

The Moral Crisis of Just War: Beyond Deontology toward a Professional Military Ethic

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We live amidst the ruins of the character/ virtue ethic of an earlier age, now populated by deontologists and utilitarians. In such a moral setting, professions face constant pressure to become occupations (instrumental roles with no internal commitment or inherent excellences) and professionals are subject to expectations that they will be mere experts in the efficient manipulation of means for any requested end. —an excerpt from this essay

Abstract

In the wake of the terrorist attacks of 11 September 2001 and the recognition of asymmetrical or 4th generation warfare, the just war tradition has faced a crisis of legitimacy. It is argued that the just war tradition was suited for kind of warfare that has been eclipsed, that global counter-terrorism necessarily entails a style or mode of warfare that is not compatible with the tradition criteria of the just war tradition. This paper argues that the bellicose conditions at the outset of the 21st century have indeed pushed the just war tradition into a crisis from which it may not recover but that this is no loss. Indeed, that form of the just war tradition that is in crisis ought to pass and in its passing a space may open for a more robust and relevant vision of just war, one that is in keeping with the best that the U.S. military says about itself and with the professional military ethic that its moral leaders seek to foster.

Introduction

For several years now the U.S. Army has been in the process of evaluating its professional military ethic. This evaluation has been prompted by repetitive deployments in an era of

persistent conflict that have left the Army, in the words of General Casey, “stressed and stretched.”¹ Matthew Moten succinctly identifies four factors that have contributed to this stressed condition:

² The first is the type of warfare that the Army is being asked to conduct. Whether one describes the post 9/11 combat environment as “4th generation warfare,” asymmetrical war, a global war on terrorism, or the latest incarnation of the age-old effort at counterinsurgency, Moten observes that it is “one of the most ethically complex forms of war.”

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The second factor he identifies is that of policy decisions that have blurred the moral, ethical, and legal lines soldiers have been trained to observe and uphold.

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Don Snider, Paul Oh, and Kevin Toner elaborate upon this, noting that evolving views of international laws and treaties (specifically, those related to the laws of war), public policy and court rulings related to the classification of enemy combatants, the use of military tribunals, and the employment of harsh interrogation techniques are “evolutions from the norms followed throughout the pre-9/11 era.”

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The third factor involves the increasing reliance upon commercial contractors, in effect “outsourcing” significant portions of the Army’s professional jurisdiction – including its sustenance, its thinking, and its core expertise, fighting.

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The fourth factor he names stems from what has popularly been called “the revolt of the generals,” which Moten describes as “the professionally improper dissent on the part of retired generals,” but which could be broadened to encompass a host of issues related to civil-military relations, from the tension Martin Cook identifies between subordination and expertise in the officer’s role,

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to officers’ connections to media and defense industries.

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In this situation, where some observers think the Army is near the breaking point, and, I might add, where the results of the Military Health Advisory Team survey pertaining to “battlefield ethics” are less than comforting,⁹ Moten concludes that the essence of the professional ethic needs no radical change.

¹⁰ Instead, he suggests that what is needed is codification of the existing ethic, perhaps in the form of an “Officers’ Code.”

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In contrast, Don Snider, Paul Oh, and Kevin Toner suggest that a codified professional ethic as well as continued reliance upon a “values clarification” approach to instilling that ethic are insufficient.

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Instead, they call for a move “from values to virtues,”

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which amounts to a fundamental (but not entirely discontinuous) shift in the moral formation of soldiers, and which, I would suggest, is arguably more in keeping with what the term “professional” in the professional military ethic means.

In what follows I enter into this debate by way of the just war tradition and the first stressor that Moten identifies. Not unlike the Army, in the wake of the terrorist attacks of 11 September 2001 and the new prominence of asymmetrical or 4th generation warfare, the just war tradition faces a moral crisis. Increasingly, its legitimacy as a moral guide for contemporary warfare is called into question. It is argued that the just war tradition was suited for a kind of warfare that has been eclipsed, that global counter-terrorism necessarily entails a style or mode of warfare that is not compatible with the traditional criteria of the just war tradition. For example, traditional notions of just cause give way to preventative war, last resort is thought a luxury one cannot afford in the face of nihilists armed with WMD, reasonable chance of success is reduced to a probabilistic hope and the traditional distinction drawn between combatants and non-combatants is blurred in the face of the reality of full spectrum operations.

I argue that the bellicose conditions in the first decade of the 21st century have indeed pushed the just war tradition into a crisis from which it may not recover but that this is no loss. Indeed, the form of the just war tradition that is in crisis ought to pass and in its passing a space may open for a more robust and relevant vision of just war, one that is in keeping with the best that the Army says about itself and with the professional military ethic that its moral leaders seek to foster.

