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DUTY AT ALL COSTS

George M. Clifford III

In his *Dereliction of Duty,* H. R. McMaster describes the Joint Chiefs of Staff during Lyndon Johnson's presidency as the "five silent men" who cooperated with Johnson in deceit instead of speaking the truth about what was happening in Vietnam. McMaster proffers several explanations as to why these officers remained silent: the unwritten code of the military professional to stay out of politics; loyalty to their commander in chief; loyalty to their services; and the belief that they could achieve more good on active duty than by retiring and speaking out.[1]

One of President Johnson's "five silent men," General Harold K. Johnson, Army Chief of Staff from July 1964 to July 1968, after his retirement engaged in considerable self-examination about his decision to remain on active duty in spite of his grave objections to the prosecution of the Vietnam War:

> I remember the day I was ready to go over to the Oval Office and give my four stars to the President and tell him, "You have refused to tell the country they cannot fight a war without mobilization; you have required me to send men into battle with little hope of their ultimate victory; and you have forced us in the military to violate almost every one of the principles of war in Vietnam. Therefore, I resign and will hold a press conference after I walk out of your door."[2]

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The senior U.S. commander in Vietnam for much of that time was General William Westmoreland, who insisted on large-unit "search and destroy" missions. Johnson's professional judgment, supported by a major Army study, was that only an intensified, classic counter-insurgency response would succeed against Vietcong and North Vietnamese attacks. The Joint Chiefs of Staff

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(JCS) refused to support General Johnson, fearful of interfering with a field commander's prerogatives. History shows that General Westmoreland's tactics were wrong. General Johnson never had his confrontation with Nixon, convinced that resigning would achieve little or nothing, generating a brief flurry of media attention but no policy change. However, near the end of his life General Johnson came to regret that decision.[3]

More recently, Lieutenant General Gregory Newbold, USMC (Ret.), attracted much media attention with an April 2006 *Time* magazine column that called for Secretary of Defense Donald Rumsfeld's resignation.[4] General Newbold also assessed his own performance as the operations director for the Joint Staff:

> After 9/11, I was a witness and therefore a party to the actions that led us to the invasion of Iraq—an unnecessary war. Inside the military family, I made no secret of my view that the zealots' rationale for war made no sense. And I think I was outspoken enough to make those senior to me uncomfortable. But I now regret that I did not more openly challenge those who were determined to invade a country whose actions were peripheral to the real threat—al-Qaeda.[5]

Not only did Newbold object to the war in principle, but he believed that the planning for it had been seriously deficient:

> What we are living with now is the consequences of successive policy failures. Some of the missteps include: the distortion of intelligence in the buildup to the war, McNamara-like micromanagement that kept our forces from having enough resources to do the job, the failure to retain and reconstitute the Iraqi military in time to help quell civil disorder, the initial denial that an insurgency was the heart of the opposition to occupation, alienation of allies who could have helped in a more robust way to rebuild Iraq, and the continuing failure of the other agencies of our government to commit assets to the same degree as the Defense Department.[6]

In 2002 Lieutenant General Newbold had appeared a likely candidate to be the next Commandant of the Marine Corps. He instead chose to retire, in part because of his opposition to the war. He waited until 2006 to make his views about the Iraq war and its planning public.

General Newbold's comments and actions, like those of General Johnson, pose two ethical issues. First, when, if ever, should an officer request to depart in protest because of policy objections?[7] Second, when, if ever, should an officer who has departed because of policy objections speak publicly about those objections? This article's three sections develop a model for American military officers to use in answering those questions. The first section identifies the four categories of moral situations that an officer who has policy objections can face. The second section examines moral factors relevant to deciding whether to depart in protest. The third section employs those moral factors to evaluate

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whether an officer should depart in protest with respect to each of the four categories of moral situations. Finally, the article's conclusion illustrates the model's utility by reviewing the decisions of Generals Johnson and Newbold.

