ROUGH DRAFT

THE PLACE OF CODES OF ETHICS IN THE MILITARY

When Stephen Toulmin argued in 1950 that reason has a place in ethics, he was fighting a one-front war against the emotivists.[1] These emotivists denied that reason belongs any place in ethics over and above the place it purchases there from science. Insofar as an ethical dispute is concerned with the facts of the case, reason can enter in. Beyond that, according to the emotivists, it has nothing to say to us.

Our task here is similar to that of Toulmin's, only we are looking for the place codes of ethics have in military settings, and we are fighting a two-front war. On the one front, comparable to the emotivists for Toulmin, we are facing the sceptics who doubt that codes of ethics have a place in such settings, often because, we will argue, they do not understand how codes of ethics, military or otherwise, function. These sceptics we are concerned with need not deny that ethics has a place in military matters. What they are sceptical about are the codes themselves. On the other front is a group we will call the idealists who give these codes too high a place because, often, they too do not understand what codes are about. So understanding the right place for these codes is no trivial academic exercise. It makes a difference, our argument is, where the codes of military ethics are placed as to just how they are used and misused.

An initial step toward understanding the place of codes of military ethics can be taken by referring to Hare's distinction between the critical and the intuitive levels of thinking.[2] Thinking critically about moral issues, for Hare, is that thinking which questions the rules and principles on the intuitive level and which deals with conflicts between the rules

and principles on that level. Because the critical level examines the intuitive, but not visa versa, the intuitive level can be said to be parasitic on the critical.

However, this asymmetrical relationship between the two levels does not mean that the intuitive level is unimportant or dispensable. For one thing, this level of thinking is needed when raising children. They cannot be expected to think critically in their early years; yet they must learn in these years to behave in accordance with society's ethical norms. Giving them some seemingly arbitrary "ready-made" rules gets them started on the road to behaving properly. For another, and this is more important for our purposes, there is simply no time for critical thinking during certain emergencies. Time is not always available to critically think about whether it is ethically proper to torture a prisoner in order to extract information from him about where, beneath us, he has planted a bomb which is about to go off. At such a point in time, all we can do is appeal to our "intuitions" or "ready-made" rules. Hopefully, the rules we have, if we have any at all, have been critically examined prior to such an emergency. If not, chance will determine whether we will do the right thing or not.

According to Hare, the place of codes of ethics of all kinds is on the intuitive level. Codes are paradigm examples of sets of ready-made rules. In addition to being useful in educating children (or raw recruits in military settings) and during emergencies, they have a time-saving function. Generally they save time in keeping us from having to think through what it is we are supposed to do on every occasion when we are faced with a decision. Without such rules, we would be kept so busy doing critical thinking that we would be paralyzed into inaction.

But having placed codes of ethics, specifically military ones, on the intuitive level gives us only a general sense of the place these codes have within the military, since, as military codes, they have some special features which they do not share with codes in other fields such as medicine, law, education and business. It will be useful therefore to make comparisons with these other fields to more precisely find the proper place of codes of ethics in the military.

One way to make comparisons is with respect to the content of these codes. As one might expect, there is some overlap here. All the kinds of codes we are comparing express a concern for the integrity of their respective fields or professions, and all take the high road in speaking of service, honor, honesty and loyalty. Further, the wording of these codes suggests that they are concerned with very weighty matters. And, no doubt, the things they talk about are "heavy" morally. Yet one cannot help but be struck by how much more important some are than others. In particular, military codes have more to do with life and death matters than codes for education, law or even medicine. There is a kind of ethics of scale involved here. Whereas physicians may have to make decisions of life and death about individual patients, military commanders during war routinely make such decisions which affect hundreds, thousands, and in some cases millions, of people. Further, they make these decisions not just as they affect people who are marginally alive because of some illness, but more often than not, as they affect those who are young and in good health. It would seem, therefore, that a plausible case can be made for saying that codes of ethics in the military have at least as much substance to them as do codes in other fields.