Specifically, the form of just war that faces a crisis of relevance is just war conceived as a moralistic or legalistic checklist that is part and parcel of a deontological, duty or law-based ethic. Such an ethic is always in crisis because the moral challenges of justice in war always exceed the capacity of such an ethic. As a consequence the warrior ethos cannot help but degenerate, in the provocative words of Timothy Challans, into a kind of utilitarian work ethic at odds with the moral vision that animates both just war and Army values.¹⁴

The passing of this deontological vision of just war is a good thing insofar as it may open a space for the emergence of a more fruitful vision of just war that dovetails with a professional military ethic oriented toward character and virtue. This is to say, at its best the professional military ethic is an ethic of virtue or character and that when the just war tradition is understood in terms of virtue and character, the challenges of asymmetrical war remain but they are not insurmountable, as I will show by considering a few of the criteria and the challenges put to them by the current context.

Finally, I conclude by suggesting that even as re-envisioning just war as an ethic of character addresses the first stressor – the changing face of war – it simultaneously elevates the

significance of the other three stressors Moten identifies, which each in their own way are a refraction of civil- military relations, insofar as each reflects tensions created at the interface of a professional military with civilian institutions, values and policies. The shift from values to virtues potentially can heighten the tension of civil - military relations just the extent that civilian institutions and culture neither share nor respect the virtues that constitute the professional military ethic. The conclusion to be drawn from this is that a professional military ethic is not unrelated to civic virtue and so the work of fostering a professional military ethic, and sustaining the character needed to wage war justly, cannot be the sole domain of the military but must also involve civil society and the parallel work of fostering civic virtues.

The Crisis of Just War

It is widely recognized that we have entered a new era of warfare. With horrible poignancy, on September 11, 2001 terrorism announced that it had come of age. No longer are wars waged between symmetrical powers - state versus state; now we are immersed in asymmetrical warfare, where states face non-state enemies who are palpably post-modern: trans-national, decentralized, more closely resembling a fog or that mythic beast with multiple and multiplying heads, the hydra, than the traditional more or less well-defined and (at least potentially) containable national enemy. Moreover, this hydra is one given particularly to living amongst and preying upon civilians. In other words, this is an enemy who does not respect the traditional western moral parameters of warfare.

The response to this new kind of enemy – originally a global war on terrorism, now global counterinsurgency - has been no less remarkable for the novel directions it has taken warfare.¹⁵ Consider, for example, the strategy of “shock and awe,”

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with its stated aim of inflicting the psychological equivalent of the bombing of Hiroshima and Nagasaki on the enemy population, of the policy of preventative war as outlined in the US National Security Strategy of 2002,

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the illegitimacy of neutrality as implied in President Bush's address to a joint session of Congress on September 20th, 2001, "Either you are with us, or you are with the terrorists," the collapse of the international principle of national sovereignty and self-determination as the enemy is pursued across national boundaries around the globe (with cruise missiles, stealth missions, or the use of unmanned drones), or the softening of international conventions on war as enemy combatants (and in many cases, civilians) are stripped of the protections of the Geneva Conventions etc. and imprisoned under harsh conditions, often after being "disappeared" to clandestine locations inaccessible to the likes of the Red Cross. And these are only some of the characteristics of this new way of war. No doubt, much is happening about which we know nothing, given that this war involves not only more conventional, visible campaigns like those in Afghanistan and Iraq but also "ghost wars," fought covertly in ways such that, as President Bush said, we will not know that they have begun or ended.

Accompanying this recognition is the suspicion that these developments have finally rendered the just war tradition obsolete, irrelevant, impossible.¹⁸ In these changed circumstances, the traditional criteria just do not seem to fit. Global counterinsurgency and the demands of waging it successfully defy such antiquated notions like legitimate authority, last resort, and the necessity of distinguishing between combatant and non-combatant.

Put more starkly, are we not now in a perpetual (color-coded) "supreme emergency," to use Michael Walzer's well-known concept,¹⁹ one that does not permit us the luxury of the moral purity or "clean hands" that the just war tradition, in more amenable times, afforded? Or, to echo the logic some have used in defense of suspending key protections of the Bill of Rights, surely the just war tradition is not a "suicide pact,"²⁰ rigidly binding us to a code of conduct in the face of a vicious enemy that does not share our moral vision of war? Or as the US administration's briefs suggest, does not the "military necessity" of crushing the evil of terrorism overrule the binding character of just war criteria?

The challenges presented to the just war tradition by the current situation are real. For example, as warfare shifts from the nation-state model to conflict with and between non-state actors, the criterion of legitimate authority, which has traditionally lodged the authority to wage war with heads of state, is called into question. Likewise, the current situation appears to many to render the criterion of "last resort" vacuous. After all, it is argued, when facing a purely evil, irrational, nihilistic enemy like a terrorist movement, war becomes the only possible means of response.²¹ In a similar manner, many proponents of the war against terror note the difficulty both with identifying what the successful end of such a war would look like and how to measure the probability of attaining that end. Consequently they have effectively replaced this criterion with what might be called a "sincere hope for success."

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Lastly, the difficulties the current situation presents to the criterion of non-combatant immunity

are obvious. The predominantly civilian context of this war has led some to suggest that the distinction between civilian and military may disappear altogether

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and that prohibitions on practices like torture are anachronistic. Unsurprisingly, perhaps, in this setting, even the long-standing principle of the “moral equality of soldiers,” whereby ordinary combatants are not considered criminal merely for prosecuting war, as well as the general immunity from criminal guilt afforded civilian populations, is being called into question.