The context of General Newbold's decisions makes clear how his resignation and General Johnson's choice not to resign dovetail to provide appropriate case studies for the moral questions outlined above. General Newbold was not alone in publicly calling for Secretary Rumsfeld's resignation. Other retired generals who did so include: Army major general Paul Eaton, responsible for training Iraqi security forces in the year after Baghdad fell; Marine general Anthony C. Zinni, previously commander of Central Command, responsible for operations in the Middle East; and Army major general John Batiste, commanding general of the 1st Infantry Division in Iraq during 2004–2005.[8] Many of the retired generals critical of Rumsfeld have cited McMaster's *Dereliction of Duty,* a book now widely regarded by military officers as essential professional reading, as partial justification for their speaking out.[9]

A few officers—among them a former Army Chief of Staff, General Eric Shinseki; the Commandant of the Marine Corps, Michael W. Hagee; and Central Command's General John Abizaid—have reportedly sought to influence policy from within the institution by strongly defending their opinions while on active duty.[10] If so, they emulated President Johnson's "five silent men," who, at least in part, believed that they could accomplish more good by remaining in post than they could achieve by resigning. From this perspective, General Johnson's ex post facto lamentations, not his actions, were wrong.

The high profile of those involved, their positions of significant leadership within the Department of Defense, the diversity of moral choices they made, and the serious issues involved combine to make the decisions of Generals Johnson and Newbold timely and interesting. McMaster's influential book, a recent article in this journal challenging some of his central conclusions, and the continuing relevance of these moral issues for officers in and out of combat lend additional impetus to examining protest departures through an ethical lens.[11] Military ethicists and others have largely ignored the issue of protest departures. Martin Cook is a notable exception; he has briefly discussed the subject, but even he did not offer a detailed analysis or any suggestions as to when departing in protest might be appropriate.[12] This lack of substantive moral discourse suggests a need to broaden the moral development of officers to include this topic.

CATEGORIES OF MORAL SITUATIONS

Officers face four different categories of moral situations when assigned responsibilities they believe morally wrong.[13] These options constitute a spectrum best viewed as progressing from least to most morally problematic:

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- An assigned responsibility the officer can perform with minimal moral discomfort
- An assigned responsibility the officer can perform only with substantial moral discomfort
- An assigned responsibility the officer can perform only at the cost of significantly compromising his or her moral standards
- An assigned responsibility the officer must not perform.

In the first category, at one extreme of that fourfold taxonomy, the moral component of an issue lacks sufficient gravity or import to evoke substantial moral reflection or debate. For example, an officer may disagree with the uniform prescribed for a special event. The officer may have good reasons for disagreeing—for instance, legitimate concern about the comfort of personnel involved or projected impact on public relations. Both reasons have moral dimensions. Officers have an obligation to the well-being of assigned personnel. Officers have a similar obligation to maintain the institution's health, an obligation that good relations with the public (voters and taxpayers) support. Yet no officer should choose to depart over this issue. Nobody's life, or even health, appears at risk. No one must act illegally or, probably, contravene any regulations or instructions. Long-term consequences, if any, seem minimal.

This exemplifies the type of assigned responsibility about which officers may have moral disagreements but that nonetheless they should be able to perform with minimal moral discomfort. Subordinates and seniors, all individuals of good will and high moral standards but with different vantage points, levels of experience, and responsibilities, will frequently reach different conclusions about such issues.[14] Officers of all grades routinely deal with them.

At the other extreme of the spectrum lies the fourth category, egregious illegal orders, such as to commit what international or U.S. law classifies as war crimes. The substantive consequences of complying with such an order are so great than an officer has no ethical choice other than to refuse to obey. Since Vietnam, most discussions of what an officer should do when confronted with an order or assignment with which the officer morally disagrees have focused exclusively on this type of situation.[15]

Few U.S. military officers will face a moral decision in this category.[16] The laws governing the American military cohere well with most major ethical systems.[17] (Court proceedings or other investigations may prove that orders governing treatment of enemy combatants detained at Guantanamo, Abu Ghraib in Iraq, and elsewhere were recent exceptions to that generalization.)[18] The officers most likely to face a moral decision in this category are in grades O1 through

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O6—that is, second lieutenants or ensigns through colonels or Navy captains, officers leading ground units or serving in aircrews or on board vessels at sea. Lieutenant William Calley alleged that his commander, Captain Ernest L. Medina, ordered the My Lai massacre. Had that allegation been proven, Captain Medina's order to Lieutenant Calley would have belonged to this fourth category, an order that Calley should have refused to obey. Only when widespread, systemic moral breakdown occurs, as in Nazi Germany, are flag and general officers likely to confront this category of moral decision.

