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## **ETHICS OF FIGHTING POWER**

**By Patrick Mileham**

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# **ETHICS OF FIGHTING POWER**

**by Patrick Mileham**



**FOREWORD BY  
RODDY LIVINGSTON  
CHAIRMAN COMEC**

*Ethics is a developing area and of interest to the Armed Forces and Officer Cadets in our University Service Units, so it is appropriate that we should examine this complex subject, which becomes even more pertinent with the changing nature of conflict and hybridization of war.*

*Former COMEC Vice-Chairman Patrick Mileham's expert analysis challenges us with complex questions and contradictions during military operations to which there are seldom easy answers. He sets the ethics of fighting power in context with other factors of global strategy and security, particularly the fundamental enigma of causing harm to do good.*

*We are familiar with military values and standards distinct from that of other professions, and a reliance on the metaphor of a person's 'moral compass'. However perhaps controversially, the author makes two important differentiations - firstly between the what is 'moral' and what is 'ethical' and then 'justice' and 'law'.*

*Dr. Mileham develops the Just War Theory, guiding the decisions to go to war and during war, as well to seek after-conflict principles which should be formally recognized. He then argues the distinction between - but wholly convergent dynamics of - 'operational ethics' and the 'institutional ethics' of professional military service.*

*The paper is referenced with detailed end-notes and a bibliography. It should thus be a very useful text and literature survey for those seeking a deeper understanding, or an inclination towards further personal research.*

*The officer academies might well be interested in developing a shorter version, covering the Just War Theory and its basis in the Law of Armed Conflict, and the connection with 'operational' and 'institutional ethics'.*

*Roddy Livingston*

# ETHICS OF FIGHTING POWER

## by Patrick Mileham

### 1. Introduction

***‘There is nothing more practical than good theory’.***

William James, philosopher.

By virtue of their profession, soldiers, sailors, airmen and airwomen are liable to be presented with paradoxical, contradictory and sometimes even near-impossible tasks. With their own people, adversaries and sometimes neutrals, placed at deliberate or accidental physical and psychological risk, it can be their duty to act as ordered with armed might. There are two fundamental facts about war – it is nothing less than contradicting and countering other peoples' ideas with physical and deadly force, and is always a great and dangerous experiment. Therefore, justifiably people may pose such questions as

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...countering other peoples' ideas with physical and deadly force...is always a great and dangerous experiment.

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- Why are we ‘at war’?
- What about peace?
- Can unrelenting ‘evil’ really be eliminated?
- How do we get adversaries to cooperate peacefully with us?

Then to be fair and just, how do ‘we’ collaborate with ‘them’ for equal success? So does it help to drop the term ‘war’ entirely, in favour of ‘armed conflict’?

These questions are individual, corporate and social, but also eminently, political, theoretical and philosophical as well as physical and practical. The consequence of using armed force is to cause harm, even if the intention is to do good. Duplicity, double standards, legal fiction or unhappy oxymoron? In detail, the arguments can be very dense, the contradictions multiplying. In seeking answers thinking individuals are tested both intuitively and counter-intuitively. The causes and effects of war and peace are vastly complex and changing all the time. Over-simplified, insensitive use of armed force can make matters worse.

Destruction and restraint are defining concepts and basic tasks for military professionals. While maintaining the monopoly of force for defending the nation-state and providing a source of manpower, the implicit and far more sophisticated

obligation to help pacify the wider world is a genuine and generous role, under the popular and political will of a leading modern, forward-looking, benign, liberal-democracy to which we claim to belong. Who trusts who? That is a recurring theme throughout this Paper.

This paper is published during the Covid-19 global pandemic, an 'existential' threat to the whole of humankind, with consequences as grave as war. The 'enemy' is real and not random, yet it arrives unseen and accidentally, a biological phenomenon of mass destruction. Nations have 'mobilized' themselves to deal with this sudden threat to national security, yet a national and global crisis of this nature was not unforeseen<sup>1</sup>. The inter-relatedness of every sort of human activity has been accentuated as never before, causing multiple ambiguities of every sort. Will it inevitably lead to additional physical violence and conflict?

Anyway, directly or indirectly related to wider human security, the purpose of this Occasional Paper is to argue for the restrained use of Fighting Power by Britain's Armed Forces as institutions existing for the public good, responsible and effective, acting both legally and ethically. For the general reader, this Paper is designed to explore the subject of the ethics of fighting power directly. For the scholar, the extensive endnotes and comprehensive literature coverage may be a useful 'primer' for deeper study.

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...the purpose of this Occasional Paper is to argue for the restrained use of Fighting Power...

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## **2. Human security: existential threats:**

Humankind, with a three-fold population increase since 1945, is a successful species. This phenomenon has occurred by virtue of the primal, natural physical urge for continuous procreation and encouraged by increasing human security. The impulses for the growth of well-being and recreation, of bodily and mental satisfaction, are assisted by a developing world social order, designed to diminish offensive behaviour, and maybe equalize the benefits of the consciousness of human experience. In human evolution, there has grown an elevated sense of seeking a life of greater significance and value. Particularly over the past 6000 years, with or without religion, the human imagination has developed an inherent desire to transcend mere consciousness and attain a personal and corporate sense of well-being while expressing universal ideals and the very meaning of human existence.

One school of thought exposes evidence that the world appears to be a much safer place than it has ever been. In modern history the world has moved from the preponderance of international war to activities governed by international law. However, this view of certainty is denied by other prominent authors, citing

numerous additional factors and warning of dangerous complacency<sup>2</sup>. War-fighting between the major powers has not occurred since 1945, but armed violence and conflict has been continuous and developing since then.

In setting parameters and detail, the study of military ethics resides intuitively deep within the understanding and practice of managing global affairs. Benign processes and procedures are devised by international and global institutions, chief among which is the UN's mandate for 'global governance'<sup>3</sup>. But in reconciling priorities providing for human security and happiness, the subjective processes of politics and objective procedures of international institutions – supposedly neutral of selfish national interests – inter-react uneasily.

Even so, there seems to be an intuitive recognition of an urgent need for well-defined global 'values and principles', with 'human dignity and capability' as central to any sort of comprehensive ethic of governance<sup>4</sup>. In truth hyper-competition, violence and war-fighting persist. Human security is fragile and international justice weak. Of living standards the world is divided over the rights and wrongs of plenty and poverty. Thinking and cooperation is often years behind events in respect of human rights, fair trade, crime and corruption, as well as of current and likely future

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...trust as a universal unifying  
force is as inadequate as ever.

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physical disasters, and how to meet crises both man-made and natural, including pandemic disease. However, trust as a universal unifying force is as inadequate as ever.

While such terms are general, state insecurity is a combination of very many different human dynamics and aspirations as well as natural causes and effects. Consider problems of

- Terrain, oceans, space and changing climate
- Access to resources for commercial activity
- Energy and waste
- Population movement and human travel
- Differences of religion and ideology<sup>5</sup>
- Inequality of wealth accumulation
- Particular regional / national population demographics and often gross inequalities, particularly of mortality rates, health-care, education, occupational opportunities and expectations, with
- Many states being divided, even fragmented, into separate community groups claiming to be 'nations'<sup>6</sup>, and

- The current and future asymmetric connectivity in information technology and the cyber-sphere.

In respect of the last-mentioned, the blessings of communications, together with the benefits of cyber-dynamics and artificial intelligence, nevertheless bring increasing dangers to the unity of humankind. What are the moral principles about the contentions of privacy, openness and surveillance? What about the promised algorithmic future, of genetic modification and our individual human right to be truly human - and free ?

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...uncertainty, with social and psychological, physical and political ramifications, which seemingly increase exponentially...

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Anyway, all such dynamics can cause much real life and death uncertainty, with social and psychological, physical and political ramifications, which seemingly increase exponentially as the world moves on over time.

Unfortunately when denied, all these uncertainties can lead to bouts of impulsive violence, deliberate use of force and armed conflict. Such behaviour physically threatens the lives and livelihoods of individuals and groups, their sense of security and natural determination to attain physical and mental expectations. More or less, human communities organise themselves in nations and nation-states within geographical frontiers. Yet according to Philip Bobbitt in his *Shield of Achilles*, many of today's nation-states are even more interrelated and integrated globally by the dynamics of the 'society of market-states'<sup>7</sup> – despite the often strong counter-veiling sense of fragmentation (see endnotes 5 and 6). They are more or less governed by 'rules based' operating arrangements, cooperating with chains of cause and effect of public goods and services, and working within international jurisdictions. Nation-states remain the units of international cooperation, but also competition. Michael Howard agrees, but emphasizes the 'state will always be necessary to provide security [including physical and public health], fiscal organization [taxation and monetary policy] and law'<sup>8</sup>. But any diffusion of military power within a nation-state can be dangerous and nation-states traditionally remain a danger to each other.

According to Matthew Ridley, when people and nations 'mutually cooperate' in fair and 'agreed competition', they can flourish<sup>9</sup>. The world is still divided between more or less civil-democratic states and militarized-authoritarian states, some being entirely vicious. Syria, Iran, Iraq and Saudi-Arabia dominate the Middle East, and outside nations rightly or wrongly interfere. A number of African nations are in religious and ethnic turmoil, dominated by terrorism. North Korea threatens peace in Asia. But of the 7.6 bn global population today almost 80 million persons are displaced from their homes in particular regions<sup>10</sup>, often amid much sustained violence. In short, Lawrence Freeman categorises many states as 'not workable'



- being 'collapsed states', 'troubled states', 'fragile states', 'states at risk' or just 'weak states'(endnote 2). Of the major states, the USA, Russia and China are more strident in their claims on world dominance now in 2020 than they were in 2000<sup>11</sup>. Market states provoke acute rivalry and so-called 'trade wars' persist. As punishment short of actual war, trade sanctions can cripple economies often with unintended consequences, such as the starving of powerless populations as collateral casualties.