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Although the challenges are real, the shadow of suspicion cast over the just war tradition by the current situation is itself not an entirely novel development. Indeed, it could be argued that the just war tradition has never been entirely at home in the modern world. The tradition was largely eclipsed with the rise of modern modes of war, and although the creation of international law as well as military manuals, like Leiber’s General Orders No. 100, attempted to reassert some moral restraint on war that was quickly becoming total, it was not until the latter half of the twentieth-century that the just war tradition was seriously re-engaged on a wide scale.²⁵ Yet even as it was being re-engaged, its viability was questioned, particularly in light of nuclear realities.

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Furthermore, public perception and the heralds of “4th generation warfare” notwithstanding, the current asymmetrical context is not unprecedented.²⁷ The just war tradition arose and came into its own before the advent of nation-states. Indeed, it was precisely the variegated threats posed by decentralized bodies of fighting men in the high middle ages - brigands, mercenaries, pirates, and even feudal lords themselves - that prompted the just war tradition to further limit the scope of justified violence by narrowing legitimate authority and enhancing non-combatant immunity.

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So, if the neither the question put to the tradition, nor the circumstances that currently prompt such a question are new, then why the generalized sense that the just war tradition is perilously close to eclipse? Certainly there is some truth in the claims of those who suggest that the crisis is brought on by certain crypto-pacifist distortions of the tradition that effectively make it impossible to satisfy the criteria. There are, for example, those who assert that any non-combatant casualties render a war unjust or that there can always be one more intervention before last resort. Likewise, there is certainly some truth in the claims of those who suggest that the mere invocation of the tradition's language is not a sign of the tradition's health but conversely a sign of its brokenness. After all, realists and their PR apparatus are not above cynically and pragmatically using (parts of) the tradition on behalf of agendas that do not in fact cohere with the tradition.

Yet, the distortions and manipulations of the just war tradition are not the root of the tradition's current crisis of moral legitimacy. However these and similar misuses of the tradition contribute to the sense of crisis, they do not get to the heart of the matter. For the tradition's difficulties run deeper than its mere manipulation and abuse. Rather, the challenge currently confronting the just war tradition arises from the moral vision that underwrites the dominant contemporary approach to just war.

The Crisis of the Deontological Vision of Just War

What is in crisis amidst the changing face of war at the outset of the twenty-first century is a deontological vision of just war that construes the tradition as a kind of legalistic checklist disconnected from considerations of character and so reducible to duty and obedience. To make sense of this claim, it is necessary to make a brief detour through the work of Alasdair MacIntyre, one of the great philosophical minds of our age and one of the leaders in the contemporary revival of a character and virtue based approach to ethics. In his justly celebrated work, *After Virtue*, MacIntyre traces the public impasse in moral discourse – why public moral discourse so often degenerates into fruitless name-calling, dismissals, and “talking past” one another – to a shift in moral vision that occurred in the West as the medieval era gave way to the modern.²⁹ In a nut-shell, his argument is that the moral incoherence of modernity is precipitated by the loss of a sense of a thick telos or purpose attributable to humanity and embedded in the character and virtues of particular communities. The loss of this ontological teleology and concomitant character and virtue-based vision of morality were accompanied by the rise of utilitarian and deontological modes of moral thought.

Put in terms of military history, the shift MacIntyre describes corresponds in general terms to the eclipse of the era of chivalry, when warfare was deeply embedded in a way of life marked by character and virtues that were internalized (and visible externally in things like the artistry of armor and weaponry), and the advent of the modern era, when warfare was increasingly

industrialized and the internalized virtues associated with warfare gave way to external rules imposed by discipline and authority.

Put more directly in terms of just war, this shift in moral vision and military practice was accompanied by a change in how the discipline of just war itself was understood and practiced. Prior to modernity, just war (at its best) was understood not as a deontological checklist of criteria or set of rules that anyone, be they saint or scoundrel, could pick up on the eve of battle and then understand and employ. Rather, the just war tradition was the name given to a discipline, a set of habits, practices, and dispositions, that were but the expression of the constant character and virtues of a people. It was, in particular, the extension of the virtue of justice that characterized a people in their everyday life, to the realm and practice of war.³⁰ As an expression of the character of a community, the just war tradition was not a list of rules to be committed to memory so much as a set of markers for a way of life, a way of life characterized by virtues such as justice, prudence, temperance and fortitude that took form in the disciplines and practices summarized by the criteria.