The Iraq conflict has produced an example of an officer believing that by performing his assigned responsibility, deploying to Iraq, he would violate the law. First Lieutenant Ehren Watada, of the 3rd Brigade, 2nd Infantry Division, at Fort Lewis, Washington, submitted his resignation and refused to deploy to Iraq: "Simply put, I am wholeheartedly opposed to the continued war in Iraq, the deception used to wage this war, and the lawlessness that has pervaded every aspect of our civilian leadership." The Army subsequently denied his resignation request.[19] His case, unresolved at the time of writing, is especially pertinent, because he believes that by refusing to go he is fulfilling his primary moral duty, defending the Constitution.[20]

Lieutenant Watada has chosen a high-stakes moral stand, as would most (all?) officers who face this type of situation. If subsequent legal proceedings vindicate Watada's claim, then he will have done his duty, perhaps the only officer to do so. Military personnel may not use obedience to orders as a defense if the accused knew, or should have known, that the orders were unlawful.[21] If Watada is not vindicated, the legal proceedings will probably find him guilty of desertion. Officers, having sworn to defend the Constitution, lose the privilege to quit military service at their option and must continue to serve pending acceptance of their resignation.[22] Common sense dictates that a military cannot remain viable if its leaders may quit at any time.[23]

The taxonomy's second category consists of situations in which an officer can perform an assigned responsibility only with substantial moral discomfort. This category includes assigned responsibilities that, although not illegal or immoral per se, violate established policies. When I was a junior officer, a senior directed me to expend nonappropriated funds for an item implicitly prohibited by official instructions. Yet the item was essential for a program, the program would benefit many, and purchase with appropriated funds was illegal. When I expressed my unease, my senior, at his own initiative, put his instruction to me in writing. By doing so he took full responsibility for the decision and relieved my moral distress. In subsequent years I repeatedly, in a variety of different situations, emulated and taught this example of taking responsibility.

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However extensive they may be, written policies cannot foresee or address every contingency. The more extensive written policies are, in fact, the more likely they are to lack internal consistency. Intentionally violating policy should make officers uncomfortable, but they must accept responsibility for difficult choices. Positive experiences in resolving this type of situation help to habituate the virtues of prudence (of which moral awareness is a prerequisite) and courage.

A comment once made about the role of civil servants applies equally to military officers—that they live "by an unusual code. Assuming that the government for which he works is a constitutional one, a permanent official's conscience must not bleed when he is asked to carry out a policy that doesn't fit his own ideas. Indeed, he requires a conscience which tells him, except in extreme circumstances, to pipe down after he has had his say, and to get to work in support even of what he thinks is wrong."[24] No officer, of any grade, who has a strong sense of morality will likely serve for very long without being assigned a responsibility to which he or she morally objects. Yet unless a situation involves grave consequences for others or the nation, the nation rightly expects military officers to do their duty.[25]

An example of an issue with grave consequences would be understatements in recent years of the amount of force and duration of time required to stabilize Iraq. The United States today faces an international policy conundrum (developing a viable exit strategy) as the toll of wounded and killed military personnel increases daily. In other words, General Newbold's decision to retire clearly falls into the third category, the type of assigned responsibility with which officers can comply only by compromising their moral standards. General Johnson's decision to remain as Chief of Staff in spite of his objections to the president's policies and lack of forthrightness with the public also belongs to the third category.

An example of an issue that does not meet that threshold is policy regarding homosexuals serving in the military. Those who object to the presence of gays and lesbians in uniform may view the policy of "don't ask, don't tell" as morally wrong, but that policy does not cause grave, irreversible harm to the nation or to military personnel. Individuals denied the privilege of serving their nation lose a privilege, not a benefit or a right.[26] Yet many on both sides of this issue understandably feel substantial moral discomfort in complying with a policy that they find morally wrong. The "don't ask, don't tell" policy thus belongs to the second category of moral situations.

It is impossible to demarcate definitively the line between the second and third categories. The most important determinants of that boundary are the degree and amount of harm or other evil caused by complying with an assigned responsibility. Officers of good moral character may define harms in contrary terms—believing, for example, homosexuality wrong and therefore harmful to

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good morale versus believing it morally acceptable and therefore not a legitimate basis for discrimination. Similarly, officers will often differ in their assessments of likely outcomes and of the magnitude of those outcomes, such as the number of troops and length of time required to stabilize a vanquished Iraq. For all officers, consideration of the third category (assigned responsibilities that if performed will cause significant compromise) requires analysis of pertinent moral factors. What are they?