Forecasting the future is difficult, elusive if not impossible, and some dynamics of global future security / insecurity are indeed frightening even to consider. The seminal research programme by Britain's Ministry of Defence, *Global Strategic Trends. The Future Starts Today* is the best official statement we have. Likewise broad, farsighted but without due panic, Toby Ord gives measured guidance in his 2020 book *The Precipice. Existential Risk and the Future of Humanity*<sup>12</sup>, if we are wise enough to follow it.

In sum, state power has been categorized positively and negatively by many writers, for example J.K.Galbraith and Naom Chomsky<sup>13</sup>, including how the military arm of state fits in with *raison d'état* and the *Realpolitik* dynamics of national interests and international relationships. However powerful the state, a sense of both regional hegemonic and even far-distant fears of insecurity seems to persist, even amongst the most powerful. So why and when can nation-states / market-states justifiably go to war?

### 3. Fighting power: rights and wrongs

**'One man's safety is another man's destruction'.** Daniel Defoe, author, spy.

**'....fighting spirit drives soldiers forward in the most arduous and adverse of conditions'**<sup>14</sup>.  
MOD Army Operations.

In the field of international relations, why is there a need for armed forces? They are instruments of national power for use in deadly physical competition with other powers. The whole question behind this Paper resides in the legal and pragmatic use of military 'hard power' in armed conflict. Such is physical coercion, extending from the deterrent reality and message of thermo-nuclear weapons, through a substantial range of physical military capabilities and activities of land, sea, air, space and cyber, towards 'soft power'<sup>15</sup> incorporating the means to exert benign influence for the mutual enjoyment and security of communities and nations.

However, the once-clear distinction between the nature of hard and soft power civil and military, is becoming increasingly obscured by the changing character of conflict and 'hybridisation of war'<sup>16</sup>, the continuum of means of power to disrupt or destroy

the security of other states. The greatest difficulties and positive opportunities of today's and tomorrow's competitiveness and hybrid war-fighting come from the new technologies. Electronic communications provide for intelligence gathering; 'information warfare' is about information versus disinformation; in 'cyber-warfare' is about attacking and defending the electronics of installations and systems. Already artificial intelligence (AI) and algorithmic human engineering can be used offensively, likewise autonomous vehicles (robots and drones). All such physical-intellectual-cognitive-conceptual capabilities bring us into uncharted behavioural considerations in a 'sub-threshold' of actual war without direct physical harm – questionable in law and maybe equally or more damaging, while undermining normal moral dynamics and ethical principles as never before.

What's good in our world? In enterprises of commerce and market-state wealth-generation, cooperation and collaboration is the way that globalisation works, when it does, without the threat of military force. If power ultimately is about seeking benefits and 'the good life', Ridley seeks 'virtue' in such people, communities and populations. The beginning of corporate human virtue is the ability simultaneously both to 'compete' and to 'cooperate'<sup>17</sup> to mutual advantage with a spirit of creative, intuitive/counter-intuitive, win-win, joint-enterprise.

What of the future of 'human security' and the need to take traditional or new sorts of military action? Britain guards its interests internationally and from within its membership of NATO, comprising 29 liberal-democratic nations led by the USA since 1949. The most powerful military alliance in history, Article 5 of the treaty guarantees 'collective defence' – an attack against one is an attack against all. Britain is a nuclear power, with forward-looking global reach, clearly stated in the already mentioned MOD document *Global Future Trends*<sup>18</sup>, containing informed guesswork stating what security crises may lie ahead for the world's armed forces.

Anyway, extreme human competition is exemplified by violence, armed force, conflict and war. Briefly, all nations' armed forces face the same purpose. They are more or less prepared to fight in inter-state conflicts, that is in

- A war of national survival - often termed 'existential' – and in
- Wars of choice<sup>19</sup>

being experimental, as well as possessing an ability of taking part in a range of other, including 'humanitarian', operations of a more peaceable nature. When evil is encountered, where people are already, or likely to be physically harmed and killed by vicious individuals, groups and regimes, and no other course is appropriate and likely to be effective, 'offensive action' may be justified. Such requires persons ready with necessary motivation and 'fighting spirit', and highly-trained professional skills for attaining 'war-fighting excellence'<sup>20</sup>. In today's global 'society

of market states'<sup>21</sup>, wars of choice tend to reflect a mixture of altruism and hard-nosed national self-interest, with an intuitive sense of what is good, at least in part.

The hypothesis of 'the Good' is defined by philosopher Iris Murdoch as an aspiration for oneself and equally others, being a 'dream' for 'unity' amongst humankind. Such is the ultimate 'sovereign good' – a phrase coined by Pascal from Seneca – albeit unachievable. The philosopher Boethius wrote of the reality of creating good amongst humankind as free agents, but always as impermanent 'fleeting good', not as if 'fixed by some [everlasting] law'<sup>22</sup>. The search for the truth and

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...the Good... always impermanent,  
fleeting...

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the good within the human condition  
– the whole purpose of the personal,  
intuitive-cognitive exercise of ethics –  
tests every new generation.

How are goodness and truth connected to causes and effects, facts and reality, duties and virtues? How are aspirations, values, policies and principles converted into actions? Sociologist John Searle argues about the distinction between lower and higher order and quality of human living. If violence and murder are primal 'brute facts' about life, death and survival, lethal force and judicial killing are something else, a different category of often highly sophisticated 'institutional'<sup>23</sup> actions loaded with significant social-moral, civilizational value. Evil people put value on their 'violence', good people put value on the 'force' they use to counter violence. However, terming people 'evil' is a value judgment which works both ways. Categorically, value judgments<sup>24</sup> are not necessarily rational even in our advanced state of civilization and highly-developed, interrelated living. Such goodness can collapse more easily than we ever thought, even before the Covid-19 existential viral threat bringing brutal mass destruction to human beings, one by one.

There are some fundamental and critical contradictions in the field of military operations, the like and extent of which no other profession experiences.

- Why is our enemy our enemy?
- How can what is bad ever be made good?
- Is our adversary always wrong?
- How unlimited can be a personal liability<sup>25</sup>, to kill and be killed?

If our enemy is bad relative to us, can moral relativity therefore be justifiable for the greater good? How can good people forgive bad people, and bad people forgive self-identifying good people? The latter is a very obvious catch question, but so are all the rest. In the world there can be no real absolute 'unity' in everlasting cooperation. Unity is likely to be 'fleeting', as competition moves from the present to the future.

What is the future utility of armed force? A major prediction is well made in the MOD *Global Future Trends*. In emphasis

‘Few would dispute that the character of conflict is changing, for example, distance is becoming increasingly irrelevant as a security buffer and the West’s technological advantage is reducing. The physical dimension could become less important than *the cognitive and moral dimensions*<sup>26</sup>’.

‘Cognition’ is the exercise of information and the intellect. However, to avoid cynicism, readers will well understand that to use the term ‘military morals’ is ingenuous

...a critical distinction must be made between what is moral and what is ethical...

and pejorative. It is therefore obvious that a critical distinction must be made between what is moral and what is ethical in the military context.

#### 4. Moral dynamics, ethical principles....

***‘The moral is three to one with the physical’.***

Napoleon Bonaparte, emperor.<sup>27</sup>

Mention has already been made about ‘fighting spirit’. Adding to Napoleon’s dictum above, Wellington wrote of France’s enemies as too often being ‘more than half beaten before battle’. Tolstoy (who fought against both nations in his time) wrote of ‘the moment of moral hesitation which decides the fate of battles’<sup>28</sup>. In the military field we use the term ‘moral’ in a rather particular and subjective way, chiefly meaning the strength of will-power, motivation and morale. Thus, to avoid a quite dangerous category-error in our understanding of international relations, politics and professional military activities, it must be emphasized that moral frequently means something quite different from ethical<sup>29</sup>.

Morality is grounded in the dynamics and psychology of actions, habits, social norms and community values. Ethics is the process of individual thinking – that is cognition, philosophy – based on the ‘virtues’ of the idealized character of individuals, communities and nations, both in their pre-dispositions and forward-looking intentions. Ethics is not a thing in itself but a disciplined mental exercise, an endeavour, based on deductive intuition – or by study drawing on existing general philosophical principles<sup>30</sup>. Such can transform what are subjective and personal practical actions in concert with other persons, to form a more rational inductive and objective, consensual, unifying perception of what is closer to being a fair and just, trustful and truthful ideal state of human affairs.

In a definitive frame of mind about the terms moral and ethical, and looking back

to their etymology, we find that

- *Mos, mores* is Latin for custom, habits, norms of behaviour and culture. The Romans' business was imperial power.
- *Ethos, ethikos* are classical Greek words (at the time of city-states) in the search for human spirit, character and virtue, inspired by civic consensus, *polis* and *demos*.

By definition, this encompasses both subjective and objective understandings of life, as well as the intuition and counter-intuition of collaboration-competition – in the way that Ridley (section 3 above) defines virtue, as well as the causes-effects-causes continuum by which Aristotle demonstrates that humans become good by doing good things<sup>31</sup>. From the Greek we also get *phronesis*, the virtue and character of practical wisdom, and *eudaimonia*, well-being.

In confirmation of general human inter-relations, A.C.Grayling writes

‘when it is the *character* of an agent [individual, nation, army, soldier] that matters, we are discussing *ethics* in the sense of *ethos*; when it is the consequence of action or conformity with duty that matters, it is the narrower focus of *morality* which is in view’<sup>32</sup>.