In other words, just war was not simply a matter of sheer obedience and duty, of learning the rules in a few hours of ethics instruction by the chaplain and then summoning the will-power to obey them, perhaps with the encouragement of a friendly drill sergeant or forward leaning commander. It was not a matter of a checklist of criteria that anyone could use, without regard for character and regardless of whether one cared at all about justice and one's neighbor yesterday or would continue to do so tomorrow. Rather it was a matter of practices deeply engrained in habit arising from commitments internalized over the span of one's life in a community of like-minded and habituated persons. It was the kind of moral vision that might give rise to the well-known observation of General Sir John Winthrop Hackett, "What the bad man cannot be is a good sailor, or soldier, or airman."³¹

With the advent of modernity, this character-based vision of just war collapsed and what (eventually) replaced it was just war as a deontological checklist and it is this deontological vision of just war that is in crisis today. That the moral model charged with upholding the just war discipline is deficient is suggested by two very different contemporary voices engaged with matters of military ethics. On one hand, Timothy Challans, a harsh critic of contemporary paradigms of military moral training (and no friend of a virtue ethic approach), notes that the celebrated "warrior ethos" does not foster reflection on and deep commitment to the ethics of killing. He writes, "the warrior ethos is really about a special kind of work ethic, one that centers on mission accomplishment and potential self-sacrifice, not on moral restraints and law-abidingness."³² On the other hand, writing from a perspective much more congenial to a virtue and character ethic, Snider, Oh, and Toner observe that "Thus far 'Warrior' has not worked effectively for individual moral development. This is a . . . void in the Army's vital effort to 'move' Soldiers from mere intellectual acceptance of a set of values to a personal lifestyle, a

heart and soul embodiment of those values in everyday decisions and actions, which authentically ‘walks the talk’.”³³ This deficiency, moreover, is not a matter of individual or isolated failures but part and parcel of a moral tension inherent in a military that, while aspiring to function as a profession characterized by particular virtues and internalized norms of excellence, is organized in many respects like a bureaucratic hierarchy, which, MacIntyre notes, is antithetical to the character of a profession insofar as bureaucracies are the domain of instrumental reason and “experts” highly skilled in the efficient manipulation of means for the sake of any end.³⁴ Sort of like experts in sharpening and wielding the spear for any use or as Brian Imiola and Danny Cazier put it, “Any code whose underlying function is merely effectiveness will work equally well for the unjust warrior as for the just warrior.”

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The contemporary challenge to various criteria has already been noted. Once the crisis has been identified with the underlying moral vision, one can see more clearly that the current challenge to the just war tradition’s legitimacy is not circumstantial, that is, it is not inaugurated with the horrific evils of 9/11. Rather the stresses associated with asymmetric warfare are but the latest symptoms of abiding deficiencies with the deontological construal of just war.

While rules and commands are an important part of moral formation – and a character / virtue ethic recognizes the importance of commands and rules – the reduction of the moral life to a deontological vision suffers from several significant weaknesses that become particularly clear in the context of war fighting. First, there is the problem that the rules of war are always written for the last war. Said differently, it is simply impossible to anticipate and articulate a rule for every possible scenario that can arise on the battlefield, especially when the nature of war is constantly changing and combatants continuously adapting. This is implicitly acknowledged by those who argued in the wake of Vietnam (and who argue today in the midst of the Iraq and Afghan campaigns) that the war in question was a novel kind of war, and so we should not be surprised nor can we blame those who commit terrible acts precisely because it is not yet clear how the rules apply in this new situation. In other words, a rule-based approach is doomed to always play catch-up.

Second, and not entirely unrelated to the first problem, there is the problem of knowing which rules apply in which situation. For instance, one might well know and be committed to the principle of discrimination but when one is engulfed in the fog of war it is not always clear who is and is not considered a combatant and hence a legitimate target. Consider, for instance, the situation of a firefight in an urban setting where women are being coerced to collect weapons from the bodies of fallen insurgents or children are sent to collect scrap electronics that may be of use in constructing IED’s. One can know the rules but not be clear on which rules apply when.

Third, and perhaps most damningly, the deontological approach faces serious questions regarding its effectiveness. In the midst of the extraordinary stresses of combat and war, in the face of what Jonathan Shay, drawing on his work with Vietnam veterans, has called “atrocious producing situations,” knowledge and will-power are not particularly reliable.³⁶ Along the same line, Philip Caputo, in his classic memoir of the Vietnam War, has noted that what distinguished the soldiers who participated in My Lai from those who refused was not a matter of who knew the rules and had been trained to follow them, since all knew and had been so trained. Rather, as he learned who did and did not participate, the difference that emerged was one of character. 37

Likewise, Mark Osiel has argued that the “manifest illegality” standard for discerning unlawful orders fails on the same grounds: the deontological moral vision simply does not form soldiers in a fashion that would enable them to make the judgments necessary to discern what was in fact unlawful in the theatre of combat, with its attendant stresses and ambiguities. 38

Beyond Values and Rules: Character, Virtue and a Professional Military Ethic

It is abundantly clear that those charged with the moral leadership of the military recognize that the contemporary crisis of the ethics of war is not simply a matter of a just war tradition suddenly rendered obsolete by novel circumstances. The push for reconsideration of the military as a profession instead of an occupation³⁹ and for the development of a professional military ethic is proof of this. It is clear that among those charged with moral leadership the crisis is understood to be one of moral vision. Although it is just as clear that there is as yet no consensus on what the “fix” is. The suggestions, for example, that what is needed is simply a clearer articulation of the norms of behavior in a new code 40 or more reflective rational autonomy 41

suggests that the deontological vision remains intact. Nevertheless, as the work of Snider, Oh, and Toner, among others, suggests, there is growing recognition that what is needed is a move “from values to virtues.” What is needed is a shift from ethics education by means of values clarification in the form of memorized codes and fostering obedience to commands to a

renewed emphasis on the character and virtues that are acquired by immersion in a community of professionals, whose commitment to the excellences of their vocation is internalized and not merely instrumental. Thus there is more talk not of leadership but of ethical or moral leadership and not merely of command but of the command climate – both crucial to the mentoring/formation/habituation of professionals in the excellences internal to their craft.

