treatment for dealing with unethical laws. Generic Example: A law has been passed you feel is immoral/unethical because it is extremely unfair. You are now in an ethical dilemma: your duty ethic says obey, while, say your ethics for fairness and respect for others, makes you take umbrage. What do you do? If you truly believe the law is immoral, your integrity ethic tells you to violate it. So far, so good. The difficult part is dealing with the ethics of honesty and accountability. Fulfillment of these principles require you to OPENLY proclaim the law immoral and publicly violate it and therefore willingly accept the sanctions society may impose for your actions. This is the price one pays for ethics. It is also known by the name of civil disobedience. In extreme cases the personal title is dead martyr. This is the difference between violating a law silently, as a thief

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<sup>21</sup>The idea that merely joining a society requires both the concomitant loss and gain of "rights" is an old one. However, the idea that by joining a group or society "requires" the sacrifice of an "individual's moral autonomy" is the premise of Robert Paul Wolf in his essay "In Defense of Anarchism".

in the night, for your personal benefit, as opposed to openly, for the benefit of others. Recall and apply the two Kantian provisions we kept: you want your behavior to become the universal standard because of your concern for the well being of others. We have only to look at our own country's civil rights movement, let alone the recent stands in Eastern Europe and Asia, to know all laws are not just and immutable. John Calvin divided proper conduct under three categories: "moral, ceremonial, and judicial", with only the moral "enduring without change".<sup>22</sup> Furthermore, despite Calvin's, shall we say, "grin and bear it" attitude toward government injustice, he stated:

"...sometimes he (God) raises up some of his servants as public avengers and arms them with his commission to punish unrighteous domination..."<sup>23</sup>

One must remember that unrighteous domination was measured in the terms of morals, not man made laws.

So what does this societal example have to do with the military situation? Everything, it is one in the same. Those that make ethical stands in violation of laws, regulations, rules or orders, do so at personal risk, be they in or out of the military. The question for the military itself is "Do we want our members to have the

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<sup>22</sup>On Civil Government. Chapters XIV-XIX, by John Calvin.

<sup>23</sup>Ibid. Chapter XXX.

courage of conviction to question the ethics of its actions and orders?"

This question has a direct bearing on the military's external legitimacy as viewed by society. Quite unlike the Hobbesian notion that society is subject to the will of the sovereign<sup>24</sup>, our government is established such that the will of the society, or "collective self"<sup>25</sup> in the Rousseuian sense, is the government. The ethics of the military, to be legitimate, must therefore reflect the ethics of the collective self. These concepts are discussed by various authors in The Military and the Problem of Legitimacy.<sup>26</sup> What I found interesting was a single conclusion reached by authors representing various different ideologies that military legitimacy may be closely linked to the political unity between the military and the nation-state, with political unity strengthened by common ideological values permeating both the military and society. A democratically elected government was not a requirement.

Example:

"In examining the relation of the army to society one has, then, to take into account, among other things, problems of morality and customs and the specific moral principles binding on career soldiers and resulting from the nature of the social roles they play. In addition we must consider the common elements appearing both in the morality of society as a whole and in the morality of a defined professional group.

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<sup>24</sup>Leviathan, Part I", by Thomas Hobbes.

<sup>25</sup>The Social Contract and Discourse on the Origin Of Equality, by Jean-Jacques Rousseau.

<sup>26</sup>The Military and the Problem of Legitimacy, edited by Gwyn Harries-Jenkins and Jacques van Doorn.

This leads to more general problems far outstripping the relation of the army to society, that is to problems of professional ethics, their genesis, character and function and particularly to the relation between the morality of particular professional groups and the morality of society as a whole."<sup>27</sup>

It may be surprising to some Michalik's study, and the positive relationship between the morals of society and military it discovered, examined the Polish People's Army in the early 1970's. As a validation of this conclusion, it would be interesting to compare the changes made to the Polish military since the democratic reforms, to changes made to military organizations without this relationship within governments which underwent, or are undergoing similar reforms. In another essay, van Doorn concludes legitimacy, in a complex society, is demonstrated by both a fairly general support for certain organizations and the combined absence of explicit and successful resistance to the continued existence of the same. Additionally, the question of an organization's legitimacy only arises when, on the basis of generalized societal values, an inequality is found to exist.<sup>28</sup> The following quote, which would be comic if it were not so tragic, highlights an example of such an ethical/moral inequality between our own military and society which led to change:

"The greatest contribution Vietnam is making...is developing an ability in the United States to fight a

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<sup>27</sup>Ibid, "Normative Linkages Between Civilian and Military Sectors of Polish Society", by Mieczyslaw Michalik.