Military codes of ethics differ from other codes in ways other than content. Codes are not just lists of rules. They are lists intended to apply to certain people. Thus within the medical community there are codes for physicians, nurses, and various other health care specialists. In medicine's case, these codes center on the physician as can be seen in the nurses' codes which stress, among other things, obedience to the physicians. Obedience of inferiors to superiors is found in military codes as well, but with an important difference. In medicine, and in law for that matter, the significant actions which could have the greatest ethical implications are performed by the physicians. They perform the surgery, they do the diagnosis and they "order" the medications and other therapeutic procedures. Military superiors certainly give orders in a similar fashion, but beyond that they do not, strange to say, do anything. Above a certain rank, military officers will not regularly be found on the field of battle shooting at the enemy. Instead commanders tend to become administrators who have others do the shooting for them. In medicine that would be comparable to physicians devising plans for surgical procedures and then ordering the nurses and other health-care professionals and non-professionals to actually carry out the surgery.

This comparison to medicine helps to show that the range of responsibility in military matters is extremely wide since it is those in the lower ranks who, as it were, do the surgery for the generals and admirals on the enemy. This means that in contrast to practices in medicine, and even law and education, both professionals and non-professionals in the military are doing things which inevitably will have major ethical implications.

The necessity of war forces this sharing of responsibility across all ranks, where the high-rank personnel take responsibility for ordering and the lower ones for actually doing whatever it is that needs to be done. The problems these arrangements of responsibility pose on a code of ethics are twofold. First, from the point of view of the superiors, what gets done becomes remote, so it becomes difficult for them to assess militarily and morally what is happening. About such remoteness, A. J. P. Taylor in his The History of the First World War gives the following account.

> Passchendaele was the last battle in the old style, though no one knew this at that time. Even the generals at last realized that something had gone wrong. On 8 November (1917) Haig's Chief-of-Staff visited the fighting zone for the first time. As his car struggled through the mud, he burst into tears, and cried: "Good God, did we really send men to fight in that?: His companion replied: "It's worse further up." Haig alone was undismayed. He went on planning a renewal of the campaign in the spring.[3]

Second, from the point of view of those doing the shooting, their sense of responsibility will often be no match for the levels of responsibility which are laid at their feet. As many of them will be non-professionals, they will likely have a less fully developed sense of what is expected of them than those professionals who are commanding them, but not doing the fighting.

The special place, then, a code of military ethics has which to the same degree codes of other fields do not have is that it ranges over both those who are, and are not, well trained to follow its edicts. As if this

were not bad enough, the edicts apply to those doing the fighting under the most trying conditions. (As we have noted) these fighters are expected to live under certain standards of ethics while under fire, while suffering from fatigue and injury and while fighting often under less than ideal environmental conditions. It is rather paradoxical that we expect those in battle to deal with the most serious of moral problems even though they may not be professionally trained and even though they must work under the worst possible conditions. This is somewhat comparable to asking an x-ray technician to perform controversial surgery on a patient not in the sterile surroundings of a hospital but at the scene of an accident near a busy, noisy and dirty intersection.

Thus far, we might say that everything is down hill when it comes to applying a code of ethics to the military. Matters just seem to be more serious and difficult here than in other fields. Taking account now of another consideration which makes the military setting different from the setting of health care, law and education seems, if anything, to add to the difficulties. This consideration has to do with the special group character of military activity. Both sociologists and all who have been in a military uniform are familiar with the kinds of group behavior exhibited by young men in uniform. Such behavior can and at times does range on the negative side all the way from mild intimidation of others to rape and murder. In a group, these men will do things they ought not; things that they would not do by themselves. The principle here can be expressed as the whole is worse than the badness of the parts. That same kind of behavior becomes still worse when the group is given weapons, is transported to another nation where the social constraints upon it are fewer than at home, and is allowed to operate within a permissive military command

structure. When this group character, along with the other characters of the military already discussed, is taken into account, it is difficult to avoid the conclusion that there is a greater need for a code of ethics than in medicine, law, education and so on. The problems are simply more severe during war as compared to peace, so the need for some ethical control appears to be greater.