Thus what is right and wrong can be a decision of conformity with community morality – ‘what we do around here’. The choice of what is good, better and best is an exercise of personal judgment, namely ethics, which should transcend the habitual compliance of narrow group loyalty, which by definition is essentially moral. Rosamund Thomas confirms that ‘Ethics differs from morality in that conduct may be described as “moral” when it is maintained or observed as fact, but become “ethical” as it rises from fact to ideal’. John Lucaks suggests such ‘understanding is of a higher order of accuracy...a higher quality of truth’.

However, what is the nature of ‘goodwill’, ‘will-power’, free-will and ‘wellbeing’, and what about good faith and mutual trust? Even well-received tenets of wisdom, goodness and truth, can be ‘fleeting... not fixed’. ‘Speaking truth to power’ calls on conscience and courage. But whose power and whose truth? These are matters touching on goodness and truth and the very meaning of life – ontology<sup>33</sup>. The fundamental notions of freedom and liberty, of submission, servitude and slavery, are political facts and realities. Politics is about local values, choices and priorities, about basic order and norms of behaviour. To the assertion of the ...efforts to reconcile order and liberty. historian Wilkinson that

‘The greatest theme of history still is, and perhaps always will be, the unending story of men’s efforts to reconcile order and liberty’<sup>34</sup>,

one should add Reinhold Niebuhr's conclusion about achieving 'freedom' with 'security', in that

'Politics will to the end of history be an area where conscience and power meet, where the ethical and coercive factors in human life will interpenetrate and work out their tentative and uneasy compromises'<sup>35</sup>.

But uneasy are the compromises of intuition and counter-intuition in politics. Tensions, ambiguities and conflict of values abound.

Politics forms nations. War, we know, is the continuation of politics, 'an act of force to compel our enemy to do our will'<sup>36</sup>. Nations can never be perfect, however ethical is their claim to altruism and skilful balancing of cooperation and competition. True wisdom surely lies in the lifting of action from the norms of a community's ideas of right and wrong behaviour, to belief in principled ethical conduct transcending to a 'higher good', a more universal and idealized understanding of human life, together with possibilities for a better future for global humankind.

In sum, military professionals have more or less carefully conceived and regulated duties, the effects of which can be harmful. Effects are one thing, ends are another. The question is what are the true ends<sup>37</sup> in the ethics of the fighting? Can it be other than the spirit of a lasting peace? A keen aspiration to pacify warring parties may be a commendable 'moral action', while lasting peace should be something more, drawing deeply on an 'ethical spirit' within individual consciousness. Indeed British Army doctrine recognizes the power of a 'spiritual foundation' in military affairs, and the duty of professional covenanted relationships of trust and respect. Such can lead, paradoxically, to *agape*, being individuals' loyalty to all humanity and the kind of love transcending all adversarial hatred<sup>38</sup>.

## 5. ... and the spirit of the law.

***'...the principles of international law derived from established custom, from the principles of humanity and from the dictates of the public conscience'<sup>39</sup>.***

Article 1 (2) of Additional Protocol I of 1977. Geneva.

If morality and ethics have anything to do with law and justice, such is to be found by way of jurisprudence, an important branch of philosophy. In pointing out that law and justice are categorically different, Lon Fuller writes that law is based on 'the morality of aspiration and the morality of duty'. Aspiration is a spiritual exercise

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...law and justice are categorically different...

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to do with seeking 'perfection'<sup>40</sup>. Likewise Michael Barkun writes of 'law-with-order' as distinct from 'law-with-justice', bringing into deeper

argument questions addressed by sociology, anthropology, social-psychology and other human sciences. However in action, purity of intention and perfection of outcome are as elusive as ever, maybe impossible to achieve.

The international, even supranational inspiration and justification for the conduct of war was articulated internationally in 1899 in the well-known Marten's Clause, the most up-to-date version of which is spelt out at the head of this section<sup>41</sup>. It has an appeal to natural law. Nowadays claims to individual freedom and conscience are invoked by the Universal Declaration of Human Rights, Article 1, in that

'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood'<sup>42</sup>.

The obvious question must be admitted: how can one be conscientious, altruistic and brotherly, forgiving in the medium- and longer-term, when people are trying to destroy, kill or harm you in the shorter?

Herein lies the contradiction of the theoretical-philosophical 'inalienability' of human rights, 'of life, liberty and the pursuit of happiness'<sup>43</sup>. Nobody has an inalienable right to do wrong, or take away the life and liberty of another person, without severe legal constraints and judgment derived from ethical principles. Just War Theory, explained in section 7 below, points to the true purpose of armed force which is to pacify and disarm.

The distinction between law, *lex*, and justice *jus*, raises the existence of the thinking about and practice of 'natural law' rising above the rawness of mankind's basic 'state of nature' and bringing a sense of 'natural justice'. People frequently seek justice, beyond what legal processes can achieve for injured parties, which John Rawls denotes generally as 'fairness'. The perennial question is how fair is any law, any legal process? Views differ. But by definition, professional armed forces work within well-codified International Humanitarian Law (IHL) and domestic law, when acting alone or fully in support of the UN, NATO and other international coalitions. Compared with the past, there is a much a higher philosophical sense of justice today in the use of armed force, which in detail may sometimes be too elusive to be expressed with desirable clarity in normal language or legal terminology.

Anyway, IHL is what determines the quality of fighting – meaning restraint and fairness. While jurisprudence is the philosophy of law, there are different metaphysical interpretations

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...legal interpretations of facts can sometimes be contradictory...

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within both legal categories and disciplines. IHL in practice often overlaps with Human Rights Law (HR law), and legal interpretations of facts can sometimes

be contradictory<sup>44</sup>: one might well be applying different legal tests. Thus legal uncertainty and the conflict of two legal categories-traditions can occur, particularly in a post-war stabilization and securitization phases. Moreover, IHL, in British usage termed as the Law of Armed Conflict (LOAC), is civil law not criminal law, and mainly applies to states not individuals<sup>45</sup>. The burden of proof in civil law is on 'the balance of probabilities'.

Law works well when there is general good-will amongst peoples living together within the 'spirit of the law'. So, defined in time and geographical space, once armed conflict has started, missions, objectives, tactics and targets need legal guidance. Based on the LOAC, robust and explicit Rules of Engagement (ROE) are then expressed for each specific campaign and conflict zone, given the aims and operational circumstances to regulate and restrict whatever force may be used.

Next, entry into a country by clearly justifiable invasion and subsequent deliberate belligerent occupation is normally enabled by a UN Security Council Resolution. The presence of external armed forces personnel can be subject to legally binding justification in Memorandums of Understanding (MOU) between both or a number of parties. The metaphor 'legal framework' is used when bringing particular agreements together. However recognizing, recording and reporting specifics and case-studies, including delicts under international law, is beyond the scope of this paper. Such are found in the work of national and international courts, notably the International Court of Justice (ICJ), UN, from 1945, The Hague, being successor to the 1922 Permanent Court of International Justice, of the League of Nations), The International Criminal Court (ICC, from 2002, The Hague,) and the European Court of Human Rights (ECHR, from 1959, Strasbourg).

So what actions and intentions are lawful or unlawful, legal or illegal, moral or immoral, ethical or unethical, right or wrong and good or bad, best or worst? Actions all have to be judged objectively on the evidence, often long after the event. Those which are lawful, moral, ethical, right and good are often more difficult to prove as correct and sustainable than their opposites. Legal instruments which enable judgments and decisions before action is taken are often very difficult to frame. On operations, pinning criminality on individuals is a different and often difficult matter, subject to due processes of law and demands of irrefutable evidence for conviction, yet still open to appeal. Criminal evidence in the UK needs evidence 'beyond reasonable doubt', stricter than in civil law cases.

Thus military operational actions and intentions are often matters beyond simple objective evidence, contending with contradictory factors suggesting counter-intuitional 'value judgment'<sup>46</sup>. Human will-power, good-will and well-being are also affected by the same subjective value judgments. Of course the ultimate purpose of international legal activities is to promote the security and generate the well-being of humanity, human rights and democratic ideals, while supporting benign national



institutions. Nonetheless, some recalcitrant, adversarial parties can be pacified only through 'hard power', physical military action.

One is reminded that the study of ethics is that of abstract thought, propositions and hypotheses, and unethical, immoral or amoral behaviour is about complex social facts and ideals, not simple matters of brute action. So moral behaviour and ethically-directed conduct and intentionality is often a matter of subjective value judgment rather than narrowly objective legal consideration. Sometimes the law confounds its own intentionality and prevents actions which are right, and good, moral and ethical. Indeed, most training case-studies are negative, that is when things go wrong not when things go right. ...things go wrong...

Finally, stopping the enemy from fighting surely is the proper and higher good, the aspiration, the pre-eminent dynamic of ends justifying and legalizing 'fighting power' and war-fighting. When absolutely necessary, military means provide professionals with the ability to fight successfully. Means, however, do not unquestioningly justify ends. Categorically, military power should eventually give way to civilization in its fullest reach. Above all, the supremacy of good-will is the foundation of all ethical principles and conduct, as well as effective law and true justice.

Anyway, to take forward such considerations it is necessary to distinguish between what I have categorized 'Operational Ethics' and 'Institutional Ethics'<sup>47</sup>, the latter being the aspirational ethics of the military profession as a distinct profession. The former is much dependent on the latter, and together they form the *ethos* – the character, ethical standing and reputation of the profession of arms at home and abroad, noted later in Section 10.

## 6. Operational ethics

***'The man who does not fear death will ever be your master'.***

Tacitus, classical philosopher.

In overcoming evil with good and moving from the moral to the ethical, if deadly and destructive means have to be used, a precept, an ideal, a self-disciplinary golden rule is worth considering.

Lethal force used for the public good of all parties, must be sufficient to put right a significant and dangerous wrong, cause minimum casualties on all sides, end quickly and achieve long-lasting security and peace.

