

**Limitations on the Use of Military
Force in the War on Drugs**

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Is the civilian police officer really a soldier in a blue uniform? Is the battle against crime a variation on a battle against enemy forces in wars between nations? Is the war we wage against crime, specifically the war on drugs, really comparable to the wars we wage against nations? To those who wholeheartedly endorse the constabulary use of military forces, such questions are presumably answered in the affirmative.

But the issue of using the military in a law enforcement constabulary role is a fairly complex issue. Broad generalizations concerning it are bound to be either misleading or naive. Even if we narrow our focus to the use of the military in the war on drugs, the complexities are enormous because of the many different "fronts" on which the drug war must be fought. There is the war against the abuse of

drugs by individual users, the war against drug distribution at local, regional, state, national and international levels, and the war against drug manufacturers, drug importers and drug exporters. There are a number of problems associated with drug abuse, such as broken homes, child and spouse abuse, birth defects, drug related robberies, assaults and murders--the list seems endless. What makes the war on drugs so very difficult to fight is the fact that it has to be fought in many different ways by many different sorts of combatants. There is very little about it that is amenable to simple generalizations about whether we can or cannot use this or that force or strategy.

Let us state at the outset that we are assuming what seems to us painfully obvious, viz, that drug abuse in our society has reached the level of a national crisis. Illicit drug use causes significant harm to our society akin to an attack by an invading army. We maintain that the war on drugs ought to be fought, and that ethical justification for fighting it rests on the harm principle (do no harm), the principle of benevolence (the general welfare), the principle of autonomy (respect for persons, individual, liberty, etc.), or any one of a number of other ethical notions. We are assuming that, whatever the reader's ethical persuasion, there is

agreement that it is right and good to wage war on drug abuse.

In this essay, we will argue that in general the straightforward use of military force for constabulary purposes is something that would serve neither the military nor civilian law enforcement operations very well. The term 'constable' is defined as a "public officer *usually of a town or township* responsible for keeping the peace and for minor judicial duties." A 'constabulary' is an "organized body of constables of a *particular district or country*...an armed police force organized on military lines but *distinct from the regular army*" (Webster, emphasis added). The importance of these definitions is their focus on domestic rather than international police functions and the distinction between constabularies and the regular army.¹ Our first argument is designed to bring out what we see as significant differences in training, attitudes, and outlooks appropriate to combat soldiers versus police officers. Our second argument raises the question of the role of the military in a constitutional democracy. These two arguments are designed to show that, even though we are in fact already making extensive use of the military in the war on drugs,² there ought to be a strong natural presumption against it--at least in domestic or national matters.

Having attempted a pre-emptive strike against the use of the military in the war on drugs, we will call attention to some very legitimate uses of the military in that are not affected by these considerations. If there is a general presumption against the use of the military in the war on drugs, and at the same time some recognizably legitimate uses, where do we draw the line. By introducing a modified version of the Principle of Double Effect, we will provide some standards in terms of which the military may justifiably render valuable assistance in the war on drugs. It is our view that the use of the military in the war on drugs ought be limited to activities that meet the conditions of this principle.

I. Training, attitudes, and outlooks:

While we use the language of warfare and fighting in discussions of the war on crime, it is important not to overlook the analogical status of such language. The war on crime, especially the war on drugs, is indeed a war, its battles are real battles, its stakes are incredibly high, and its importance cannot be underestimated. But the training, knowledge, skills, and attitudes of its "warriors" are special to the police profession.

An individual who is trained to be a good combat soldier is not the equivalent of an individual who is trained to be a good police officer. The combat soldier undergoes specific training, acquires special knowledge, skills and abilities and has a certain outlook on and attitude toward the enemy. On the other hand, if Jones is a good police officer, he or she will undergo specific police training, acquire special knowledge, develop specific skills and cultivate a particular outlook on or attitude toward the alleged lawbreaker. The training, knowledge, skills, and outlook essential to being a good soldier, while similar in some respect to that of the police officer, are on the whole unique to the military. If a person who is trained as a combat soldier is used as a police officer, or vice versa, the result will be either inappropriate police work or inadequate soldiering.

While requirements vary from state to state and town to town, the admissions and training requirements for the police officer are fairly standard.³ Most cities and towns require that their law enforcement personnel be admitted to a regional police academy for six months of training. Admissions requirements include a high school diploma, in some cases two years of college, and both physical and mental soundness.

In addition to a physical fitness examination, the would-be police academy enrollee must submit to ten hours of psychological and psychiatric evaluation. Efforts are made to eliminate candidates who have potentially harmful character flaws, emotional instability, aggressive or violent tendencies, or who have alcohol or drug related histories.