If this greater need is indeed present, nothing as yet has been said as to how it might be satisfied. Fortunately the answer to that question is found in still another difference between the military and the other fields of endeavor with which we have been comparing it. Comparisons to medicine and law are particularly useful. Institutional organization in these fields is much looser than it is in the military. A certain form of organizational discipline is certainly present during the training periods in medicine and law, although the control is far less than it is in basic (officer) training within the military. Once training is over, a certain amount of organizational discipline will continue for those in medicine who work within the framework of a hospital or medical institute. Similarly those in law often work for a large legal firm, where what they do can be watched and assessed to at least some degree. However, many others will practice their professions as physicians or lawyers as Lone Rangers. No doubt these professionals who do their work pretty much by themselves will be subject to the restraints of their professional associations. However, these associations are very often permissive in practice, if not in principle. Thus, if they have a code of ethics for their members, it will make sense to view it primarily as self-imposed. The code, when articulated, will be seen by the associations and the professionals who belong to them as something which will appeal largely to individual conscience,

to a sense of self-respect or, perhaps, to a personal sense of professional integrity. As a result, there will be a strong temptation by some to view the code in particular and any call to ethical behavior in general as just so much mouth wash.

In the military, codes of ethics can also be seen as gyroscopes to guide individual behavior. However, since the military viewed as an institution is so much more structured than medicine and law, it need not accept the idea that codes of ethics are for individuals to adopt or not adopt as they see fit. The institutional control the military has over its people is tighter even than that of a business run by an autocratic president. One can resign from a position in business much easier than from the military. It is also easier to find new work with the competition in business than in the military. If IBM is not treating one well, Apple or Xerox might serve as a place of employment. In contrast, opportunities to work with armies, navies or airforces other than those of one's native country are strictly limited.

Thus we can see that the military's authority over its personnel is great, relatively speaking. If it chooses to exercise its authority over its people in order to get them to work in accordance with a code of ethics, then it might expect at least some success in achieving compliance. Just considering that authority by itself, great success might be expected. However, as we have observed already, the ethical problems of the military are more serious and difficult, so it is not clear how much success can be expected in the end. The greater authority of the military and its greater problems may just balance each other out, leaving the military with codes of ethics no stronger in principle than those found in medicine, law, business and education.

Still, the need for a code of ethics within military settings, being as strong as it is, encourages persistence in the inquiry into the possibility of having a functioning code, so at least the attack from the sceptics' front can be dealt with adequately. It will be recalled that the sceptics doubt that codes of ethics have any place in the military scheme of things. We did not specify why these sceptics have such doubt, but it should now be clear that these doubts probably rest on their awareness, dim or clear as it may be, of the difficulties facing those who would put the brakes of ethics on a military machine. Others might be sceptical simply because they are realists about war who feel that ethics, whether in the form of codes or not, does not belong in military settings. Yet still others might be sceptical for a totally different reason. These people may feel that ethics has a place within the military, but that codes themselves are a waste of time for reasons other than those mentioned until now. Some of these people might feel that these codes have a tendency to be held too rigidly once they have been accepted, while others in this group might feel that codes in large enough numbers already have been put down on paper. Why then, this latter group asks, do we need another code so that it too will be ignored like the rest?

As we have already indicated, we want to argue against the sceptical attack, if not necessarily against all the range of reasons which support it. We must, of necessity, oppose the realist reason some sceptics give, otherwise the whole study of military ethics becomes moot. We need not, however, disagree with those sceptics who attend to those conditions that militate against having an effective code of ethics. Indeed we have insisted that these difficulties are real. Further, we need not even disagree with the sceptics who say that there are too many codes to be found within the environs of the military. In fact, most standing military organizations

have had ample opportunity to codify and recodify the ethics with which they are most comfortable. To be sure, it remains a possibility that whatever failure they have experienced in getting their military personnel to behave morally is due to the need of a further recodification of their ethics. They might not yet have gotten it quite right. Still, the felt need for a code, even though codes are already in existence, may not be really a need for a code as such, whether it be a modified version of an old code or a totally new one. Rather, the need may have to do more with effectively promulgating the codes already in existence.