RELEVANT MORAL FACTORS

Identifying the relevant moral factors establishes a moral framework by which an officer with an assigned responsibility from the third category can select an appropriate course of action. Careful reflection can also help clarify whether the issue truly belongs to the third category or in fact belongs only to the second.

Aristotle maintained that ethics have a single goal, *eudaimonia*.[27] This Greek word is usually translated as "happiness" but is better rendered as "well-being" or "flourishing."[28] The prominent twentieth-century philosopher Alasdair MacIntyre recognized that an individual's *sitz im leben*—situation or setting in life, which he terms *practices*—defines that teleological aim.[29] For military officers, the commissioning oath clearly states that *telos,* or goal. Officers swear or affirm "to support and defend the Constitution of the United States against all enemies, foreign and domestic."[30] The officer's duty is to defend the Constitution, not to advance her or his career, support a political ideology, or achieve any other purpose. The oath has no fine print, no subclauses, as the remainder of the oath emphasizes. Some may interpret that straightforward declaration as a rule.[31] In fact, however, the oath constitutes a broad, overarching declaration of the telos of an officer's military service.

Fulfilling that moral purpose is especially important when matters of life and limb are involved. Enlisted personnel, who numerically suffer the most combat casualties, swear to obey the orders of those appointed over them.[32] Officers are the uniformed leaders of the armed services. Their responsibility "is to give voice to those who can't—or don't have the opportunity to—speak."[33]

The character traits or virtues conducive to performing the duty to defend the Constitution constitute a framework for determining an officer's duty in any specific situation. MacIntyre's definition of virtue makes this clear: "A virtue is an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such goals."[34] Focusing on virtue avoids the temptation to allow the end to justify the means;[35] recognizes that most ethical behavior is the result of habit rather than choice;[36] and includes an affective as well as rational component of ethical behavior.[37]

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One military ethicist has proposed that the relevant virtues for an officer living out the telos of the commissioning oath are the services' core values.[38] However, as the four services have different core values, this approach unnecessarily complicates any general discussion.

A longtime professor of military ethics at the Air War College, James Toner, relying on a virtue ethics approach for his wide-ranging discussion of military ethics, singles out the four virtues of prudence, justice, courage, and temperance as the most important for military officers.[39] Three of those virtues—prudence, courage, and temperance—are, as discussed below, of critical value in helping officers identify and do their duty. However, the virtue of loyalty is arguably more important than the virtue of justice for the officer who has moral objections to an assigned responsibility.[40]

Obviously, moral officers need the virtue of justice.[41] Officers allocate resources, administer discipline (rewards and punishment), assign responsibilities, and perform other tasks in which the virtue of justice bears directly on performance. Without justice, it is impossible to sustain good morale and maintain fidelity to the Constitution. For instance, the constitutional requirement for equal treatment under the law differs between civilian and military but should be consistent for all personnel in each category, regardless of race, religion, etc.

Yet for the military officer facing a morally objectionable assigned responsibility, loyalty supersedes justice. The officer has sworn to defend the Constitution, whether or not the Constitution is just. Before dismissing that statement as trivial, consider the ongoing debates over abortion and capital punishment. The Supreme Court has declared both abortion and capital punishment constitutional.[42] Many loyal American citizens sharply disagree with the Court, strongly believing one or both of those acts unjust. But whatever an officer thinks about the morality of abortion or capital punishment, the officer has sworn to defend the Constitution. Similarly, the nation may fight an unjust war. Michael Walzer has suggested that the U.S. invasion of Cuba in 1898 was unjust.[43] Yet the military officer (all male, at the time) who received a legal order to fight that war had no recourse but to do his duty and go fight. To refuse to go before one's resignation was accepted constituted desertion and an indirect attack upon, rather than defense of, the Constitution.[44] That has not changed. Unless vindicated by current legal proceedings, this is the position in which First Lieutenant Watada will find himself.