## Naive idealism or pragmatism?

- Whose public good are we thinking about?
- Whose wrong is to be put right?
- How much destruction and how many casualties are necessary to achieve what success?
- How easy is it to establish enough security?
- How does a conflict end quickly?
- How long will a peace last?

Witnessed by people with conscience, warfare contains the most acute and critical of all contradictions in the human condition. No war can be intrinsically, good except in fleeting moments of time. However, there can be an end-result which may, and with luck given time, achieve what is truly good defined above. If fighting can possibly be a moral good, then pacifying adversaries should lead to deeper, wider and higher ethical ideals achieved in end-results. The purpose surely is to win the war to win the peace, for the good of all sides.

However, In defence and the military profession, we can speak of a 'good war' or a 'bad war' <sup>48</sup>. No-one should enter a war unless it is likely to be good war, that is to counter a worse evil that pervades at the start, and put it to rights. We can speak of a bad peace where perpetuated wrongful actions can get worse. How helpful is international law? Very helpful much of the time but it is not always so, since law cannot easily define what is the good, better and best from what is bad. Frequently what is good for one person, community or nation is bad for another person, community or nation. Legally decided, a good peace for one party or nation may be a bad peace for another. So what is the utility of war and of law?<sup>49</sup>

Based on explicit and implicit criteria and arguments, including the 'principles of war'<sup>50</sup>, 'operational ethics' comprise the ethics of professional people, with applied principles. Such guide fighting conduct against the enemy and in respect of civilian populations, particularly when complex, ambiguous and contradictory situations require effective, just and legal actions. Operational ethical considerations take shape to meet the requirements

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...fighting justly, and particularly in  
stopping our enemies from fighting...

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- Whenever the use of lethal physical force is necessary, by
- Fighting justly, and particularly in

- Stopping our enemies from fighting, while establishing mutual cooperation.

Simply stated yet hopefully profound. The Law of Armed Conflict and increasingly Human Rights Law, contain much in the way of restraint but also enabling guidance. Even with the contradictions and conflicts between the two branches of international law, the demands for compliance and adherence to these laws are more or less encompassed in the codes of the domestic civil and criminal laws of the nation-states and reflected in professional-military regulations, but not always clearly and comprehensively stated. Next, how is war justified?

## 7. Theory: Just War Tradition

***‘Better an unjust peace than a just war’.* True or false?**

Cicero, classical philosopher.

### ***Just War Theory***

‘Operational ethics’ are derived from the study of the Just War Theory (JWT) or ‘tradition’. JWT is not law. In brief JWT is political, quasi-legal and moral-philosophical thinking about violence, conflict and war-fighting between states. The Western theory of a just war rests somewhere between justice (Latin, *jus*) and law (*lex*). It should re-emphasized that ‘military ethics’ is the philosophical study of

...what is not only ‘right’ but ‘good’,  
predominantly here in armed conflict...

what is not only ‘right’ but ‘good’,  
predominantly here in armed  
conflict, but also in *jus ad vim*, that  
is in all categories of force.

The ‘just war’ tradition and norms of ‘fighting justly’ are to be found in the *jus ad bellum* and *jus in bello* disciplines derived from moral philosophy, the right course of action tending also to be good. From the classical times of Plato and Aristotle, through Saints Augustine and Thomas Aquinas, Hugo Grotius and the Enlightenment, to post-Enlightenment and modern-day thinkers, numerous authors have informed a code as best they could, conceptualizing what we know and understand currently as the discipline of ‘military ethics’. (See Further Reading section below.)

In essence, the JWT discipline is about ‘normative’ principles which guide expected ‘ethical conduct’. How members of armed forces actually behave during training and on operations, we can judge in descriptive terms, which may or may not live up to the principles of JWT and national or international codes of military ethics. In armed conflict the law does not cover every conceivable description of human behaviour, about anything and everything which happens, but the wisdom of

moral philosophy can and should prompt critical enquiry and training well before operational decisions, judgments and events are faced.

The JWT is nowadays well-known in military education and training, based tangentially on numerous instruction manuals and legal documents. There are currently two distinct categories, or sequential phases in JWT firstly *jus ad bellum*, being the reason for and right to go to war and conduct military operations. Secondly the justification for action during operations, *jus in bello*, for the type, scale and extent of armed force used under the IHL /LOAC.

Although many aspect of IHL/LOAC had existed in customary form from early times, their embodiment in treaty form began in the middle of the 19<sup>th</sup> Century with a succession of multi-lateral agreements dealing with both the conduct of hostilities, sometimes referred to as 'Hague law' and the protection of victims, sometimes referred to as 'Geneva law' (from the cities where many of the treaties were drawn up). Since the second half of the 20<sup>th</sup> Century these two branches have become increasingly intertwined. The instruments and documents of the International Law of Human Rights<sup>51</sup>, while also having many antecedents, emanate chiefly from the United Nations' Charter of 1945, which itself is a form of treaty law. The Universal Declaration of Human Rights (UDHR) of 1948, together with the European Convention on Human Rights (ECHR) from 1953, were incorporated into a UN treaty of 1966 and a number of other regional treaties.

In Britain at present, the RN, Army and RAF have separate codes of 'Values and Standards', which are domestic institutional codes of trustworthiness, but not regulation or law. These chiefly belong under the heading of Institutional Ethics, Section 9 below. But beyond what can be inferred from the LOAC and ROE and good judgment There exist no national explicit 'doctrine' or 'code' of military ethics - which properly covers the ethics of 'fighting justly', linked to bring about safe and lasting security and peace *post bellum*. There is further work to be done by Britain's MOD and the Armed Forces. (See endnotes 63 and 69.)

### ***Jus ad bellum***

Why do states go to war, why are communities in conflict? War-fighting is a political act. In the minds of national leaders, armed force often takes on the nature of an unavoidable Kantian 'categorical imperative'. Such questions are for politicians and statesmen in the first instance, but increasingly drawing on military professionals' advice as to what can be achieved physically, intellectually (rationally) and morally (meaning national will-power) by the use of force. Then for a nation or coalition partner (by permanent treaty or agreement) to steer a quasi-legal course towards war-fighting, is a political matter under the UN Charter and specific Security Council Resolution.

In brief what justifies the use of physical and lethal force? War-fighting as *jus ad bellum* requires that force can only be used

- As ‘last resort’
- When there is ‘just cause’ – meaning fairness relative to provocation
- The cause beings ‘proportional’ – warranting a level of military response
- With ‘right intent’ as counter-provocation for military action
- With a desired ‘end-state’, limiting military action
- When there is a ‘reasonable chance of success’, and
- Through a chain-of-command as ‘competent authority’, being responsible for military personnel and the conduct of war<sup>52</sup>.

The most significant is the penultimate principle, that is judging ahead of time the likely ‘success’ of the operation, whatever that implies and requires. If success is not clearly assured by intervening with armed force, there may be no real, practical choice but stand back and watch the aggression of others unfold and do their worst.

In claims for a nation entering a ‘just war’, a specific Resolution granted by the Security Council gives the decision-making process substantiation in international law – an instituted fact in Searle’s categorization (endnote 23). Uncertainty of the legal status of military action can cause problems, not only at the time but *ex post facto*. For example, retrospectively much fault was found in the Chilcot inquiry of efforts by the British government to justify legally the military invasion and occupation of Iraq in 2003 (see endnote 48). In the event Britain’s Armed Forces did not like the war any more than did the British public.

### ***Jus in bello***

Next, facing often intransigent enemies in second and third world countries in turmoil, military professionals have to contend with dreadful circumstances of disorder and insecurity, and witness hundreds or thousands, maybe millions of personal tragedies. Desperate people who have nothing to lose are ‘the most dangerous creation of any society’, claimed the American novelist, James A Baldwin. Most of the time, British soldiers, sailors and air personnel and those who command and lead them on operations, meet the highest standards of moral conduct, according to the norms as codified and demanded in service.

But success in the conduct of war often needs overwhelming force but this cannot be used in a disproportionate manner. LOAC is based on a number of

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...legal principles, the application of which leaves a margin of discretion.

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legal principles, the application of which leaves a margin of discretion. This discretion requires the judgment of politicians and commanders before eventualities and is

subject to the scrutiny of others after events. The dilemma of urgency, to take some sort of action in the face of acute risk of unacceptable casualties on our side, may raise the possibility of excessive collateral deaths or injury to civilians on the other.

Thus, for the British Armed Forces the principles of *jus in bello* are expressed in the already-mentioned *Manual of the Law of Armed Conflict*, being

- ‘Military necessity’ – similar to last resort, but allowing force to be used with restraint
- ‘Humanity’ – honouring the human rights of an enemy as a fellow human being, particularly when captive and always worthy of dignity and respect
- ‘Proportionality’ – only proportional force should be used
- ‘Distinction’ – between combatants and non-combatants particularly in respect of civilians and collateral casualties<sup>53</sup>.

Whilst the principles are not law themselves, the law reflects them and directs how they are to be applied. Even if the enemy does not, fighting fairly is expected of all commanders, leaders and soldiers. Beyond what is guided by the LOAC and ROE, action for effect relies on great sensitivity and moral goodwill, with personal conscience of individuals applied as well as the conscience of nations.

However, during intense operations, in the heat of the moment, often it is difficult to determine and follow precise ROE derived from these principles in ‘tactical’ situations. Perhaps the three most difficult judgments are

- Whether ‘that person’ or ‘those persons’ are ordinary non-combatant, protected civilians, or rightful targets as combatants (‘discrimination’ is a term often used)
- How much or little force can be used to achieve what is militarily ‘necessary’, and
- When military necessity may become ‘urgent’, a seemingly instant categorical imperative for decisive action, not a careful judgment of many minutes, hours or days of deliberation.