If this suggestion has some merit to it, it is important to consider in more specific details than we have so far as to just how a code is to be promulgated. We will begin this consideration on the lowest level of the military ladder. We have said that the nonprofessionals in the military pose special problems. Being less trained in military traditions than the professionals, and less educated generally than their leaders, they will have more of a tendency either to not know what to do when faced with an ethical problem or to do the wrong thing instinctively. No doubt many will bring a sense of right and wrong with them from their religious and educational background. Yet many will not. Once the mix of those with and those without this sense takes shape, only the most optimistic will assume that right will have more might than wrong. Reminding ourselves as well that this mix of nonprofessionals could very well be asked to act militarily under the most stressful conditions, it would seem that promulgating merely by giving a lecture or two in basic training would hardly be enough to do the job. The code, whatever its content, would have to be presented repeatedly in such a way that it would be, as it were, ingrained into one's conscience to such an extent that it could not be forgotten.

As to those without a conscience, it would be enough for them to ingrain the code into their general memory, with the added thought that violations would be met by sanctions from those above them in rank.

The exact form the training in the code would take would vary with the circumstances. If a war were underway or about to begin, and the time the nonprofessionals were in the military was counted by the weeks, promulgation might mean little more than committing the code to memory by repeating it in training sessions and, in addition, making clear what the procedures are for invoking the code against those who act immorally. This suggests that the code would have to be brief in form and to the point. Prisoners, it might say, are not to be killed, tortured, robbed or abused without mention of exceptions. In the rush to battle there might not be time to deal with such borderline problems as when an enemy soldier is a prisoner. Is he one simply by dropping the weapons and throwing his hands up? What if he does these things in the heat of battle when there still is some danger involved in the process of taking prisoners? The promulgation of the code here would not include such refinements in the art of ethics. Rather it would be designed to help the military avoid committing gross moral errors such as those at My Lai in Viet Nam.

In peacetime, elaboration on a basic code would be possible. The code would still need to be kept simple in the sense that its basic form would likely need to be kept to eight or ten rules and with each rule kept as simple as possible. Within that format, the content of the rules would have to be specific enough to have prescriptive power, and the major content areas would have to be encompassed. Certainly a rule about obedience to a legal order from a superior would be included in the code as would one concerned with truth-telling and the treatment of civilians. But now in

peacetime, while there is time, elaboration would take account of more exceptions as well as borderline problems. Explanations about codes in general could also be encouraged such as, for example, that they are revisable and that they are not intended to solve all the moral problems we encounter. These elaborations and explanations could be presented to the lower echelon personnel with case studies in a discussion format so that they might develop a sense that the ethical problems are real ones. In all this educative process, however, it would be a mistake to lose sight of the basic rules and to allow those who are to follow them to forget what they are. Part of the process of learning about the code would be that deviations from it are at best very rare and that therefore when in doubt it is probably better to follow the code than not.

In sum the code for the lower military echelon will be made up of concrete rules each of which is to be followed rigidly and automatically. It will be viewed as a code which has the sanction of the military and the society which stands behind it. Such a code therefore is not to be violated lightly.

To some extent the place of a code of ethics for NCO's will be much the same. They, too, will have to memorize the rigid code and keep in mind that penalties will come to those who are forgetful. However, these professionals will be giving orders as well as taking them, so their code will be somewhat more complicated. They also will be important as teachers of the code, so their understanding of it will have to go beyond that of those below them. In fact, they may be more important as teachers to the enlisted ranks than are the commissioned officers. After all, they spend more time with their "students" so they have ample time to teach the code and other things as well both by example and in lesson form. Additionally,

NCO's are not so distant from those under them in rank; and at least the good ones can, as a result, relate to them better than can the brass. It would, therefore, be a great mistake to rely exclusively on commissioned officers to promulgate a code of ethics.[4] Just as most things the enlisted personnel learn come from the NCO's, so the code must come to a large extent from the same source.