Loyalty to the Constitution takes precedence over justice also in dealing with subordinates. Since an officer's primary moral obligation is to defend the Constitution, results matter. Repeatedly relying upon the same individual or unit to accomplish the most dangerous and difficult missions may be unjust; that person will suffer the most hardship and risk and that unit probably the most

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casualties. Yet repeated assignments may be essential if officers are to fulfill their duty to defend the Constitution.

Prudence, loyalty, courage, and temperance are thus the four most important virtues for military officers facing assigned responsibilities with which they morally disagree. The discussion that follows of these virtues focuses on aspects relevant to whether an officer should depart in protest.

Prudence is practical wisdom; prudence "not only helps us to be of good counsel, but also to judge and command well."[45] The virtue of prudence encompasses the wisdom to recognize and classify a moral challenge (cf. the preceding section of this article), discern the moral issues involved (explored in this section), and develop an appropriate response to that challenge (the article's next section).[46]

The virtue of prudence is a sine qua non for military officers who would perform their duty to defend the Constitution. One critical aspect of prudence is the ability of an individual to recognize her or his own blind spots. For example, leaders during war may have so much personally invested in victory that they cannot see factors that make victory unachievable.

Military officers develop the virtue of prudence, which Aristotle classifies as an intellectual virtue, through experience, moral development, and mentoring.[47] The specifics of prudential wisdom vary according to the specific situation an officer faces. Reading this article, for instance, enhances moral development by focusing attention on categories of situations in which a protest departure may be justified, the moral issues pertinent to protest departures, and the experiences of officers who found themselves in morally problematic situations. Discussing the article's contents with other officers would afford opportunity for mentoring.

Loyalty has already been defended as a primary virtue for military officers facing a moral situation that may warrant a protest departure. Two aspects of loyalty require consideration. First, to whom or what is loyalty due? Second, if loyalty is due to more than one entity in the same moment, what is the proper hierarchy of those loyalties? The first of those questions is the easier to answer: loyalty is due to the Constitution and to one's seniors, peers, subordinates, and self. Although an officer's loyalties also extend to family, friends, allies, fellow citizens, etc., these are of secondary importance for this discussion, since the previous categories subsume them: loyalty to self encompasses loyalty to friends and family, loyalty to the Constitution embraces loyalty to citizens, and so on.

The second question—establishing the proper hierarchy of loyalties—is much more problematic. Loyalty to the Constitution always takes priority over other loyalties. The Constitution and the nation are synonymous for the military officer, as the Constitution defines the nation. Clarity on this point ensures

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the preservation of our democratic republic and prevents the emergence of any form of monarchy or oligarchy through misdirected loyalty of officers to the executive, legislative, or judicial branches of government.

Fletcher Knebel's widely read 1962 novel *Seven Days in May* suggests what to most seems impossible, an attempted military coup in the United States.[48] In the novel, an officer whose loyalty to the Constitution remained his first priority averted that crisis. Four decades later, however, in an era of a military community that finds its values at odds with those prevailing in society, an era of growing careerism, and an era in which fear of terrorism is for many more potent than the defense of freedom, to dismiss cavalierly the possibility of a military coup seems imprudent.[49] Emphasizing that a military officer's first and paramount loyalty is to the Constitution, to defend it against all enemies foreign and domestic, erects a bulwark that safeguards democracy.

But what of other loyalties? Loyalty to seniors is presumed to follow close behind in the hierarchy of a military officer's loyalties. The seemingly omnipresent "chain of command" photos found on walls and bulkheads in all military commands symbolize this presumption. A military officer's seniors, if military officers themselves, share the duty to defend the Constitution. If civilian, they occupy posts created by authority of the Constitution, which established civilian control of the military and identified the president as commander in chief.[50] But no officer can abdicate personal moral responsibility.[51] For example, as previously noted, no officer (or enlisted person, for that matter) can claim that he or she was simply obeying orders as a defense in a war crimes trial.[52] An illegal order must be disobeyed (this is the fourth category of the fourfold taxonomy of moral situations that an officer may face). Loyalty to the Constitution therefore always takes precedence over loyalty to seniors.