This renewed emphasis on character, virtue, and the excellences intrinsic to the profession of arms is appropriate insofar as a profession rightly understood is not merely the abode of certain skills and degrees of skillfulness that qualify one as an “expert.” Rather, a professional “professes” a commitment to certain standards of conduct. A profession is a matter of “role-differentiated behavior” in the words of Anthony Hartle,⁴² which means that it is subject to internal norms of behavior that are reducible neither to rules nor to a calculus of efficiency. In this regard it might even be associated with a calling.

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As such, a profession and a professional are distinguished from an occupation and an expert because the skills they encompass are inextricably tied to certain excellences that preclude such (expert) skills from being employed in certain ways and for any ends whatsoever.

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(This is why one might argue that mercenaries, no matter how proficient in arms, are not professionals. They are at best experts for hire.) Thus, for example, professional soldiers in the U.S. military do not properly attack civilians or mistreat prisoners of war not merely because they were ordered not to (which implies that if they were ordered to kill or abuse civilians or POWs that they would with a clear conscience), but because such practices are contrary to the respect, service, honor, integrity, and perhaps courage that properly characterize a U.S. soldier.

How might this shift from deontology to character, from values to virtues, aid in addressing the contemporary moral crisis of the military ethic? Let us begin an answer by reconsidering the three problems mentioned previously that plague a deontological approach to the ethics of war. To begin with, there is the sense that the rules are chronically out-of-date as the nature and conditions of war continue to evolve in response to social, political and technological changes. Closely related is the issue of knowing which rules are applicable in a given situation and knowing how to apply those that are. While the constantly changing character of war presents a challenge to every ethic, a virtue or character ethic is particularly well-suited to address this situation. In fact, there is a virtue whose object or concern is precisely situations where the letter of existing law proves to be either inadequate or inappropriate. This virtue is frequently given the name “equity,” although that hardly captures all that this virtue is about. We might describe one who displays this virtue as possessing insight or wisdom into how to act in a novel situation that is “beyond the rules” yet in a manner that is nevertheless consistent with the spirit of the rules and laws. Mundane examples of this kind of virtue abound. As an engineer once explained to me, those who know only the rules that make up the building code make lousy engineers and, if permitted, would build unsafe structures precisely because they lack the virtues, such as what is classically called “equity,” that are truly essential to the craft of engineering. Likewise, skilled

assembly line workers who manage to retain a sense of their work as a craft know the difference between “working to rule” and producing good products. More to the point of just war, the virtue described here, although rarely named as such, is frequently associated with good leadership. There is a significant difference between inexperienced or “by-the-book” officers and officers who have so internalized the spirit of the rules – the character at which the rule properly aims -- that they know when and how to move forward in situations where the letter of the law provides little help.

Closely related to the way a virtue or character ethic addresses the gap in a rule centered approach between the rule and the constant novelty of war, is the way a virtue or character ethic deals with the matter of knowing when which rules apply and how they apply. Here again there is a virtue associated with this skill. It is the virtue of prudence and it is a kind of judgment that is able to assess a situation, identifying what is at stake and how various rules and virtues come into play in this particular situation. In the popular imagination, prudence is often equated with a certain cautious deliberation in acting, a kind of careful application of the rules. What this commonplace understanding of the virtue lacks is a sense of how prudence is more than mere deliberation but involves seeing as well. It is a matter of seeing in the sense that prudence involves recognizing the morally salient features of a situation so as to be able to determine what acts are appropriate and what rules are applicable. Thus, it is a prudent soldier who, upon seeing a small child pushed out into a street in the middle of a fire fight to recover a weapon, is able to discern whether and how the decision to shoot that child involves questions of proportionality or discrimination.

Finally, there is the problem of effectiveness. War is, as Michael Walzer observed, the hardest place.⁴⁵ And in such a moral pressure cooker, knowledge and will-power are not particularly reliable. Rather, in the midst of battle, which can frequently feel like an ethical wilderness, what checks a person’s descent into brutality and preserves her moral center is character. Character, which concerns a person’s fundamental identity, who one is, and encompasses not only intellectual convictions but also the passions and dispositions that constitute the spirit and emotions,⁴⁶ is the foundation or well-spring of behavior and action. Thus a soldier who lacks character, who has not internalized the virtues of duty, honor, and courage, who does not inhabit the moral ethos of the professional soldier as that ethos is on display in the command climate as well as exemplary soldiers called officers, cannot finally be counted on to hold the moral line when the going gets tough.