Once admitted to the police academy, the cadet receives extensive training in the safe and proper use of firearms, hand to hand combat, and other defensive strategies. Physical fitness conditioning is accompanied by courses in the history of law enforcement in which the police officer is presented with actual examples of acceptable and unacceptable police work. Training in criminal investigation includes evidence collection, crime scene analysis, fingerprint gathering, and record making. While the police officer is trained to shoot to kill, he or she is also sensitized to the rights of suspects and the legal limits of police aggression toward them. There are proper procedures for making an arrest, stopping a motor vehicle, invading a private home, etc. Police training includes strategies for handling domestic feuds, talking a would-be suicide off a window ledge, persuading a suspect to surrender, negotiating for hostages, etc. Even though every police officer receives rudimentary training in drug investigations, those who work this beat

are required to take additional special training. Approximately eighty hours of drug enforcement administration training is taken by officers who do battle in the war on drugs.

The police officer knows that eighty percent of his or her work is public service and public relations oriented. Only about twenty percent is "combat" oriented. A duty to render positive assistance to members of the community justifies the academy in requiring its cadets to learn such things as CPR and First Aid. In keeping the peace, the law enforcement official must also promote a good image in the very same community of people among whom enemies of peace and civility live and move. The operational precept of the police officer cannot be "advance and destroy" unless the case is clearly one in which public safety is at stake. The ostensible enemy of the police warrior must almost always be seen as an "alleged" offender whose guilt or innocence is to be determined later in a court of law.

Compare what we have said about police officer training with the induction standards and training requirements of a soldier. There are numerous similarities between police and military training programs. Like police officers, today's soldiers are cut from the same cloth of high school graduates who volunteer to undergo a rigorous entry level training

regime. Infantrymen spend at least 12 weeks learning basic skills before undertaking more specialized training. Combat readiness requires constant practice throughout one's military career.

Unlike police officers who are taught *restraint* in the use of force, combat arms soldiers are taught to focus force in the form of firepower and movement to overwhelm an opponent. The principle of sufficient force is applied when closing with intent to kill, capture, or destroy. Disciplined soldiers exercise restraint only to conserve ammunition and to limit collateral damage. Legal and community concerns are at best remote intentions on most battlefields where soldiers *advance to destroy* an enemy.

It may be tempting to suggest that the military police are suitably trained for constabulary efforts in dealing with civilian lawbreakers, but we should not rush to this conclusion. The military police training program at Fort McLellan in Alabama is comparable to the training program of an infantryman.⁴ But even though they are taught the same basic skills and have the same basic knowledge as the infantryman, the skills are not as deeply instilled and as finely honed as they are in the regular infantry. Like the infantryman, the MP is taught to close with the

enemy and destroy enemy installations, but their battlefield activities are somewhat different from those of the infantry. They are likely to serve combat objectives by controlling vehicular movements, keeping runways open, keeping supplies flowing, handling POW detainees, and operating radio equipment.

Unlike the infantryman, the MP is trained to apprehend and interrogate suspects, conduct criminal investigations, collect evidence, analyze and secure crime scenes, settle domestic disputes, and maintain law and order. And yet, the main thrust of the military police training is not criminal investigation but military combat. An estimated ninety percent of former MPs join civilian law enforcement ranks, but they are required to attend the police academy for the same 640 hour training program given to other police trainees. To retrain all combat soldiers for police work, or to double train personnel for both police work and combat, would be a mistake. The end result would be either an infantryman who is not mentally prepared for wartime combat, or a police officer whose attitudinal posture is inappropriate to constabulary endeavors. The very existence of different training programs for military police beyond that given to infantrymen underscores this conclusion.

Recognizing a new state of affairs and perhaps an end to the cold war, we may be tempted to think infantry training should be less combat oriented. But, most military professionals still view the world as a dangerous place. In spite of hopeful European developments, the Middle East, the Korean Peninsula, and Latin America remain explosive corners of the globe. Traditional bipolar recipes for deterrence remain untested in a multi-polar world. In short, military professionals have reasons for wanting to keep their powder dry.

Preparation for war is the *raison d'être* of peacetime armed forces. Short notice contingency operations, like Grenada and Panama, suggest well-trained units in a state of readiness not unlike the state of readiness of an NFL football team lined up for the snap of the ball--every muscle tensed, physically fit and ready to spring into action.

Differences in training may be accompanied by differences in attitudes and outlooks on the part of trainees. Some insight into the attitude or outlook that an effective combat-ready soldier might possess can be found in the writing of Samuel Huntington and J. Glenn Gray. Huntington describes the military mind⁵ and Gray describes the soldier's view of the enemy.⁶ Let us look at each in turn.

Huntington refers to the military ethic as a "conservative realism" that values a strong commitment to the military security of the state. He thinks the military mind tends to view human nature as weak and essentially unchangeable.