There are even situations in which loyalty to subordinates must take precedence over—or redefine the meaning of—loyalty to seniors. This is particularly difficult when the senior is a civilian:

> The challenge is always to acknowledge and respect two competing considerations: the genuine expertise of trained military professionals and the need to ensure that their professional military advice is solicited and heard; and the vital concern to guard against the military's making claims to expertise that properly lies beyond the scope of military advice and encroaches on political expertise and authority.[53]

For example, one lesson from the Vietnam War was that civilian control of the military should not extend to the tactical level.[54] The military professional's expertise embraces the requirements and costs of waging war, the conditions for waging war successfully, etc.[55] General Newbold and other senior military officers brought this expertise to the table during the planning of the Iraq war;

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civilian leaders like Secretary Rumsfeld, in spite of his long tenure, arguably lacked this expertise. Loyalty to seniors and to subordinates demanded that General Newbold as JCS operations director speak candidly in advising his civilian seniors about a war that he believed was not only unnecessary but that they planned to wage in a manner that would result in unnecessary and avoidable casualties among U.S. armed forces.[56]

Genuine loyalty requires speaking the truth, as one understands it, in a timely, direct, and appropriate manner. If an officer fully believes his or her opinion to be the truth and of such importance that it demands a hearing, then the officer is morally obligated to do everything possible to ensure being heard. Admittedly, truth can be elusive, especially when dealing with predictions of the future. "Opinion" better denotes my meaning, but it fails to convey the degree of confidence and significance that an officer in such a situation must attach to it before placing loyalty to subordinates above loyalty to seniors.

Loyalty to self and loyalty to peers, then, both fall always below loyalty to the Constitution and usually below loyalty to seniors and subordinates. The profession of arms is rightly described as service to the nation; the term "armed services" explicitly recognizes this characteristic of an officer's profession. Service, by its very nature, requires subordinating the servant's interests to the master's. Martin Cook, in fact, describes military service as an unlimited liability contract.[57] Under the terms of this unlimited liability contract, officers may have to go into harm's way, perhaps even die, in the course of their duty. Less recognized are the smaller, more routine, and more frequent sacrifices that result from being told where to work, assigned what to do, dispatched on lengthy deployments, etc.

Careerists are officers who consistently place self ahead of other loyalties. Courtney Massengale, one of two protagonists in Anton Myrer's novel *Once an Eagle*, exemplifies a careerist.[58] Careerism is an unhealthy form of egoism that values the self above all else, an approach to ethics that is incompatible with the service and sacrifice inherent in the profession of arms. Unfortunately, careerism seems increasingly prevalent: "'The officer corps is willing to sacrifice their lives for their country, but not their careers,' said one combat veteran who says the Pentagon's civilian leadership made serious mistakes in Iraq, but has declined to voice his concerns for attribution."[59]

There are occasions on which loyalty to self appropriately takes precedence, such as when a senior is never satisfied with a subordinate's effort or performance or demands that the subordinate sacrifice all aspects of personal life to perform non-mission-essential duties. Martyrdom, to be worthwhile, must achieve something meaningful.

Several factors often masquerade as loyalty. Officers, for example, may be told that they must "go along to get along"—that is, comply with that which does not

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fully meet standards in order to maintain positive peer relationships. This is not genuine loyalty but pressure to be complicit in others' failure to do their duty. An appeal to loyalty may disguise an appeal to expediency (nobody will notice that not all the checks were made this one time) or mutual self-protection (don't report me late for duty and I won't report you if you're ever late yourself). Such appeals always demand that loyalty to peers take precedence over loyalty to seniors or to one's duty to the Constitution.

Conversely, doing one's duty can be carried to an extreme. A subordinate who for the first time in three years of working for the same senior is twenty seconds late for muster or (except perhaps in recruit training or a ceremonial unit) has inadequately polished shoes does not need reprimanding. Those shortcomings may be inadvertent or may, as part of a larger picture, point to unhealthy stressors in the subordinate's life. Good leadership prudentially applies rules and regulations in a way that is fully consistent with doing one's duty. Nobody would choose to serve with an officer who lacked loyalty to subordinates or peers. But that loyalty must always be understood within the broader perspective of loyalty to seniors and an officer's teleological duty to the Constitution.