Just War, Character and Virtue

Character matters. At its best, the renewed interest in articulating a professional military ethic recognizes this. It is nothing less than a call to move beyond a deontological vision of rules, laws, codes and values and focus on inculcating the virtues that should animate soldiering as well as fostering the moral dimension of leadership that is absolutely crucial to the flourishing of those virtues in times of peace and conflict.

To return specifically to the matter of just war, at this point we might ask what difference might a virtue or character based account of just war make in the face of the crisis that confronts the just war tradition today? Let us consider by way of example three of the criteria that are frequently called into question today.

First, there is the criterion of legitimate authority. Asymmetrical warfare and the proliferation of non-state actors, such as global terrorist and insurgent networks, are thought to highlight the irrelevance of the just war tradition's criterion of legitimate authority. But this holds true only for just war construed as a set of rules or laws for guiding nation-states. As a checklist of rules or laws, just war is not suited to warfare that does not correspond to Westphalian notions of statecraft and sovereignty.⁴⁷ Restrictions on what the tradition calls "offensive" wars, the limitations imposed by notions of national self-determination and sovereignty (which nation states are understandably reluctant to subvert), effectively tie the hands of nation states who are committed to waging just wars when those nation states are confronted by decentralized and transnational threats like a global terrorist network or even when they are confronted with what is today called a humanitarian crisis like ethnic cleansing or genocide within a sovereign country's borders.

A virtue or character based account of just war, rooted in the virtues associated with the professional military ethic, need not be so hindered. After all, the emphasis on "selfless service" that is so prominent in that ethic, it can be argued, is analogous to the virtue traditionally named "justice," which is outward-focused and other-directed. One is selfless in one's service to others. This is to say, unlike the modern deontological account of just war, which is self-centered in its emphasis on defensive war, the selfless character of the professional military ethic has no intrinsic difficulty with acting on behalf of one's unjustly attacked neighbors. This is the case, not because it simply ignores national boundaries or self-determination but because it understands

that states and statecraft are rightly affirmed only as an aid to justice and selfless service of one's near and distant neighbors, and never as an obstacle to such service. (That many soldiers do not appreciate the appropriateness of their deployment in humanitarian interventions suggests that selfless service as a "value" that they memorize is not synonymous with the internalized virtue associated with the professional military ethic.) In this way, war against a terrorist organization as an interventionist and perhaps offensive war (as understood in the older tradition, not as an excuse for preemptive or preventative war) presents no intrinsic difficulties.

A second criterion that is currently under severe distress is that of last resort. Again, I wish to suggest that the crisis is linked to the criterion's construal as a rule disconnected from character. The criticism of this criterion is typically couched in terms of assertions about the enemy. We are told that such and such a foe is immune to reason, cannot be negotiated with, and so forth. There are two problems with such claims. First, such assertions claim to know ahead of time what the criterion is meant to test. This is to say, the criterion is in place precisely as a marker for the effort to determine if one's foe is intransigent. The critics of the criterion imply they know what the outcome of that effort will be without making the effort. As such, the critique is an act of faith. Specifically, it is an act of bad faith. As an act of bad faith, it reflects a second problem with the dismissal of last resort. This second problem is the failure to connect the criterion with the character not of the enemy but of the would-be just warrior or professional soldier as articulated by the professional military ethic. This is to say, while last resort certainly entails an exploration of the enemy's behavior, it is also an expression of the just/professional warrior's character. Specifically, one might refer to what is called "respect," acting with the conviction that all people possess inherent dignity and worth.⁴⁸ The professional soldier respects others even when those others show by their actions that they do not respect themselves or their victims. In this way, the bad faith of those who presume ahead of time that killing is the only appropriate response to an enemy is exposed. Such persons lack the respect that is intrinsic to a just people and professional soldiers. I might also suggest that they lack the appropriate patience and hope that is part and parcel of such respect as well as the wisdom to explore alternatives other than destruction.

This is not to suggest that a just people or professional soldiers will be naïve or prone to appeasement. Not at all; virtues like justice, prudence, and courage are not compatible with either stupidity or apathy. Rather, this is to say that for the just war people and professional soldiers, the resort to arms is always a last resort in the sense that it comes on the heels of the respect and the hope that the injustice can be addressed by means other than war. Moreover, respect for the inherent dignity of one's enemies – again, even when they do not reflect that same respect for dignity – means that for the just war people and professional soldiers the last resort to arms, where it is deemed a necessity, is deemed a sad necessity.

The final criterion to be considered by way of example is that of discrimination. The difficulty of

discriminating between combatants and non-combatants in the midst of asymmetrical warfare, particularly in urban settings and against terrorist networks, has prompted some to argue that the criterion is no longer viable, that this new kind of warfare is necessarily “full spectrum” and that as a consequence responsibility for noncombatant deaths should be shifted entirely to the asymmetrical adversary. Still others reinterpret and so loosen the criterion such that the distinction is no longer drawn between combatants and non-combatants but between those who are deemed a threat and those who are not. In a manner not unlike the criterion of last resort, such challenges to discrimination reflect an approach to the criterion that is disconnected from character and virtue. The criterion is treated as a bureaucratic rule with no intrinsic or internal connection to the character of those who would be just warriors. As such, it is deemed an unnecessary restraint on the military experts’ manipulation of lethal means for the sake of winning the nation’s wars.