Additional moral judgment has to be applied at ‘strategic’ and ‘operational’ levels because, in many instances during any one action and extended operations, some

or many of the above principles can be in moral-legal conflict with each other. For example using force for self-defence might be a clear and fair, moral and right decision, but adversaries also have rights to life and liberty under HR law. This contradiction is investigated by David Rodin in his 2002 book, *War and Self-defense*<sup>54</sup>, in which he asserts that there can be much difficulty in arguing corporate, national and international self-defence from the undoubted legal right for individual, tactical self-defence.

But the deadly logic of kill or be killed seems often to require pre-emptive action, albeit pre-emption under the LOAC requires near enough or absolute evidence of an enemy's intentions – which is a human rights' concept – such being frequently unclear both before and particularly during operations. It is worth repeating that standards of evidence are 'beyond reasonable doubt' (for criminal law in British courts) or 'on the balance of probabilities' (civil cases). When things go wrong illegal activities are investigated in Courts Martial procedures and press exposure, but such actions are almost certainly immoral as well. However conversely, what actions might be lawful and within ROE may not necessarily be ethical, for the greater good. Culpability should not be unfairly inferred, nor the law easily ignored. In the search for evidential cause from effect, it is easy and often dangerous to read or write history backwards.

### ***Jus post bellum***

Justice during the stabilization and security-building stages before or after ceasefire, leading to gradual or immediate and hopefully lasting peace through treaties and legal instruments, is currently not fully and formally recognized as a third part of the Just War Theory. Such denial seems increasingly bizarre.

During the *jus post bellum* phase, which can be prolonged over months or years, what can military professionals do when 'occupying' territory in the full legal sense to provide security and stability by agreement in a country? There has been considerable work done, particularly by legal experts and researchers devising 'principles'. Brian Orend is on record as stating that there should indeed be a move 'towards a new Geneva Convention on *Jus Post bellum*'. In a seminal work *Jus Post Bellum* of 2008, he asserts defining 'principles', namely

- 'Rights vindication' – that is restoration of previous provisions and circumstances
- 'Proportionality and publicity' of the peace settlement
- 'Discrimination' between leaders, soldiers and civilians in a country in turmoil
- 'Punishment', particularly of 'rights-violating' leaders

- ‘Compensation’, where financial payment may be justified, and
- ‘Rehabilitation’ of the nation.

While much of this has to be politically conceived to restore or create new legal arrangements, Orend suggests there are numerous processes, particularly with often extensive ‘military assistance to the civil powers’(MACP). Two legal processes are desirable if ‘belligerent occupation’ is to be prolonged and to bring an end to the fighting, namely ‘adhere diligently to the laws of war, and investigate ‘ much of the old regime, and prosecute its war criminals’.

...disarm... provide security... not too hasty exit...

Orend notes three broad military tasks, namely to help

- ‘Disarm and demilitarize the society
- Provide effective military and police security for the whole country, and
- Follow an orderly, not-too-hasty [military] exit strategy when the new regime can stand on its own two feet’.

Military security and civil-police assistance is often needed to enhance and grow both the internal and external security of the subject nation long after the fighting has ceased.

Then to achieve security and legality and to build /rebuild society, Orend recommends that external nationals and powers should

‘Work with a cross section of locals, on a new rights-respecting constitution which features checks and balances; allow other [benign] non-state associations, and “civil society”, to flourish; forego compensation and sanctions in favour of investing in and rebuilding the economy; if necessary revamp the education curricula; ensure that the benefits of the new order will be both concrete and widely, not narrowly, distributed’<sup>55</sup>.

By their nature these criteria are social-practical and politico-constitutional, but so often they need military presence to provide enough sustainable security enabling them to happen over time. After long experience, while *jus ad bellum* and *jus in bello* are provided respectively as above with seven and four neat general principles, it is difficult to articulate similar criteria for *jus post bellum* with clear and succinct advice. However, if there is any doubt about nation-building, it is helpful to refer back to the ‘instituting’ or re-instituting of facts, so as to counter the negative ‘brute’, basic social facts *post bellum*. (See Searle, outlined in Section 3 above and endnote 23.) The disintegration of the former might well have caused the conflict



in the first place. However, it must be admitted that none of this advice can be easily fitted into in any proposed new Geneva Conventions.

Finally, looking back to the causes and justification of war, it is worth re-emphasizing that the most significant principle of *jus ad bellum* is to judge in advance the likely 'success' of the operation, attaining the win-win equilibrium in the establishment of true *jus post bellum*. This is a matter of practical wisdom and is the responsibility of statesmen, politicians and senior military officials, being fully answerable to their populations and the future history of humanity at large.

## 8. Sensitivities: ethical - moral

*'Ah but a man's reach should exceed his grasp, Or what's a heaven for?'*<sup>56</sup>

Robert Browning, poet.

Since the International Tribunal at Nuremburg of 1945-6, all military personnel are responsible in law for their own actions, extended from deeper considerations of natural law<sup>57</sup> and jurisprudence, in order to understand the new circumstances of total war and the sheer horror and scale of the possible annihilation and genocide of large sections of humanity. How responsible are individuals? Much is contained in military regulation in respect of the chain of command and the lawfulness of orders.

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...complexities, ambiguities, contradictions  
and paradoxes of military service.

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There are, however, five well-articulated principles from moral philosophy which inform military ethics. However, all of them expose

the often extraordinary complexities, ambiguities, contradictions and paradoxes<sup>58</sup> of military service. While professional soldiers, sailors and air personnel, in command or under command, nowadays are individually morally responsible for their military duty as ordered, this may conflict with

- Their duties as citizens with responsibilities for humanity and upholding International Human Rights Law. The contradictions are termed 'deontological'
- The necessity to judge the consequences of their actions. The intent might be right but the particular consequences wrong and bad. The dilemma, known as 'consequentialism', has to be resolved in advance, demanding considerable powers of imagination and conscience
- The recognition that more than one effect may follow directly and indirectly from an action. An action may be simultaneously good

and bad, right and wrong. The term is 'double effect'. This dilemma is constantly exposed in the risk of collateral damage to people and property, and when enemies use human shields, and taking account of

- What is safest and best for the majority, that is 'utilitarianism' in action, when a minority may be disadvantaged and harmed, as well as
- The need to be fully aware that actions in the use of force should enable a successful end-state, a safe peace. Professionals have to judge means and ends simultaneously, overcoming the natural tendency to compromise on means. 'Teleological' (Greek *telos*, end) judgment has to be applied.

However, when is an officer or non-commissioned professional obliged and justified in disregarding or disobeying an order, sensing it to be 'manifestly unlawful' – that is under Article 33 of the Rome Statute for the ICC? Such may be an open question. What is known and what is knowable? What are the risks?

The well-known philosopher Alasdair MacIntyre, writes of the responsibility for and recognition of risk factors – the probable and possible effects, and the unknown and unknowable. He claims that people must be '...justifiably and uncontroversially held responsible' for

- Intention – '...for that in their actions which is intentional'
- Awareness – '...for incidental aspects of those actions of which they should have been aware', and
- Predictableness – '...and for at least some of the reasonably predictable effects of those actions'<sup>59</sup>.

Of course sometimes these contradictions are in tension between and even contradictory with each other, such as the 'unlimited liability' clause (see Hackett in Section 10 and endnote 67). We have learnt that awareness and coping with such elusively-conceived moral forces sometimes brings added risk when trying to act with sensible restraint in war, notably what constitutes peoples' human rights. On operations intelligence and imagination are required by military agents, to think beyond what is merely morally 'good enough'<sup>60</sup> under the circumstances, otherwise a poachers' charter prevails defeating best intentions.

However, training and education can develop individuals to react effectively when presented even with many unforeseen difficulties, including moral contradictions. Dealing with overlapping military professional codes of conduct is a growing intellectual, ethical and physical endeavour, absorbing thousands of professional peoples' attention<sup>61</sup>. 'Trusting enemies'<sup>62</sup> to respect 'restraint' is a new venture being pioneered at the

diplomatic and grand-strategic level, but should be considered also at the tactical when the cease-fire stage is achieved and the conflict diminishes to at least low-level violence.

But codes of conduct are at the level of what is moral. Ethics requires doctrine, and again, proper military doctrine on the 'ethics of armed force' is needed to be developed for the British Armed Forces<sup>63</sup> – realistically to set the exam questions, even though doctrine cannot always provide the answers. While the duties explained in the sections above cover operational ethics, other principles apply within the ethics of military service in the next section below. While the two branches are categorically distinct, convergence is vital.

## 9. Institutional ethics: military service

***'...the major service of the military institution to the community...it serves may well lie neither in the political sphere nor the functional. It may lie within the moral'***<sup>64</sup>.

Gen Sir John Hackett, Arnhem veteran, university principal.

Within the study and practice of 'military ethics' or 'defence ethics', the second sub-discipline needs to be articulated and well understood by military professionals and governments who lead and support them. Such is 'instituted' or 'institutional ethics'<sup>65</sup>, the 'ethics of professional military service'. This used to be termed simply

as 'man management' and 'morale'<sup>66</sup>,  
institutional ethics... covering practical and managerial  
...the limits of 'unlimited liability'. questions, including mood, confidence

and resolve, to the willpower to fight to  
the death. The difficulty of explaining moral obligation in theory and practice is  
exposed in the factor that

'The essential basis of the military life is the ordered application of force under an unlimited liability. It is the unlimited liability which sets the man who embraces this life somewhat apart'<sup>67</sup>

Admittedly even now, there is no clear 'contract' for members of the Armed Forces in Britain. Every person is a volunteer on joining and remains a volunteer, inspired with greater or lesser motivation and morale on a daily basis, so long as he or she serves.

As already mentioned 'moral cohesion' is the term for corporate will-power in British doctrine (endnote 14). It is about the unifying moral values which provide the integrating pressures required to get people to fight together effectively and successfully. The metaphor of an individual's sense of a guiding 'moral compass' is frequently used. The institutional Values and Standards<sup>68</sup> are moral statements

guiding much of the desired normative behaviour under this heading, but not necessarily of themselves truly ethical<sup>69</sup> (See Section 4).