<sup>28</sup>Ibid, "The Military and the Crisis of Legitimacy", by Jacques van Doorn.

limited war, to go to war without arousing the public ire."<sup>29</sup> Robert S. McNamara

The eventual publication of the "Pentagon Papers" combined with Watergate, led to a complete societal loss of faith in the military and Federal Government. Society made changes. We have now gone from accused "baby killers" in that period to enjoy a public confidence rating of near 90% after Desert Storm. Clearly, societal values were in sync with the latter military operation.

#### Instructional Methodology

Ethics should not be instructed as a stand alone block of instruction. This, in and of itself, treats the subject as just that, a subject, something segregative from all else. Ethics should be taught in a pervasive manner, in any course or block of instruction where decisions are to be made. I instruct a DoD mandatory acquisition course for grade levels 13-15 and military 04-06 which utilizes an integrated Harvard Case Study Learning Methodology. One of the beauties of the GKC model, for me, was its easy adaptation to my existing methodology with the resulting pervasive quality. The model is introduced in the beginning of the course and then applied throughout. Additionally, I often posit pointed ethical questions to my students to gauge their reaction and ability to cope with ethical dilemmas. Example: Recently I inquired as to how many

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<sup>29</sup>Op cite. Shafritz.

students had, by virtue of their jobs, participated either directly in, or in support of, Desert Storm. After a quick tally, I informed them of the estimates that at least 100,000 people were killed in that operation. I then asked what their culpability was in their deaths. A major replied, "That's our job". A civilian 14 said, "That's something one has to accept if you work for DoD". I interjected that they had all accepted the ethical principles, as well as the decision making model and this was their defense? Finally, an 05 stated, "It was a just war". Somewhat relieved I asked him to explain. His sole response, "We were right".

Are these the type of responses we want? Are they in any way ethically acceptable? They embody at least two connotations. 1. Being unethical is the price one pays for being military, or worse, 2. If you're in the military, its acceptable to be unethical. How many good people feel they are unethical, or are given license to be, because of their military association?

#### Bellum Justum

It is, for the above reasons, vital that the philosophy of Just War doctrine be explained to all of our students. Some members of my own college faculty comment the very title is an oxymoron. Those that make such statements, upon

questioning, clearly don't know the doctrine's origins or understand what it entails.

The doctrine originated in the Middle Ages and is attributed to Saint Augustine, whose purpose, among other things, was justification for Christians serving in the military. The basis of his argument was the difference between existence in "The City of God" (an essay), and the essay in which it was detailed, "The City of Man". Approximately eight centuries later, it was embellished by Saint Thomas Aquinas in his "Summa Theologica"<sup>30</sup>. Subsequent commentaries from Suarez, Hobbes, & Kant to the present have all been variations on the same theme. Its fundamental principles, however, precede Augustine, and are deeply rooted in western thought. Plato furnishes prescriptions on warfare in Chapter XVII of the "Republic", and Aristotle's, "The Politics" (Book VII, Chapter 14) provides "guiding principles" for a governments use of military force.<sup>31</sup>

The Jus Bellum doctrine has two parts: Jus ad bellum (the just means of entering war) and jus in bello (the conduct of just war). What must be clearly understood, is the doctrine, similar to our ethical decision making model, is prescriptive, and details what ought to be done and how

<sup>30</sup>Summa Theologica, Part II, Question XL, by Saint Thomas Aquinas.

<sup>31</sup>A good source for a compendium of short articles dealing with Just War Philosophy and implications for its modern implementation is Issue #12 of the Josephson Institute of Ethics magazine, "ETHICS: Easier Said Than Done".



to do it. It is not a device to rationalize past actions. Now, if we assume our previous model as valid for interpreting the ethical baseline of our society, how then would the government's and military's conduct stand up to scrutiny if the provisions of Jus Bellum were followed?

#### Jus Ad Bellum

A nation is justly allowed to enter into war only when it is declared by a legitimate authority.<sup>32</sup> Since war is not the desired state of man, it is not to be entered into lightly. Jus ad bellum, like solving an ethical dilemma, proceeds to offer steps and guidelines. War, as a means of conflict resolution, must only be entered into as a last resort. The reasons for the war must be morally justifiable, either: defense from aggression, or to correct an injustice which another legitimate authority has allowed to go uncorrected. The intention of war, must at all times, be the establishment of peace. This last point is stressed, not only by Augustine, Aquinas, and Calvin, but by Plato, Suarez, Kant, and even the much (though often wrongfully) maligned Hobbes.