Seniors occasionally demand excessive loyalty from subordinates. Such demands tend to cascade down the chain of command. For example, even as General Tommy Franks, as Commander, U.S. Central Command, was obsequious toward Secretary Rumsfeld, so also General Franks demanded that same kind of loyalty from his subordinates.[60] This has the unintended consequence of depriving all levels of healthy dissent and denies the senior the opportunity to capitalize on the perspective and wisdom of the entire staff. One of five errors in the 2003 Iraq war that Gordon and Trainor identify was that President George W. Bush and Secretary Rumsfeld "presided over a system in which differing military and political perspectives were discouraged."[61] In contrast, General Henry Shelton, in his tour as chairman of the Joint Chiefs of Staff, wanted unvarnished opinions and insisted that service chiefs and commanders read McMaster's *Dereliction of Duty*. The secretary of defense at the time, William Cohen, echoed Shelton's sentiment.[62]

In sum, loyalty, like the Aristotelian moral virtues other than justice, constitutes a situationally defined mean between two extremes.[63] For loyalty, the two extremes are excessive devotion and priggishness. An officer who fails to report a peer's felonious behavior displays excessive devotion. An officer obsessively focused on duty, unable to overlook any human foible or forgive any error, performs priggishly. Neither extreme makes for a good officer who appropriately balances, on the one hand, loyalty to peers and self with, on the other hand, loyalty to seniors and duty.

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Achieving the right balance is a continual challenge. Cheating scandals at the various service academies have consistently revealed students who were aware of the cheating but failed to act to stop it. Their inaction magnified the scope of the scandals, illustrating some of the negative consequences of excessive devotion. Too many valiant officers in World War I tragically incarnated Tennyson's words "Theirs not to make reply, Theirs not to reason why; Theirs but to do and die," priggishly leading their troops in hopeless assaults on enemy lines.[64] Those officers were disloyal to their subordinates, wasting thousands of lives in futile assaults. The virtue of loyalty, shaped by the telos of duty, must be complemented by the virtues not only of prudence (knowing when and how to object to an order) but of courage.[65]

Courage is "character in action; it is a pattern."[66] Identifying the best moral option (the function of prudence) is insufficient for a moral life. One must act on that information to select and then to live out the identified option. Courage is the essential virtue for doing this.

Aristotle described virtue as intentional habits. If a person acts in the morally correct manner yet without any awareness of what he or she is doing, the act, though morally correct, is not virtuous. Virtue requires that a person cultivate the habit of intentionally making the right choice.[67]

With respect to courage, the right choice is the mean between the extremes of rashness and cowardice.[68] The rash act is an act that is made without reflection, may have little or no chance of success, and confers no virtue upon the doer. Colonel George Armstrong Custer's braggadocio that resulted in the massacre of the 7th Cavalry at the Little Big Horn illustrates rashness, not courage.[69] General George B. McClellan's reluctance, when he commanded the Army of the Potomac, to engage Confederate forces in battle illustrates cowardice in command; although personally brave, he was unwilling to risk his command, his reputation, or his troops in combat.[70]

Recent examples of senior officers misjudging the mean between rashness and cowardice are instructive.[71] Robert Timberg in his analysis of the Iran-Contra scandal of the 1980s contends that the Naval Academy training that had helped Lieutenant Colonel Oliver North (of the National Security Council staff), Robert McFarlane (the president's national security adviser, 1983–85), and John Poindexter (McFarlane's successor) achieve positions of power in the Ronald Reagan administration was also responsible for their acts that led to criminal charges. In each case, the officer's threshold for resigning was too high for his good as well as the good of the nation.[72]

General Zinni takes an even less charitable view toward senior officers, believing that the military services are "broken," because senior officers place career ahead of duty. He cites former General Shinseki's fate as the price of candor. Secretary Rumsfeld publicly criticized him for testifying before Congress that

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Iraq operations would require several hundred thousand troops and then marginalized the general by announcing his successor a year early.[73] That happened in spite of a long-standing custom that calls upon senior officers to give their opinions, if specifically asked, during testimony before Congress.[74] In a *New York Times* op-ed, General Eaton wrote of Shinseki's punishment, "The rest of the senior brass got the message, and nobody has complained since."[75] Against this backdrop, the generals who have called for Rumsfeld's resignation have thereby evidenced considerable courage.