Values and beliefs reside in the mind and culture of groups and communities, including military. Habits, customs and professional procedures are actions which can be measured against standards, whether individual or residing in the conscious *mores* and norms, habits and customs of the community or profession. 'Virtues', studied within the sub-discipline of 'virtue ethics', are categorically different and emanate from the inner character of the person or group, insofar as a group can have corporate virtue, character and institutional *ethos* – a spiritual dynamic, with its corollary reputation. A community or organization often claims 'integrity' within individuals, and of the whole. It is a word that recurs in many codes of conduct, yet means much more than an individual's simple honesty and reliability in daily matters. However 'trust', as both noun and verb, and in the search for trustworthy people, signals without doubt the highest form of 'integrity', rising above day-by-day honesty and truth-telling about routine problems – and in winning over the trust of enemies. Trust may indeed be the highest 'unifying good' which Murdoch

... 'to know how to trust and be trusted'. seeks (endnote 22). One definition of leadership, is for people 'to know how to trust and be trusted'<sup>70</sup>.

The role proper of 'institutional ethics', here being the ethics of the 'profession of arms'<sup>71</sup>, is to do with governance, primary law, secondary regulation and effective policies and practices of institutional human resource management (HRM). As professional institutions, modern national-military organizations should be guided and constrained by

- Institutional-military discipline
- Democratic processes and minority rights
- Human Rights law
- Employment Law
- Anti-discrimination law and regulation
- Duty of care obligation
- Health and safety regulation
- Good business practice to eliminate corrupt and prejudicial activities amongst officials, and acknowledging
- Corporate social responsibility and established governance procedures.

As in all modern institutions, moral judgment and legal interpretations of human relationships have to be made beyond what is mere policy, with the Armed Forces proving exemplary public behaviour, starting with human rights.

The following should be recognized and respected

- Fair and just treatment of all
- Individualism and identity
- Sexual orientation
- Gender
- Religious beliefs
- Racial and ethnic equality
- Marital and civil partnerships
- Inclusiveness and diversity
- Multi-cultural assimilation
- Right to family life
- Work-life balance
- Privacy
- Social-media sensitivities
- Media coverage, transparency
- Responsibility for protection from crime, enemy action and physical accidents
- Responsibility for mitigation of physical and mental harm
- Acceptance of responsible whistle-blowing to expose bad practice
- Legal protection / handling of litigation against individuals, and
- Care of veterans, over the long-term.

The whole question of the relationship between medical and military ethics, being both similar yet different from other professions, is a huge field. Both aspire to the *prima facie* 'duty of non-maleficence', the contradiction of doing harm but only with good intent. There is a growing number of criteria and case-studies in evidence of armed

forces personnel being endangered and harmed in many different ways, including moral harm. Human sensitivities have never been so recognized in the Armed Forces as now.

There are also other considerations within the discipline of military ethics which are peculiar to the military profession, namely the personal, political, legal and ethical understandings of

- Dissent from illegal orders and non-compliance
- Asymmetric war-fighting
- Dynamics of counter-insurgency
- Humanitarian intervention duties
- Use of private military companies and mercenaries
- Civil-policing, when in conjunction
- Intelligence and counter-intelligence
- Weapons lethal and non-lethal
- Unmanned and Autonomous Weapon Systems Vehicle
- Artificial Intelligence, algorithmic interventions and cognitive and physical engineering, affecting individuals' daily life for good or ill
- Information warfare
- Cyber warfare
- New technologies, including robotics and human 'enhancements'
- Working with NGOs, and
- Embedded professionals with conflicting neutrality-disciplinary codes (e.g. cultural anthropologists).

Over the long term, with a deep understanding the considerations and judgments of operational and institutional ethics, such can converge and provide for robust professionals imbued with high degrees of 'excellence in fighting power' proclaimed at the beginning of this paper. Michael Walzer asserts in his seminal 1977 book, *Just and Unjust Wars*, of 'the importance of fighting well'<sup>72</sup>. But 'success' under the Just War Theory, requires institutions which are comfortable with themselves and the wider world.

With all the above 'duty of care' criteria exercised by Armed Forces professionals

as employees, the purpose of Armed Forces is to do quite the opposite against declared enemies, with a duty of death and destruction. How aggressive should the military professional be? Contradictions persist. Before the battle of El Alamein, when the Second World War was in the balance, General Montgomery said to his troops 'everyone must be imbued with the burning desire to kill Germans'. That might have been appropriate then and such was professional moral confidence in the efficacy of fighting power in 1942. However, he wrote years after the war that 'The true soldier is the enemy of the beast in man'<sup>73</sup>. That perhaps expresses the true ethical spirit of 'fighting power'.

In summary, this ability to hold in mind often extreme, opposite and conflicting ideas and actions reveals the nature and responsibility of the military profession, its fighting spirit and need for restraint, in both competition and in collaboration with adversaries. In the end, counter-intuition and willing suspension of disbelief form the intellectual judgment of practical, wise, professional people when faced with stark contradictions and perpetual ambiguities – and the limits of 'unlimited liability'.

## 10. Profession of Arms

***'Trust men and they will be true to you; treat them greatly and they will show themselves great'.***

F.W.Emerson, poet, essayist.

This Paper began by suggesting two fundamental facts – war is nothing less than countering other people's ideas with physical and deadly force, and is always a great and dangerous experiment. It has also described many other contradictory dynamics during conflict. In recent years British governments and the Armed Forces have learnt many moral lessons in the Balkans, Sierra Leone, Iraq and Afghanistan, about conduct which is right and wrong, and ethically what is good and bad, as well as what is lawful and unlawful. A mission can fail when it is not deemed a 'just war' as much as if the physical fighting is militarily ineffective. It can fail if officers, soldiers, sailors and air personnel conduct themselves brutally, wrongly or merely insensitively, given the cultures of the nations in which they are operating.

As organic institutions, Britain's Armed Forces are part of a wider profession of arms, the result of many generations of development. They are active, evolving and symbolic expressions of British sovereignty, identifying features of the particular civil-military relationship which every nation has with its military, albeit in its own distinctive way. The voluntary military character is deeply engrained in the British

psyche. Conscription was only fully invoked for two brief periods of history. Those who join take ownership of their Service, and in a sense join a 'free association', albeit giving up some significant citizen rights and freedoms. In that they may take many known risks and face some fearsome unknown dangers – but upheld in their minds and hearts by necessary will-power and 'fighting spirit'.

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fighting spirit...defence ethics

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In truth, people join the profession and live according to what Roger Scruton describes as a 'covenanted relationship'. This is at the heart of the duty of a profession to regenerate itself over a long period. Joining such an association is not contracted in the ordinary sense, but is 'an inheritance of trusteeship, which cannot be reduced to the agreement to be bound by it'<sup>74</sup>. That is the nature of the military profession as vocation and the nature of the living 'military covenant', described by Sebastian Roberts in Army doctrine of 2000, *Soldiering the Military Covenant*<sup>75</sup>. It includes Hackett's comments about personal 'unlimited liability', when ordered to kill and be killed.<sup>76</sup> Although the Military Covenant is a 'moral understanding' about professional persons facing modest or sometimes acute levels of risk as part of their vocation, the unlimited liability concept has not been fully developed in Britain. While it remains an open question as to how it accords with the duty of care in modern-day professions, without explicit limits in a written employee contract, there is in addition an institutional covenant the Armed Forces Covenant<sup>77</sup>, formally instituted in 2013. Truth to tell, all professions are in a covenanted relationship with the public beyond legal, requirement, usually implicit but sometimes guaranteed.

The holding of military office<sup>78</sup>, commissioned or non-commissioned down to enlisted persons has been explained elsewhere, but briefly is about expected levels of responsibility and guarantees of trustworthiness, the corporate confidence and commitment as evidenced. But what's special about the standing of commissioned officers? According to Hackett

'The officer is endued with the power of coercion. In a society of free men this power cannot be safely bestowed on those who do not have the detachment and liberality of mind to use it wisely'<sup>79</sup>.

'Especial trust and confidence', *fide et fiducia*, is set out in the formal commissioning document. This is the mantle of trusteeship and powers of judgment of the 'fiduciary role' of military professionals – the same words, straight out of Sweet and Maxwell's *Law of Equity*, being 'a relationship of trust and confidence'<sup>80</sup>. So the chain of command and hierarchy of ranks serves a purpose, although all military personnel are personally liable, not only for 'fighting excellence' as a moral factor, but also the tolerance for ambiguity about restraint, which is less than legally defined, therefore a matter of ethical judgment of the greatest significance.



In sum, trust is both an ethical and moral dynamic in the profession of arms, defining a professional status. Trustworthiness is the character of goodwill personified in officers and NCOs, and all enlisted persons since 1945. The modern-day concept of and practice of 'Mission Command' reinforces this factor, responsibility being widely entrusted to subordinate commanders, not merely delegated. This means that every man or woman in the Armed Forces, irrespective of rank, are substantial public 'trustees'. They are all personally required to use their powers, physical, cognitive and moral wisely. All are ambassadors for their profession and the British population. Such can be logically extended for all humanity, holding that universal peace is the ideal end to war-fighting, a victory for all humanity.

In the end, the morality of war and ethics leading to peace, is all about trust, trust amongst *all* parties. Generating personal and institutional trust is what leaders do, *par excellence*<sup>81</sup>. Military leaders have to do this not only amongst their own people and neutrals, but their opponents and enemies as well. Preventing war and bringing about *jus post bellum*, coping with all the complexities and contradictions in what often is the most dangerous of all large-scale human enterprises, is the military's business. One caveat; if we lose the balance between fighting spirit, moderating constraint and serving public opinion, we 'might moralise and legalise our armed forces into extinction'<sup>82</sup>. Who then is left to defeat evil and maintain national, global and possibly human survival? What is left of 'fighting power'?