Today, the concept of legitimate authority is generally recognized as the national government in power. This

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<sup>32</sup>This notion extends from the concept of sovereign, who, by definition was God's representative on Earth, and therefore, could do no wrong: His will was God's. Since there were a limited number of sovereigns, this limited the opportunities for war. That is, as long as everyone else feared going to Hell, excommunication by the Church, greater than they desired the potential temporal benefits to be gained by war.

notion clearly breaks down in cases of civil war or insurgency. Additionally, it could be argued in cases concerning member states of the United Nations, the only legitimate authority is the UN Security Council, since member states, by charter, cannot use non-defensive force. Last resort is usually always debatable due to its situation relativity. Even self-defense is questionable: What is the morality of a preemptive strike? Can this be termed last resort? How? These are all questions this model forces a sovereign to ask. Jus ad bellum, is,

"essentially a moral tool or device whose purpose is to allow us to sort out or anatomize a situation to which two prima facie conflicting sets of principles are said to apply, namely, principles of statecraft and morality."<sup>33</sup>

Is Phillips precisely correct in the statement of principles in conflict? For our purposes, if the conditions of jus ad bellum apply, is there not a conflict within our definition of morality, and therefore the procedures for ethical dilemma resolution apply? Cannot our ethical baseline and GKC model be used as the basis for judging whether jus ad bellum applies? Isn't it possible, in principle, that application of this criteria could conclude that the potential atrocities of war would better serve the interests of humanity than the continuation of a heinous wrong? If the answer is yes, then, thus far, our models are in harmony, not in conflict.

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<sup>33</sup>War and Justice, by Robert L. Phillips. Page 15

### Jus in Bello

It is this half of jus bellum, the just conduct of war, where the ethics of the military become acutely involved. There is one concept of jus bellum, to which all cites I have found agree to exist, but differ as to whether it is subordinate to jus ad bellum or jus in bello. That is the concept of proportionality. Under the former, it would be a means of measuring whether it would be moral to enter into a war, i.e. what is the proportion of good to come from the potential of destruction.<sup>34</sup> Under the latter, it would appear to limit the force necessary to obtain a military objective to the importance of that objective.<sup>35</sup> At the tactical level, this would appear to be foolish advice: if you have an advantage you use it. At the strategic level, indeed at both, it must be remembered that the ultimate objective is peace, therefore Kant's prescriptive is

"it is forbidden to use any malignant and perfidious means as would destroy the confidence which would be requisite to establish a lasting peace thereafter." <sup>36</sup>

The heart of jus in bello is the concept of discrimination, the basis of which is intention. Remember, at the global level, the intent of a just war is the righting of a wrong by the means of last resort of which the over riding objective is the reestablishment of peace. No where is the destruction of the enemy mentioned. In a way,

<sup>34</sup>This view is taken in "The Idea of Just War", by Dr. James Turner Johnson. "Ethics: Easier Said Than Done", Vol #12; also see War and or Survival, by William V. O'Brien, Chpt. VIII.

<sup>35</sup>Op cite, Phillips.

<sup>36</sup>The Science of Right, by Immanuel Kant. Part Two, Sect II, Chpt 57.

the concept is remarkably similar to child psychology: you never say the child is bad, what you punish is the child's bad act. The act is committed by the government, not the people, therefore the government is held responsible and is the object of intended punishment. Governments are defended by combatants and are themselves, then, legitimate targets of attack. Noncombatants and otherwise innocent persons (civilians, children, etc.) are never to be the objects of intentional attack. To this is added the principle of double effect.

Double effect recognizes the use of force maybe foreseen to lead to multiple consequences: some good and some bad/evil. Culpability for the evil does not attach itself to the perpetrator as long as the intent of the action was to produce good; the evil produced was not intended as either an end or a means to an end--be it good or evil; and lastly, we address proportionality again: the foreseen, unintended evil must be justified by the level of foreseen good to be produced. So again, we return to the requirement for application of some unknown moral calculus mandated by act utilitarianism.