As a matter of character, however, the value and viability of the criterion of discrimination is not reducible to a calculation of its impact on a military force’s efficacy in attaining its goals. (Although one certainly could argue that discrimination is an important and efficient component of accomplishing the mission when the mission encompasses winning not just turf but “hearts and minds” as well.) Beyond the expert’s efficiency, discrimination is one expression of the character of the professional soldier as that character is traced in the professional military ethic. No less than last resort, the criterion of discrimination arises from identity, from the kind of people professional soldiers are: they are a people who serve others and respect the inherent dignity of human beings. They are the kind of people who would forego accomplishing the mission if accomplishing the mission required them to act in vicious ways – ways that conflicted not merely with the rules currently in effect but also with the excellences intrinsic to being a professional soldier, that is, with their self-understanding as warriors characterized by respect, integrity and courage, for example.

The reference to courage is deliberate and important, for the lengths to which professional soldiers will go to exercise discrimination is directly associated with their formation in the virtue of courage. After all, the responsibility to discriminate often correlates with increased risk of harm to soldiers. Thus discrimination calls for individual soldiers courageously to bear the burden of increased risk themselves for the sake of avoiding noncombatant casualties. Likewise it calls for commanders to resist the lure of the force protection imperative, and exercise the moral courage to send their soldiers into harm’s way for the sake of reducing noncombatant casualties.⁴⁹

In the face of an enemy who does not share the professional soldier’s character or virtues, in the midst of a war waged in close proximity to noncombatants, the challenges to the criterion of discrimination are real but not crippling. Rather, they are a call for moral courage and temperance, for a willingness to bear the burden of increased risk and respond to such an

adversary in a careful, measured manner consistent with who professional soldiers are and what they are fighting for.

Character Amidst the Ruins: Virtue Across the Civilian – Military Divide

It is no accident that my consideration of challenges to just war in the current situation end with the issue of discrimination and the virtue of courage. For it is perhaps here more than anywhere else that what has been called North American society's penchant for "immaculate war,"⁵⁰ an inclination that may have been tempered but not eradicated over the last decade, comes to the fore and so raises the issue of how a professional military relates to the wider civilian moral culture.

The issue is that of how a professional military, committed both to internal goods and excellences called virtues and to the principle of subordination to civilian control, relates to the wider civilian culture, which may neither share nor appreciate those internal goods and excellences.⁵¹ That the wider civilian moral culture may differ in significant ways from the moral vision of the professional military ethic is suggested by three stressors Moten identified – political and judicial decisions, increasing use of contractors, and the moral tensions evident in such incidents as the "revolt of the generals."

I have no desire to rehash or reignite debates over the existence, extent, and effect of the "military – civilian divide." Rather by way of conclusion I wish only to gesture toward the challenge that the professional military ethic, understood as an ethic of character or virtue, and by inference the just war discipline similarly construed, faces off the battlefield and outside the ranks. Specifically I want to suggest that the successful promulgation of a professional military ethic, with its attendant virtues, requires attention from both sides of the civilian – military threshold.

Alasdair MacIntyre's account of the moral condition of the modern West suggests that we are morally fragmented. We live amidst the ruins of the character / virtue ethic of an earlier age, now populated by deontologists and utilitarians. In such a moral setting, professions face constant pressure to become occupations (instrumental roles with no internal commitment or inherent excellences) and professionals are subject to expectations that they will be mere experts in the efficient manipulation of means for any requested end. In this regard, the threat to the professionalism of the profession of arms is not the use of contractors, which may actually preserve a (shrinking) space for professionals as such, but the risk that the military itself will be conceived of merely as contracted experts, a possibility enhanced by the all-volunteer nature of the armed forces. We already see this happening just to the extent that much, if not most, of the pressure to disregard the criterion of discrimination comes from the civilian side of this divide. The specialist who exposed the abuses at Abu Ghraib faced the most push back when he returned home; the decisions regarding the use of torture were made by politicians in the face of resistance by JAG officers, the greatest resistance to US casualties comes from the general public, not the military, and so forth.

In this situation, because the military is, in the language of Hartle, partially and not fully differentiated from civilian society, it will not suffice for the moral leadership of the military to foster the professional military ethic within the ranks. Rather the challenge of strengthening the professional military ethic as well as the just war discipline exceeds the military to encompass civil society as well. A professional military ethic, no less than the just war discipline, requires that the moral leadership of civil society, encompassing both individuals and institutions, nurture the same excellences that are rightly lifted up in the professional military ethic as central to who North Americans claim to be. For while civilians may not need to know how to field-strip an M-4 or be trained to move toward the enemy in a firefight, if we (civilians) are who we say we are, then virtues like respect, honor, selfless service, integrity, and courage should mark our lives in our homes, our neighborhoods and communities, in our vocations and the wider world.