To some this conclusion may seem unfortunate, since a sergeant or a petty officer may not seem to be the right sort of teacher from which to learn about ethics or morals. It might seem more appropriate to have the chaplain do that job if it is true that the regular commissioned officers need some help in this regard. But ethical rules put together into a code are basically no different from rules of any sort which military people have to follow. If a sergeant can teach recruits the rules about how to behave on the firing range, he can teach them about obedience, truth telling and the treatment of prisoners. This is not to say that the NCO's will do all of the teaching. Presumably they will be supported by commissioned officers who will, in addition to teaching enlisted personnel, be responsible for teaching the code to the NCO's and to other commissioned officers.

The officers, the NCO's and even some enlisted personnel have still another task with respect to whatever code is developed. It will be recalled that, according to Hare, the code belongs on the intuitive level of moral thinking. That is the level where the rules are learned so well that they are followed automatically. In this regard what we have said is that codes are to be drilled into military personnel in the same way that other tasks are drilled into them. A lecture now and then about the code will hardly do the job. But aside from learning the code so well that it achieves

intuitive status in people, there is work to be done on the critical level. Here certain officers, and others, need to review the code to see if it needs revising. This suggestion merely reiterates the point made earlier that codes are not final statements of some truth. Those who treat them as such and then refuse to accept emendations or exceptions to them represent the idealists mentioned at the beginning of this article (chapter). To say that critical thinking will from time to time make changes in the code is part of what is meant by not taking the code too seriously. Officers, then, need to follow those rules in the code which everyone else follows. They need to follow rules which apply to them as officers; they need to be involved in teaching the code; and now, it appears, that at least some of them who are especially adept at these matters need to do critical thinking about the codes as well.

We have spoken of the danger of attack from both the sceptics and the idealists. Against the sceptics we have argued that the seriousness of war and the group behavior of young armed men create a strong need for a rigid code of ethics. We have also argued that the tight institutional structure of a typical military organization makes it possible to promulgate such a code. Against the idealists we are now arguing that although codes should be rigidly held to, especially in emergencies, they should not be taken too seriously in two senses. First, they should not be thought of as the whole of what military ethics is about. Codes merely guide us in those serious situations which occur repeatedly enough to warrant our attention. It is difficult, and very likely impossible, for a code to cover all contingencies without becoming so abstract as to lose its prescriptive character. Second, codes are not fixed in concrete. Like other "laws" they are subject to emendation by critical thinking. So whatever code is

in force, it is not the all and forever of what military ethics is about.

In addition to the attack from the sceptics and idealists, there is, unfortunately, a danger of attack on military codes of ethics from a third front. This front is manned by a loose coalition of attackers that are most appropriately labelled hypocrites. Some hypocrites are less dangerous than others. Perhaps the least dangerous of the lot are those who do not believe in codes but act as if they do because they both perceive that others take such codes seriously and are concerned about what others think. They follow the codes and, insofar as they do, they do less harm to others than their allies do. They do not even do damage to the codes themselves if they successfully hide their true beliefs about them. For all practical purposes, these hypocrites are indistinguishable from the sincere followers of the codes.

The more dangerous hypocrites are those who profess to follow the codes of military ethics for whatever advantage that gives them but do not follow them because they neither believe in the codes nor care what others think. If they get caught violating such codes, they explain away their guilt by blaming the other side. However, more often than not, they figure not to get caught so as to have the best of both worlds. They gain by cheating, but gain also by claiming not to cheat.

In addition to harming those who are the victims of their behavior, these deviant-sceptical hypocrites, as they might be called, help debase the authority of the military codes themselves. If they fool everybody by their hypocrisy, then the codes are not hurt, of course; only their victims are. But when found out, as they often are, a feeling of unease develops that the codes have been tarnished, since they have been used to help cover behavior which the codes themselves forbid.

A further debasing takes place from another kind of hypocrite. These hypocrites are not so much sceptics as they are weak-willed types. They pretend to follow military codes but cannot do so for military and/or political reasons, even though they feel they should. These weak-willed hypocrites are common and dangerous enough. But perhaps the most dangerous to the codes themselves, although not to their victims, are the deviant idealist hypocrites. The idealists, it will be recalled, are those who put too much of a burden on the code by making its standards so high that they are reached only with the greatest difficulty, if at all. Now normal idealists would do the best they could by trying harder each time in the face of failure. Our reaction to these idealists is most typically a combination of grudging admiration toward their effort and despair toward their futile idealism.