Double effect constitutes a terrible duality in ethical behavior. The only modern theorist who carries the concept to the same extreme as Augustine that I have found is Robert L. Phillips. The act of killing combatants, and I state

this categorically feeling I will not receive any disagreement, would appear to be a requirement on the battlefield, if for no other reason than to prevent your own death assuming you are a soldier positioned there.<sup>37</sup>

Combatants are human beings and the killing of human beings is generally accepted as wrong, hence the ethical duality. Phillips applies the double effect principle to combatants as well as "innocents". He states that the correct moral intent of the soldier on the battlefield is not the killing of the combatant, but the incapacitation of the combatant by the separation of the combatant from the man. If, in the separation, the man is killed, then it is justified collateral damage.<sup>38</sup>

Now this is where the cynic, if not most people, will yell "STOP". This, they will argue, is perverting the jus bellum prescriptions into a means of rationalizing killing. The cynic will argue the duty of the battlefield soldier is to kill the enemy. If an enemy soldier is advancing and firing into his position, a good soldier will take deadly aim and fire. This closed loop scenario will probably have few, if any detractors. However, what happens if the enemy soldier is only wounded, lying incapacitated and weaponless on the battlefield. Will our less than crack shot soldier finish him off, as it were, at point blank range? Or, while

<sup>37</sup>Interestingly enough, this reason (self preservation) would be insufficient for Augustine because the intent is selfish. Hobbes, on the other hand, recognizes this as about the only right an individual has.

<sup>38</sup>Op cite, Phillips, page 61.

advancing, the enemy soldier throws down his weapon and raises his hands in the air and stands motionless before our soldier. Are we to assume our myopic friend will seize this as the chance he was waiting for and squeeze off several bursts? In all three cases, the opportunity to kill the enemy is available. Yet, if this is the duty, I trust it would be taken only once. However, in all three cases, the duty according to Phillips, would be met by firing the weapon in only the first case. In the second case, the act of our soldier has succeeded in nonlethally separating the man from the combatant and in the third, this separation has been made by the combatant himself. We do not intentionally kill noncombatants. If the duty of a soldier is to kill the enemy, then the very idea of prisoner of war is a theoretical impossibility. Put in terms of our ethical model, an enemy soldier has a moral claim on the actions/decisions of our soldier. If in the course of battle, he becomes recognized as a noncombatant, his moral claim is that he will not be intentionally harmed.

All actions done in accordance with *jus bellum* doctrine, both before and during armed conflict, define the basis of "just" in the intentions. Innocents, that is nonmilitary, may not be intentionally targeted for harm. This simple prescriptive is, of course, not so simply implemented, much less easily defined. Are civilian factory workers in a munitions plant legitimate targets while at

work, but off limits at home? The answer is their targeting is not legitimate in either case. But in the first case, the munitions plant is the legitimate target, and the civilian workers are a variable in the unknown consequentialist algorithm of collateral damage acceptability. This is the point where our GKC ethical model and the doctrine of jus bellum become discordant: acceptability of unintentional harm to innocent stakeholders.

This juncture is critical. If we accept the ground rule that the ethical decision maker exercises foresight as to anticipate all possible outcomes so as NEVER to cause unintentional harm to innocent stakeholders, then ethical warfare is an oxymoron. Jus ad bellum becomes unacceptable due to the possibility of causing harm to innocents allowed under jus in bello. Are we then, by our involvement in the military's ever preparedness for war, much less its implementation, unethical? Who, then was right, Desiderius Erasmus,

"The most disadvantageous peace is better than the most just war"<sup>39</sup>,

or

President Theodore Roosevelt,

"A just war is in the long run far better for a nation's soul than the most prosperous peace obtained by acquiescence in wrong or injustice"<sup>40</sup>?

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<sup>39</sup>Op cite, Shafritz.

<sup>40</sup>Ibid

One could argue if Erasmus were an Austrian Jew during its "peaceful annexation" by Nazi Germany his opinion would have probably differed. Add, also to that moment in history, had Chamberlain not bowed to the proponents of appeasement the war and its atrocities could have been greatly reduced. But what are we doing here? Basing an argument on speculation at its fringe in defense of unintentionally harming innocents? Remember, the GKC model rejects jus bellum because of the acceptance of foreseen, but unintended harm, to innocent stakeholders. Therefore to be in favor of jus bellum and to reject GKC on ethical grounds is to say it is morally acceptable to commit foreseen, but unintentional harm to innocent people. But yet, from a purely utilitarian viewpoint, it could easily be justified. While it can be argued easily in theory, if you place yourself or those you love within the group of innocents to be harmed, your "moral calculus" may equate you with a different answer.