This is important because, to play on Hackett's words, one thing a bad people cannot do is make and support good soldiers. Granted a professional military may be quite good at forming morally fragmented civilians into professional soldiers, but if and as long as civilian society does not inhabit those same virtues, as long as the professional military remains partially morally differentiated, the excellences internal to the profession of arms are vulnerable, at risk of being subordinated to ends at odds with those excellences, thereby reducing the profession of arms to a mere occupation.⁵²

Therefore, for the professional military ethic to flourish, and along with it the virtue based vision of just war, parallel to the push for a professional military ethic, civilian moral leadership needs

to be about the promotion of the civic virtues of loyalty, duty, respect, selfless service and so forth. Then we can confidently assert the converse of Hackett's insight: a good people make and support good soldiers.

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Endnotes

1. Matthew Moten, "The Army Officer's Professional Ethic – Past, Present, Future," vii.
2. See Moten, vii.
3. Moten, vii.
4. Moten, vii.
5. Don Snider, Paul Oh, and Kevin Toner, "The Army's Professional Military Ethic in an Era of Persistent Conflict," 8-9.
6. Moten, vii, 16.
7. Martin Cook, *The Moral Warrior*, 55.
8. Moten, 17.
9. MHAT-IV. Approximately 10 percent of surveyed soldiers and Marines report mistreating

noncombatants and damaging property unnecessarily. Less than half agreed noncombatants were due respect (47% soldiers and 38% Marines), More than a third said torture should be permissible for the sake of saving a fellow soldier or Marine. And less than half would report a team member for unethical behavior.

10. Moten, viii, 19.

11. Moten, 22.

12. Snider et al, 21.

13. Snider et al, 23.

14. Timothy Challans, *Awakening Warrior*, 11.

15. It is important to note that this novelty is the result of a trend dating back at least 30 years. See Andrew Bacevich, *The New American Militarism: How Americans are Seduced by War*.

16. Harlan K. Ullman and James P. Wade, *Shock and Awe: Achieving Rapid Dominance*

17. *The National Security Strategy of the United States of America* (2003).

18. See, for example, Timothy Challans, *Awakening Warrior*, 147, 151-2.

19. Michael Walzer, *Just and Unjust Wars*, 251ff. See also his important discussion of this concept in relation to the war on terrorism in his *Argui*

ng About War
, 251.

20. This was first uttered with regard to the Bill of Rights by Justice Robert Jackson in 1949. For an invocation of the sentiment in the context of the war on terror, see Jean Bethke Elshtain, *Just War Against Terror*, 97.

21. See George Weigel, "Moral Clarity in a Time of War," 26. See also Stephen Carter, *The Violence of Peace*, 8.

22. Elshtain is an example that immediately comes to mind. See her *Just War Against Terror*, p. 62f.

23. See, for example, William Lind, et al., "The Changing Face of War: Into the Fourth Generation," 22-6.

24. See Stephen Carter, *The Violence of Peace*, 62ff.; Gross, *Moral Dilemmas of Modern War*, 26-53.

25. James Turner Johnson, "Paul Ramsey and the Recovery of the Just War Idea"; Walzer *Arguing About War*, 3-22.

26. See, for example, James Turner Johnson, *Can Modern War Be Just?*

27. See Terry Terrif, Aaron Karp and Regina Karp, eds. *Global Insurgency and the Future of Armed Conflict: Debating Fourth-Generation Warfare*. NY: Routledge, 2008.

28. James Turner Johnson, *The Quest for Peace*, 75-90.

29. Alasdair MacIntyre, *After Virtue*

30. See Daniel M. Bell, Jr. *Just War as Christian Discipleship*

31. Hackett, "The Military in the Service of the State."

32. Challans, 11.

33. Snider, 24.

34. Snider, 3; MacIntyre *After Virtue*, 25-6, 86.

35. Brian Imiola and Danny Cazier, "On the Road to Articulating Our Professional Ethic," 9-14.

36. Jonathan Shay, *Achilles in Vietnam: Combat Trauma and the Undoing of Character*

37. Philip Caputo, *A Rumor of War*

38. Mark J. Osiel, *Obeying Orders*.

39. "The Profession of Arms," 3

40. Moten, as noted previously.

41. Challans, *Awakening Warrior*.

42. Anthony Hartle, *Moral Issues in Military Decision Making*, 7.

43. Hartle, 23.

44. I do not mean to suggest that professional soldiers are something less than experts. Rather, they are more than experts.

45. Walzer, *Just and Unjust Wars*, xxxi.

46. For more on the importance of emotional formation of soldiers, see Michael C. Sevcik, "Moral Intuition and the Professional Military Ethic," 1-10.

47. Martin Cook emphasizes that the current crisis is a crisis of the post-1648 Peace of Westphalia model of international relations. See *The Moral Warrior*

48. Hartle, 67.

49. Walzer notes that it is precisely the willingness to bear this risk that indicates a people's commitment to just war. *Arguing About War*, 137. Martin Cook discusses the force protection imperative in *The Moral Warrior*, 121-7.

50. Cook, *The Moral Warrior*, 117.

51. Hartle refers to this as the military's being "partially differentiated." See *Moral Issues*, 149-180.

52. US DOD, *The Armed Forces Officer*, 16-7 recognizes this clash of values as a potential problem.

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