Britain needs and deserves Armed Forces with the necessary will-power and goodwill in securing the nation, and to contribute to humankind. Jonathan Glover writes profoundly that in essence two ethical resources are needed, namely a sense in individuals of 'humanity' and an institutional 'moral identity'. Christopher Coker adds the need for 'moral imagination'<sup>83</sup>, the aspiration to enable thought and actions to 'rise from the moral to the ethical'. In a sense, this is the true substance of national leadership in security matters. Military professionals are all leaders in that sense, whatever position or rank they hold, and eminently pragmatic. A final contradiction; ethical principles and conduct are idealistic, but beware moralistic grandstanding, leading towards self-defeating utopianism. Everyone is human. The world will ever be imperfect.

In sum, it must be recognized that the study and application of 'military ethics', or 'defence ethics', identifies and supports a considerable military capability. Based on ethical principles, the dynamics of the 'moral component' of fighting power – as military will-power and effectiveness – are subjects increasingly under international scrutiny. The seaman, airwoman, corporal, sergeant, captain, admiral, general and

air marshal physically, intellectually and morally, can make all the difference to operational success or failure on behalf of the British people and, to be positive and idealistic, the security all of humankind.

In conclusion, what further experiments will there be? Can 'fighting power' be described as legally-sanctioned 'rough justice' when the law fails to subdue vicious people and their regimes? If the spirit of humanity and our species is to continue to prosper, then a universal, wary, counter-intuitive, optimistic spirit generating and sustaining stability, may well continue to reduce violence and armed force as witnessed in recent decades. The final questions remain open. In truth can war be eliminated as human conscience matures further, and overwhelms previously irreconcilable dynamics of human competitiveness in some sort of lasting peace? But who is in charge of our world and do we have control of the future?

## FURTHER READING

(additional to works cited in the endotes)

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## ENDNOTES

- 1 Specific warning is evident in UK Ministry of Defence (MOD) Global Strategic Trends. The Future starts Today (6th Ed, MOD Development, Concepts and Doctrine Centre [DCDC], 2019, updated 5 yearly) 66-67; David Mercer, *Future Revolutions* (Orion 1998) 35-36; Toby Ord, *The Precipice. Existential Risk and the Future of Humanity* (Bloomsbury 2020) 124-138.
- 2 A more peaceable world is the claim of Steven Pinker in *The Better Angels of our Nature. Why Violence has Declined* (Viking 2011); Jared Diamond, in *The World Until Yesterday. What Can we learn from Traditional Societies?* (Viking 2012); and Ian Morris, in *War What's it good for? The Role of Conflict in Civilisation. From Primates to Robots* (Profile 2014). Counter-claims for likely dangers are set out in Augusto Lopez-Claros, Arthur L. Dahl and Maja Groff, *Global Governance and the Emergence of Global Institutions for the 21st Century* (CUP 2020) 5, n 7 accessible on <http://www.cambridge.org/core> (15 March 2020); MOD (n 1); Lawrence Freeman, *The Future of War. A History* (Penguin 2017); and Philip Bobbitt *The Shield of Achilles. War Peace and the Course of History* (Allan Lane 2003).
- 3 A term used by the Global Governance Forum. See the seminal work of Lopez-Claros (n 2).
- 4 Lopez-Claros (n 2) 437-456.
- 5 See Jason Hickel, *The Divide. Global Inequality* (Penguin 2017) and Sam Harris, *The End of Faith. Religion Terror and the Future of Reason* (Free Press 2006).
- 6 Michael Ignatieff, in 'The Nation State and the Promise of Sovereignty' in Möhring and Prins, *Sail on O Ship of State* (Notting Hill Editions 2013) 45, counts more than 5000 'nation' communities, each claiming degrees of separation, and many in conflict war with each other across the 195 states of the world. Internal wars and cross-border wars are the result, causing a large proportion of the 80m displaced persons noted by the UN, see n 10 below.
- 7 Philip Bobbitt (n 2).
- 8 Michael Howard in Bobbitt (n 2) xviii.
- 9 Matt Ridley, *The Origins of Virtue* (Viking 1996).
- 10 United Nations, *Global Trends Report*, 18 June 2020. The world population is expected to attain 9.6 bn by 2050.
- 11 Graham Allison, *Destined for War. Can America and China escape Thucydides's Trap?* (Scribe 2017); Timothy Snyder *The Road to Unfreedom*. Russia, Europe, America (Bodley Head 2018); Chris Donnelly, 'War in Peacetime' and 'Ambiguous Warfare and the Resurgence of the Russian Military', COMEC Occasional Paper, no 9, 2017, and in regard to China, Andrew Lambert, 'Britain's Maritime Future', COMEC Occasional Paper No 6, 2016.
- 12 MOD (n 1) and Ord (n1).
- 13 K.Galbraith, *Anatomy of Power* (Houghton Mifflin Harcourt 1983); Naom Chomsky, *How the World Works* (Penguin 2012).
- 14 Ministry of Defence (MOD) Army, *Operations* (Army Doctrine Publication 2017) 3.20a.

- 15 For 'fighting power' see MOD, *British Defence Doctrine* 5<sup>th</sup> ed ( DCDC 2014) 25-36. 'Smart power' is also defined, while 'hard power' is often characterized as 'kinetic'. This and all previous editions have termed the three 'components of military power' as the 'physical' [including communications], the 'conceptual' [theory to practice] and the 'moral'. This latter dynamic is currently chiefly about the combined willpower – not ethics – of military professionals, their commanders and the people, emanating from Carl von Clausewitz's 'trinity', *wunderlicht Dreifaltigkeit* in his *On War*, ed and tr Michael Howard and Peter Paret (Princeton 1976) 184-186.
- 16 Donnelly (n 11).
- 17 Ridley(n 9). However such relies, like Game Theory, on rational players. People are not necessarily rational. Nonetheless, Ridley argues that this intuitive and counter-intuitive nature of humankind, how to compete and cooperate simultaneously has resulted in our huge success as a species.
- 18 MOD (n 1).
- 19 The problem is that 'war' is a normal and general term in everyday use, but it also has very precise legal meanings. Lawyers prefer to use the term 'armed conflict' for military operations. 'Choice' includes the UN project 'Responsibility to Protect', that is populations from genocide, war crimes, ethnic cleansing and crimes against humanity, endorsed by all member states of the United Nations at the 2005 World Summit. It is now seldom used.
- 20 As rather grandiloquently stated in MOD (n 15) 25.
- 21 Bobbitt (n 2).
- 22 Iris Murdoch, *The Sovereignty of Good* (Routledge 1971) 92; Blaise Pascal, *Pensées*, X; Boethius, *Consolation of Philosophy*, Prose III, Met III.
- 23 The complexity of 'instituted' facts, and 'brute' realities is demonstrated by sociologist John Searle in his *The Construction of Social reality* (Penguin 1995). Highly sophisticated, professionalized, well-meaning people can inflict what is the most hideous, brutal 'violence' even if they term it institutional 'force'.
- 24 Values can be variable, some dependent on other variables, others independent, while some vary from dependence and independence over time, or vice-versa.
- 25 For quotation See endnote 64.
- 26 MOD (n 1) 19, emphasis added. See also Rupert Smith, *The Utility of Force. The Art of War in the Modern World* (Penguin 2005).
- 27 Napoleon Bonaparte, quoted in G.F.R Henderson, *The Science of War* (Longmans 1906) 173. See particularly Clausewitz's (n 15) 'Moral factors',184-186. The distinction has been argued in Patrick Mileham, 'Military Integrity: Moral or Ethical?' in *Military Ethics and Leadership*, ed Peter Olsthoorn (Brill 2017), being proceedings of the European International Society For Military Ethics Conference in Belgrade, 2015.
- 28 Arthur, Duke of Wellington in a letter to John Croker, 1808; Leo Tolstoy, *War and Peace* (OUP 199) 196.
- 29 Gilbert Ryle writes on 'category errors' in *Concept of Mind* (Routledge, 1949, 2009). In maintaining that moral and ethical are not the same thing, the arguments are extensive. One starts with virtue

in cooperation (Ridley) as the superior claim in understanding the meaning of life, and ontologically seeking unity and the higher good, in Pascal and Murdoch (n 22) and Lucaks ( n 32).