The GKC model forces us to go to the fringe and examine the worst case scenario. If it is determined unacceptable, it requires us to seek another alternative. But what if all the other alternatives are worse? The answer that you should have foreseen this and not begun the path you are on just doesn't cut it: especially if the path you are on was chosen for you--our military doesn't choose its wars, wars are chosen for it. Events also happen. My car could



experience simultaneous, catastrophic brake and steering failure whereby I crash into a school bus resulting in the death and injury of children. Does this mean I ethically should never drive? All models, when carried to the fringe, begin to break down. This does not mean we reject them. My old physics instructor used to remind the class that models are created to explain and/or predict a thing or event and are not perfect. If they were perfect, they would not be models, but the thing itself. If the model isn't as good as we feel it should be we create a new model, change the existing one, or catalog the exceptions. A haunting question arises in the application of my physics teacher's method to our ethical model: Is it the model which isn't as good as it should be, or is it we aren't as good as we could be?

Given my limited knowledge in this area, I know it is beyond my ability to create any ethical model as good as, let alone superior to, GKC. Besides, would we really, fundamentally, like to have a society that embodies an ethic of war? We could easily change the model so that no "intended", vice "unintended", harm is allowed..., but by virtue of potentially allowing for an unethical solution, is not the change itself, unethical? The existing GKC can be for peace, and then changed only for conditions of war, and thus lesson the unethical impact. This is now, by definition, situational ethics: we have changed our ethical

baseline to meet the needs of the situation. Lastly, we can list war as an exception to the model and then get on with its dirty business. This approach labels us unethical by virtue of the fact we allow for the implementation of unethical solutions.

This approach embodies twin dangers. Is it psychologically healthy for our people to view their profession as unethical due to the potential of the worst case scenario? Then again, is there a danger for people to accept as morally justifiable the foreseen, albeit unintended, harm/death of innocents? The first view may progress to the rationalization that if all use of force is evil, then why place limits on force? Do whatever is necessary to get the job done. Once placed outside the moral realm, nothing is to be gained by ethical niceties, therefore kill the enemy by any and all means available... the views in which MyLai's are fostered. As for the impact of the second, one need only visit the Psychiatric Ward of a Veteran's Administration Hospital to find it is not believed by all, at least in the long run. The secondary danger for those that do, is whether they will fail to seek the best means to reduce collateral damage because it is acceptable, in favor of expediency.

Personally, I do not like any of these resolutions. The exception approach appears to be the lessor of the

evils. The exceptions, however, are not to morality, but of personal culpability. In other words, we accept the immorality of our ethical exceptions. We must, as a society and profession striving to be ethical, recognize that the harm/death of innocents, albeit unintended, can never morally be acceptable, but may yet serve a utilitarian benefit. We must then recognize, accept and instruct the moral responsibility to reduce the accepted immoral exceptions.

We close the exceptions in battle by the refinement, utilization, and enforcement of the rules of engagement. In the preparation for war, we close the exceptions by the development, acquisition, fielding, and training in the use, of precision weaponry. A comparison of sortie level collateral damage as a result of allied bombing during Desert Storm to that of WWII clearly demonstrates the closing effect. The identification and isolation of the immoralities of war may one, serve in the proportionality calculation of last resort, two, focus thought toward becoming less unethical by showing a means of continued improvement, and three, never allow us to become so hardened as to fail to recognize the hypocrisy of morally acceptable human carnage. Morally acceptable?---NEVER. Morally repugnant?--ALWAYS. An unfortunate "requirement" of war?--Our moral obligation to ELIMINATE.

## Nuclear Deterrence

Perhaps the ultimate "accepted immoral exception", which even as I write, is being closed in principle, is that of nuclear deterrence. The very concept of second strike or counter-strike or counter value<sup>41</sup> is based on the intentional targeting of civilian population centers. Several recent scientific studies, of which I am sure you have all heard, indicate an all out nuclear exchange would destroy all life on earth. This is not a moral end, it is the end. How do we ethically defend ourselves?

We start with an excuse: the means to our worst case end cannot be uninvented. Nuclear weapons exist, we have therefore inherited the sins of our fathers. We agree the worst case end is immoral, how can we do otherwise? We are in a grievous ethical dilemma: Which is "more unethical" 1) Total, unilateral nuclear disarmament (TUND), leaving our population susceptible to attack, but showing no hostile intentions, or 2) having nuclear weapons, but declaring they will not be used unless we are attacked, thus "protecting" our people. The worst possible outcomes of each are unethical. Can we defend the latter approach?