The military view of man is decidedly pessimistic. Man has elements of goodness, strength, and reason, but he is also evil, weak, and irrational.⁷

While a police officer may hold such a view of human nature, he or she may equally hold that humans are essentially good, even though some may misbehave at times. The police officer should believe that such offenders are corrigible creatures and that putting them in jail is just what they need to get straightened out. On the other hand, if you hold that human nature is evil and incorrigible, you may be disinclined to commit your enemy to the house of corrections.

Important differences also exist between the way the soldier conceives the enemy and the way the police officer sees the people in the community. According to Gray, the soldier may see the enemy (a) as beast, (b) as the devil, (c) as a comrade in arms [opposing player in the game of war], or (d) as a decent human being who is the victim of forces beyond his control. Gray notes that all four images of the enemy can

be found in fighting men. Gray himself favors the fourth image of the enemy, but acknowledges the obvious fact that it is the worst image of the enemy to have if you want soldiers to be aggressive and effective in attacking the enemy. Given that soldiers typically view the enemy as a beast to be slain, or a devil to be defeated, a soldier in the role of constable could not approach those on his beat without running serious risk of violating their rights.

II. Grounding the differences:

Differences in training, attitudes, and outlooks on the part of military versus law enforcement agencies reflect something of the role assigned to each by a society calling itself a constitutional democracy. Even though we may feel that armed services personnel at every level are men and women of good character and good intent, we may want as a matter of principle to oppose the merging of these two armed forces in society. We view with horror the march of the army on its own people in places like Beijing and we are confident that this will not happen in our society. But this confidence must rest in large measure on the clearly established role of national defense given to the military by civil society. If society were to redefine the proper role of the military to include

domestic constabulary actions it would put itself on a slippery slope that at some future time could spell disaster for the fundamental rights and liberties essential to a genuine constitutional democracy.

III. A limited role for the military:

From the fact that police officers and soldiers are not interchangeable personnel in their proper domain, it does not follow that there are no areas in which the military might render valuable and highly significant service to the cause of fighting criminal conduct. In fact, military personnel on routine training maneuvers can easily overlap with the work of law enforcement officials without violating a single element of the warrior ethos. We offer the following example of one way in which such an overlap might occur:

Long distance searching attacks are hallmarks of light infantry operations. Commanders vary march conditions (terrain, weather, night/day, etc.) to generate soldier's interest and attention to proper search techniques. This actual example describes a battalion (500 men) attack through remote national forest terrain. Training objectives were standard, with one exception. In addition to finding, fixing, and fighting the opposition force, soldiers were briefed to observe and report any signs

of marijuana production.

Law enforcement officers briefed leaders and soldiers on how to identify pot production sites. Warnings to only observe and report were issued to all hands. It was harvest time. Growers were busy protecting their crops from other criminals. Photos of previous seizures were used to drive home the dangers involved. Narcotics agents were on standby to perform police functions.

Twenty-seven squad sized (nine men) patrols established search patterns in the designated wilderness area. Water was a key factor in the hot, dry climate. Light fighters, opposing forces (OPFOR) and drug growers (POTFOR) shared the thirst for water. Search activities were focused on intermittent creeks, runoffs, and hillside seeps.

Mixed reports of OPFOR and POTFOR cracked across the radio networks. Squad leaders used standard formats to report both activities. Leaders responded with resources and support. Police helicopters were used as rappel platforms so police officers could negotiate the rough terrain quickly. Even the OPFOR got into the act by reporting two cultivation sites. Growers were using plastic pipe to pass drip water to the plants. Plants were carefully positioned to deny detection from the air.

The strategy was to find the water source and follow the pipe. The challenge of discovery energized the troops. Competition grew as bigger finds were discovered. Soldiers cheered when agents torched heaps of ripe marijuana. After two-days of searching, almost every squad had observed and reported illegal activity.

The unit commander saw the training as a "win"/"win" activity. Soldier were honing their professional skills while serving a secondary civic responsibility. The military procedures followed were strictly by the book. The operations required nothing of the soldiers that would not be required of them in actual combat and that the military studiously avoided usurping the proper functions of the police involved.

In addition to the sort of use described, military force might also justifiably be deployed in the area of border patrols. The Coast Guard has long played an important role in defending the nation's borders against illegal imports, including illegal drugs. Our military police units are uniquely organized and equipped to do border patrol and engage in interdictions. They are better equipped than both infantrymen and law enforcement officials in that they have significantly greater machine gun firepower, state-of-the-art night vision devices, helicopters, special

communications equipment, grenade launchers, and small automatic weapons. Moreover, each unit is self-sustaining in terms of basic survival skills and knowledge. An article in a recent issue of Military Police claims that the military has the ability to provide assistance in the war on drugs by detecting and monitoring aircraft, aerial photography and imaging, long-range reconnaissance, searching shipping containers, transporting law enforcement personnel and seized drugs, loans of military equipment, and expanding the training of law enforcement personnel.⁹ These border activities, however, are outwardly directed, rather than domestic, operations. Yet many of these same operations could be deployed within our borders. Given that there are ways in which the military could be used in the war on drugs, by what standards do we assess the legitimacy of such use.