- 30 As such, philosophy and ethics draws strength from the highest abstraction of thought, beginning with metaphysics and meta-ethics. A useful categorization of the branches philosophy can be found in A.C. Grayling, *The History of Western Philosophy* (Penguin 2019) xv-xxii. Philosophical categories are also involved, such as absolutism, relativism, prescriptivism and emotivism, intuitionism / counter-intuitionism (willing suspension of disbelief) and revealed-religious bidding and commandment, as well as the foundation of democratic decision-making, notably the greatest good of greatest number (utilitarianism and principle of majority rule). The psychological understanding of knowledge through first principles of human existence (ontology) and epistemology (enquiry and cognition), will-power (conation), sociology and psychology (emotion and affection) are also fields of the human sciences and the humanities.
- 31 Classic virtues are courage, self-control, justice and wisdom. See Aristotle, *Nicomachaen Ethics* II and III, in which he argues that 'ethics' involves personal choice, which may sometimes be against the custom, habits or norms of a community.
- 32 Quotations respectively Grayling (n 30) xvii, emphasis added; Rosamund Thomas, *The British Philosophy of Administration* (CUP 1989)141; John Lucaks, *At the End of an Age* (Yale 2002) 138, 73.
- 33 How we manage the search for 'ontological' belief is 'epistemology' and thinking about thinking.
- 34 Writing about the beginning of the modern age, B. Wilkinson, *The Later Middle Ages in England* (Longmans 1969) 383. Freedom and liberty are explored by Isaiah Berlin in *The Power of Ideas* (Chatto and Windus 2000).
- 35 Reinhold Niebuhr, *Moral Man and Immoral Society: A Study in Ethics and Politics* (Charles Scribner 2, Wiley 2016) 9, quoted in James Sheehan, *Monopoly of Violence* (Faber 2007) ix.
- 36 Clausewitz(n 15) 75, 605.
- 37 In general philosophy, 'deontology' is about the call for duty, say for fighting well; 'teleology' is about end-states.
- 38 MOD (n 14) 3.20g quoting Field Marshal Slim. Nigel Biggar, *In Defence of War* (OUP 2013), Chapter 2 'Love in war', explains the spirit of unsentimental love, *agape*, as the means of forgiveness and reconciliation between warring parties, whether of the pure metaphysically inspired human reason, or Divinely inspired love for one's enemy.
- 39 Derived from the original Preamble to the *Convention with Respect to the Laws of War on land* (Hague II), 29 July 1899.
- 40 Lon L. Fuller, *The Morality of Law* (Yale 1964) 4; Michael Barkun *Oder in Primitive Societies and the World Community* (Yale 1968) emphasis added. For 'perfection' see also A.D.Lindsay in *The Two Moralities* (Eyre and Spottiswoode 1940).
- 41 Source (n 39).
- 42 Universal Declaration of Human Rights, Article 1. See Philip McCormack's essay 'Grounding the British Army's Values on an ethical good' accompanying an ECAB paper of March 2015, <http://www.cgscfoundation.org/wp-content/uploads/2015/04/McCormack-GroundingBritishArmyValues.pdf> accessed 20 March 2020.

- 43 McCormack (n 42) 16, sources are from the US Declaration of Independence, John Locke, *Second Treatise of Civil Government*, and Plato.
- 44 Charles Garraway (a former General editor of the *Joint Service Manual*, cited in n 45 below) in correspondence with the author between May 2019 and June 2020.
- 45 MOD, *The Joint Service Manual of the Law of Armed Conflict*, JSP 383 (2004) is the definitive document for Britain's Armed Forces' compliance with law and general conduct, providing legal *jus in bello* principles during the conduct of operations. The 1949 Geneva Conventions introduced the 'grave breach' provisions which are indeed criminal, but limited to only the most serious violations.
- 46 Frequently things go wrong. For contradictory facts and confusion about operational intentions and realities, see Patrick Hennessy's highly amusing but dark account of British Army operations in Iraq and Afghanistan, in *The Junior Officers' Reading Club* (Penguin 2009).
- 47 Patrick Mileham, 'Teaching Military Ethics in the British Army', in *Ethics Education in the Military*, ed Paul Robinson et al (Ashgate 2008) 48-49.
- 48 For judgment see UK Privy Council document *The Iraq Inquiry*, published as the Chilcot Report, 2016 (Executive Summary see Canbury Press 2016) concerning the invasion of that country in 2003 by Britain and other coalition partners, led by the US; see also Chilcot Team, *The Good Operation* (Ministry of Defence 2017) and UK Defence Academy *Getting Strategy Right (Enough)* (Royal College of Defence Studies 2017).
- 49 Smith (n 26).
- 50 MOD (n 15) 50.
- 51 Paul Sieghart *The International Law of Human Rights* (OUP 1983, CUP 2009).
- 52 Full documentation is extensive. Leading books on Just War Theory Michael Walzer's *Just and Unjust Wars. A Moral Argument with Historical Illustrations* (Penguin 1977); Stephen Coleman, *Military Ethics. An Introduction with Case Studies* (OUP 2013) and Nigel Biggar's (n 38). They are chiefly about *jus ad bellum* and *jus in bello*, but see also Carsten Stahn and Jean Kleffner ed, *Jus Post Bellum*, (Asser Press 2008) as well as Adam Roberts and Richard Guelff eds, *Documents of the Laws of Wars*, (OUP 1982 – 2000 and updated ) and the MOD's *Manual of LOAC* (n 45).
- 53 MOD (n 45) 21-26. The words 'combatant' and 'non-combatant' are however, confusing. Further definition can be 'those who take a direct part in hostilities' for 'combatants' and, either 'civilians' or 'those who do not take a direct part in hostilities', for 'non-combatants'.
- 54 David Rodin, *War and Self-defense* (OUP 2002).
- 55 These passages are condensed with the author's permission, from Brian Orend's 'Jus Post Bellum: A Just War Theory Perspective', in *Jus Post Bellum*, ed Casten Stahn and Jean Kleffner (Asser Press 2008) 31-51. See also his 'Justice after War: Towards a New Geneva Convention on Jus Post Bellum' in *Raison Politiques*, 2012/1 (no 45) 43-55.
- 56 Browning, *Andrea Del Sarto*.
- 57 From the Nuremburg Tribunals of 1945-6 no person can claim that they were merely following the orders of a superior and thereby justified in anything they did.



- 58 The deeper study of contradictions and ambiguities, when more than one interpretation of facts, narratives, sets of values and judgments can be found in considering the literature of 'antinomies', 'contraries' and 'complementarities'.
- 59 Alasdair MacIntyre, 'Social Structures and their Threats of Agency', in *Philosophy*, vol 74, no 289, 311, adapted.
- 60 'Afghanistan good enough' was a term often used by British commanders and soldiers when facing difficult decisions about interpreting ROE and physical actions, shortcutting what was taught ethically-ideally in training/education.
- 61 St Cyr research in 2013-15 found that some 60 nations publish Values and Standards type military codes of conduct. Hakim Bouzid, Pierre Falzon, Eudes Foutel at al, 'Towards a European Code of conduct for Military and Peacekeeping Forces' in ed George Lucas, *Routledge Handbook of Military Ethics* (Routledge 2015).
- 62 Nicholas Wheeler, *Trusting Enemies. Interpersonal Relations in International Conflict* (Oxford University Press 2018).
- 63 Proceedings of a Defence Academy Seminar, 28 September 2018, published as chapter 17 in Patrick Mileham, editor *Jus Post Bellum. Restraint, Stabilisation and Peace* (Brill Nijhoff 2020). See also chapter 9.
- 64 Hackett, 'The Military in service to the state' in *War, Morality and the Military Profession*, ed Malham M. Wakin (Westview 1986 ) 120.
- 65 See Searle's distinction between 'brute' and 'institutional facts'(n 23).
- 66 The French language differentiates between *moral* and *morale*, the latter borrowed for English language usage.
- 67 Hackett, *The Profession of Arms* (Sidgwick and Jackson 1983) 202.
- 68 The Royal Navy's and British Army's six core Values, building and sustaining 'moral cohesion', are Selfless commitment, Respect for others, Loyalty, Integrity, Discipline and Courage (SOLID C). Together they combine to generate 'trust' amongst individuals and the virtue of 'trustworthiness'. See the secondary list, 'Other Military Attributes' in MOD (Army) *Operations* (n 14) 2-22 to 2-31, and in respect of leadership, n 78 below. Beware metaphors: the needle of a 'compass' points to 'magnetic north', not the same direction as 'true' and 'grid' north'.
- 69 This was agreed, and published in the proceedings of a Seminar at the Royal College of Defence Studies on 3 November 2011, 'To consider the Ethical Component of Military Capability', organized by David Whetham and this author.
- 70 Mileham (n 27)143.
- 71 Hackett (n 67).
- 72 Walzer (n 52) 127- 137.
- 73 Bernard Montgomery, *History of War* (Collins 1968) 567.

- 74 As articulated in Roger Scruton, *The Soul of the World* (Princeton 2014) 94. Trusteeship and fiduciary responsibilities are explored elsewhere in Patrick Mileham, 'Armed Forces Officership: An International. Military Capability' in George Lucas ed, *Routledge Handbook of Military Ethics* (Routledge 2015).
- 75 MOD ADP 5, *Soldiering the Military Covenant* (MOD 2000).
- 76 Hackett (n 65). This statement is metaphorical. Modern-day duty of care, safeguarding and due diligence are processes which reduce unnecessary risk.
- 77 This is a written and promulgated moral expression of intent, a compact entered into by many civil institutions and organizations to respect Britain's Armed Forces and military individuals, helping them to fulfil their side of the Military Covenant. While the two covenants run in parallel, they are categorically different. Both however confirm many of the practicalities of the civil-military relationship, aligned to the Clauswitzian trinity of trust between people, government-command and army. <https://www.armedforcescovenant.gov.uk/> accessed 11 September 2019
- 78 Mileham (see n 74). This is recognized in an Army board paper of May 2015, quoting this author, about the 'fiduciary responsibilities of trust' for the very good reason that amongst all members the 'spirit which enables soldiers to fight, relying on mutual trust' has to be an act of good faith on all sides. For importance of 'mutual trust', see also Foreword to *MOD Army Leadership Doctrine* (2016)3.
- 79 Hackett, 'The education of an officer' in *Journal of the Royal United Services Institute*, 1961, vol 6,2, 33.
- 80 The US commission also includes the same expression. John McGhee, Snell's *Equity*, 21<sup>st</sup> ed (Sweet and Maxwell 2005) 152 [and in 34<sup>th</sup> ed].
- 81 There is a vast literature on military leadership, some of which concentrates on ethical considerations. See MOD, *Army Leadership Doctrine* (2016).
- 82 This point was picked up in government minister Andrew Murrison's, *Tommy This and Tommy That. The Military Covenant* (Biteback 2011) 63.
- 83 Jonathan Glover, *Humanity. A Moral History of the Twentieth Century* (Jonathan Cape 1999); Christopher Coker, *Humane Warfare* (Routledge 2001).



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