However, for some of these idealists, social pressures will work to turn them from normals to deviants. Some of these deviant idealists will simply convince themselves in fits of idealistic fervor that they and their military are acting in accordance with the codes which they profess to be following. These particular deviants are, of course, not hypocrites since they sincerely believe, wrongly it turns out, that they are acting in accordance with the moral codes that they are espousing. But other deviant idealists are hypocrites, and it is these who are especially dangerous to codes of military ethics. These hypocrites still believe in the very high standards which are contained in their codes but realize that they and their people cannot always live up to these standards. They also realize that everyone expects them to live up to these standards partly because they profess them so strongly. The temptation for these true believers, then, will not be to be hypocritical about the codes as such but

about their adherence to them. The danger these hypocrites pose to the codes derives just from the fact that they are official and powerful defenders of these codes. If, then, they fail to live up to the codes not in the admirable sense of trying to reach high standards but in succumbing to hypocrisy, a form of lying, they undercut the codes in a very important sense. Their hypocrisy makes it look as if it is impossible for a military organization ever to hold onto a code of ethics consistently.

No doubt there is no inconsistency here at all qua codes of military ethics. The only inconsistency is in the stance the deviant idealist hypocrites take regarding the codes. They cannot hold onto both their high standards and resist the political pressures to lapse into hypocrisy.

We come around, then, now from the direction of the third front to better understand the place of a code of military ethics in the military by observing how such codes can be misapplied. The normal idealists simply tend to encourage us to misplace these codes by overrating their importance. With the hypocritical idealists the misplacement swings around 180 degrees. Rather than being overrated, they now appear to be worthless, since some of their most ardent defenders both fail to live up to their codes and lie about that fact.

What, then, is the place of codes of ethics within the military? Codes are practical devices for controlling peoples' behavior in recurring situations. The idealists' mistake is to make these devices impractical. They do this by creating codes with standards so high that few, if any, can reach them. In their idealism, they also create the impression that codes are immutable and that they somehow blanket all possible moral contingencies. But codes are neither immutable nor all-encompassing. Critical thinking enables us to revise codes as situations change. And the very

fact that codes cover only recurring situations shows that they cannot be all-encompassing. They further cannot be all-encompassing since codes need to be brief. Brevity is especially necessary for military codes of ethics since they aim to control the behavior of nonprofessionals who have less sense of military traditions than professionals do.

It is also important to know how to use codes as practical devices. It is in this regard that many sceptics misplace military codes of ethics to the point of supposing that they have no place in military life at all. It is no good just telling people about the codes they are expected to live by. These codes must be properly inculcated and rigidly enforced. Once they are, they need no longer be seen sceptically as a waste of time and effort. Nor need they, once properly understood, tempt us unnecessarily to lapse into hypocrisy and thereby create cynicism in others. Granting all the difficulties inherent in meeting ethical standards during war time, it still remains true that since codes of ethics only ask military personnel to meet certain minimal standards of morality, at least that hypocrisy born of failure to meet those standards can be avoided.

FOOTNOTES

1. Stephen Toulmin, An Examination of the Place of Reason in Ethics (Cambridge: University Press, 1950)

2. R. M. Hare, Moral Thinking (Oxford: Clarendon Press, 1981.

3. A. J. P. Taylor, A History of the First World War (New York: Berkeley Publishing Corp, 1963), p. 124.

4. Cleveland W. Feemster (Sgt.), "Ethics and the Noncommissioned Officer," Ethics and the Military Profession, April 1979: 2-5. In same issue see also "Military Professionalism and the Emergence of the NCO" by Captain Calvin T. Higgs, Jr., pp. 5-18, and "What is the Ethical Code of the Noncommissioned Officer?" by Captain James Narel, pp. 19-22.