Our intentions must again define our moral position. The intention is peace through deterrence (nonuse with a conditional threat), as opposed to peace through use, a categorical threat. Thus, the primary intention is peace

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<sup>41</sup>Dependent upon your chosen nuclear theorist and or time period, all terms are generally applicable to nuclear weapons used in other than first strike engagements. I highly suggest THE EVOLUTION OF NUCLEAR STRATEGY, by Lawrence Freedman, for those interested in a readable and comprehensive text on this subject.

(good) which is obtained through the use of a conditional evil intention (if you start a nuclear war, I'll finish it by decimating your cities and probably the planet). Since an evil intention (conditional) is not as bad as an evil deed (categorical)--- an intention can change, but a deed can't be undone---It is less immoral than use as well as TUND, which leaves our people open to attack because there is no credible enforcement function. We are yet again left with an ends justifying the means. Fortunately, it has worked. In a very Hobbesian sense we have technologically substituted the "balance of nuclear terror" for his "terror" imposed by the erection of a commonwealth, which he saw as the only way to assure peace for mankind.<sup>42</sup>

### Conclusion

"Since nations exist in a world where recourse to war is a necessary option, a nation whose values require that such recourse be consonant with the prescriptions and guidelines of just and limited war has no alternatives to the development of a military force responsive to the enlightened leadership of responsible commanders who, in turn, make compliance with just-war/limited-war standards their highest priority. This is not fanciful idealism but the most quintessential realism."<sup>43</sup>

We, as instructors of ethics, must, at a minimum, instill an awareness within our students that all their decisions and actions must reflect the ethical values of the society they are dedicated to protect: both in war and peace. There is much hope the "Cold War" is, or will soon

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<sup>42</sup>Op cite. Hobbes. Chapter XV.

<sup>43</sup>THE CONDUCT OF JUST AND LIMITED WAR, by William V. O'Brien, page 328

be, over. In final analysis, it was a war of economics: They went bankrupt before we did. The price for this result was high:

"...whole great economies are distorted, whole populations are to some extent impoverished, vast amounts of productive capacity needed for constructive purposes are devoted to sterile destructive ones..."<sup>44</sup>

In 1983, the U.S. Catholics Bishops referred to the vast resources dedicated to armaments around the world as "an act of aggression upon the poor".<sup>45</sup> We represent a tremendous opportunity cost, the legitimacy of which our society has a right to question. Our ethics demand we bear the scrutiny well, and defend only that which is truly necessary. Our senior students must be aware they are being watched, not only by society, but by their subordinates--their future replacements & our country's next military leaders. Their actions will set the tone of professional ethics they will emulate: The O1 will pattern the O6, the GS-7 will copy the GM-15. The influential ethics instructor is the senior practicing professional, military or civilian:

"The man whose life is in harmony with his teaching will teach with greater effect."<sup>46</sup>

As instructors, we must make our senior students aware of their ethical responsibility and influence. Their actions constitute the true pervasive ethics instruction.

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<sup>44</sup>THE NUCLEAR DELUSION, by George F. Kennan, page 57.

<sup>45</sup>"Early Advocates of Lasting World Peace: Utopians or Realists?", by Dr. Sisslea Bok. "Ethics: Easier Said Than Done", Vol. #12.

<sup>46</sup>Op cite, Augustine, Chpt. 27.

# CORE ETHICAL PRINCIPLES

1. HONESTY -- truthful, straight-forward, sincere, candid; doesn't mislead or deceive
2. INTEGRITY/PRINCIPLED -- courage of convictions; stands up for beliefs; puts principle over expediency
3. PROMISE-KEEPING -- always strives to keep commitments; reliable, dependable
4. FIDELITY-LOYALTY -- doesn't talk behind your back; faithful to friends, employer, country, and duties
5. FAIRNESS -- strives to be equitable, open, just; not prejudiced; doesn't discriminate on improper basis
6. CARING/COMPASSION -- considerate, kind sharing, charitable, unselfish
7. RESPECT FOR OTHERS -- respects freedoms, dignity and rights of others
8. CIVIC DUTY -- abides by laws and rule; participates, does his/her share
9. PURSUIT OF EXCELLENCE -- does best; pride in work; responsible to those who depend on him/her
10. PERSONAL RESPONSIBILITY/ACCOUNTABILITY -- considers consequences and accepts responsibility for actions and inactions; doesn't shift blame or make excuses