IV. Setting the limits:

As mentioned earlier, any constabulary use of the military will seem to some people to put us on the slippery slope of a full scale military police state. Recently the New York Times reported on "the first use of active-duty troops to fight marijuana growing in the United States."⁶ About two hundred soldiers worked with National Guardsmen and Federal

agents for a two-week period raiding hidden marijuana gardens on a national conservation range in Garberville, California. The role of the active duty soldiers was described as one of providing transports (convoys and helicopters) for the guardsmen and federal agents.

Local residents responded with complaints and protests over the disturbing sounds of military transports in their towns, noisy helicopters in the skies overhead, and armed guardsmen prowling the woods near their homes. Cries went up that civil rights and environmental laws were violated. Some lawsuits were filed against the use of military force in domestic areas. Even the local police authorities complained that the cost of this two-week venture was enough to keep their own local fight against drugs going for three or four years. The slippery slope position raises the fear that monetary and other considerations will lead to full duplication of military and constabulary endeavors in a time of budgetary stringency. How are we to guard against this fear?

One way to prevent abuses of the use of military force in the war on drugs (or any other constabulary function for that matter) can be found in a modification of the Principle of Double Effect. This principle applies to any action having two different effects or outcomes, one foreseen, intended, and desirable; the other foreseen, unintended, unavoidable and

usually undesirable. The action in question is evaluated on the basis of its primary effect--the effect that is desirable. The secondary effect is viewed as a necessary price to be paid for achieving the primary effect.

A modified version of the Principle of Double Effect could be introduced to cover actions in which the secondary effect is both intended and desirable, but always and only as a *secondary* or subordinate intent or desire.

In the war on drugs, then, we could apply the principle to limit the use of military force to actions which are covered by routine military operations meeting the following conditions:

- 1) the objectives of the military operation must be military in nature
- 2) it must be an military operation that would be carried out anyway
- 3) the operation must follow standard operational procedures
for military training or missions,
- 4) the time and place of the military operation must be in no way compromised to achieve the secondary effect,

These standards would limit the use of the military in the war on drugs to normal military training operations and/or actual missions. As long as the intent can be shown to a purely military intent, there should be little reason to fear abuse. There is room to fudge the time and place of such operations to overlap more directly with efforts to eradicate drug operations, but not if doing so will result in a weaker embrace of military goals and interests. As long as the use of the military in the war on

drugs is limited in this way, there can be little basis for complaints about the inconveniences and annoyances civilians may have to endure to eradicate the drug threat from their communities.

V. Conclusion:

We have argued that the differences in training, knowledge, skills, and attitudes between soldiers and police officers is significant and that if military personnel were used to do strict police work the result would be either inappropriate police work or weak soldiering. We have further argued that a constabulary use of the military can pose a threat to the basic rights and liberties guaranteed to citizens in a constitutional democracy.

At the same time, there are effective and legitimate ways in which the military may provide auxiliary services that are entirely consistent with the very finest precepts of effective soldiering. Such military operations are to be first and foremost military in intent and execution, rendering drug war assistance as an important by-product rather than a primary goal. The consistent use of a modified doctrine of double effect can serve to set appropriate limits on the extent to which such military force can justifiably be used to the war on drugs.

Endnotes

¹ Given that there is no world government, and hence no legitimate global law enforcement agency, it is not at all clear that we can make sense of the notion of constabulary work at the international level.

² Douglas Waller, *et al.*, "Risky Business," Newsweek, July 16, 1990, pg.16f.

³ We acknowledge with appreciation the assistance of William Stone, Chief of Police, Town of Highland Falls, NY, for providing this information to us. However, Chief Stone is in no way responsible for any errors contained herein.

⁴ We acknowledge with appreciation the assistance of Lt. Robert Fallon, US Army Military Police Unit, West Point, NY, for providing this information to us. However, Lt. Fallon is in no way responsible for any errors contained herein.

⁵ Samuel P. Huntington, "The Military Mind: Conservative Realism of the Professional Military Ethic," in Malham M. Wakin (Ed.) War, Morality, and the Military Profession (Boulder, CO: Westview Press, 1986) 2nd Edition, pgs 35-56.

⁶ J. Glenn Gray, The Warriors: Reflections on Men in Battle (New York: Harper Torchbooks, 1959) Chapter 5, Pgs 131-169.

⁷ *Ibid*, p. 37.

⁸ The New York Times Friday, August 10, 1990, Page A12.

⁹ Tom Joyce, "Guard Units Assist in War on Drugs," Military Police, PB 19-90-1, pg. 17.