If General Zinni is correct, if many military officers no longer have the capacity to exercise moral courage, officer education and training require major revamping. Officers must be able to discern when assigned responsibilities conflict with their duty—the virtue of prudence. Having done so, an officer, of any grade, must act on that conviction—the virtue of courage. If virtues are intentional habits, effective change in officer education and training will require an emphasis on how officers form habits of identifying and protesting assigned responsibilities with which they have significant moral disagreement. Effective change will focus also on the virtue of temperance.

Temperance was defined by Aristotle as the mean between insensibility (deficiency of pleasure) and self-indulgence (an excess of pleasure). Aristotle confined his definition of temperance to bodily pleasures, writing in terms of sensation and touch.[76] However, broadening the definition of pleasure to include all forms of pleasure, physical and otherwise, helpfully expands his definition.[77] In that larger sense, officers with assigned responsibilities that will cause them to make moral compromises should carefully examine their motives for, respectively, staying on active duty and departing in protest.

Obviously, some decisions require an immediate choice, and, as already noted, most moral behavior is reflexive, habitual.[78] Situations in which one must consider whether or not to request a principled departure generally afford time for careful reflection. The infamous 1973 "Saturday night massacre" that ensued when Attorney General Elliot Richardson, followed by his deputy William Ruckelshaus, refused President Richard Nixon's directive to fire special prosecutor Archibald Cox may appear to be an exception to this generalization. In fact, however, although Richardson and Ruckelshaus both "resigned," they had served at the pleasure of the president who demanded their resignation. In plain language, the president effectively fired them both, because they refused to obey his directive.[79]

Military officers are unlikely to find themselves in a similar situation, receiving morally odious orders of questionable legality that require immediate execution. In any case, the forward-thinking officer generally knows the options on the table, allowing him or her time to consider an appropriate response before

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receiving an order. Orders that, as is extremely improbable, arrive without forewarning, demand immediate execution, and are morally odious are likely to be patently illegal as well.

Self-examination takes time, is most effective when habitual, yet is an essential habit for military officers to cultivate. Moral officers will habitually assess whether their primary motive in responding to a morally objectionable assigned responsibility of any type is:

- Career advancement (the excess of self-indulgence)
- Doing their duty, a duty that appropriately recognizes and balances various loyalties, including loyalty to self (the mean of temperance)
- Self-effacing martyrdom that totally devalues the officer and the officer's career (the excess of insensibility).

Decisions to depart (request reassignment, retire, or resign) are usually costly. They invest all of an officer's credibility in a single attempt to influence policy. Others, even those who share the officer's moral views, are unlikely to continue to regard the officer as a team player. The armed services in this respect are probably no different from political parties or large corporations.[80] Senior leaders usually select their own "teams." Many seniors not surprisingly prefer players who subordinate ethical autonomy to team loyalty.[81] A decision to depart the military community, especially by the incumbent of a senior position, may preclude future employment options in defense-related fields.[82]

Officers in a pay grade between O1 and O6, in a lower-profile position, typically communicate their reasons for departing to the relevant decision makers in a formal but nonpublic way, as via a letter of resignation or request for reassignment. In this case, the cost may be mainly financial, impacting future employment options only minimally. However, resigning after ten or more years of service in a system that does not vest pension benefits until retirement eligibility can entail a substantial financial disadvantage.[83] Requesting a reassignment generally ends an officer's hope for promotion, eliminates raises tied to promotion, and perhaps forces the officer to leave active duty because of "high year tenure" policies (a requirement to leave the service by a certain point if not promoted).

The circumstances of none of the three departure options are entirely under an officer's control. Years of service, remaining obligated service, time in grade, time on station, and billet held may limit an officer's options.[84] Those factors tend to effect junior officers more than senior officers. Further, all requests for transfer, resignation, and retirement require approval. Approval is not automatic, and the process often takes months to complete. Meanwhile, the officer must remain in situ until otherwise directed.

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Officers of all grades must carefully consider their motives for deciding to depart in protest. The graver the choice, the larger and broader the consequences, the more irreparable the potential damage, the greater is the need for moral firmness rather than flexibility. *Semper Gumby* ("always flexible"), although appropriate in some military situations, is the hallmark, if employed as a moral descriptor, of the self-indulgent and thus a recipe for moral malaise rather than rectitude. Lifelong cultivation of the virtues of prudence, loyalty, courage, and temperance lived out under the teleological penumbra of doing one's duty to defend the Constitution represents an officer's best preparation for constructively facing a morally problematic assigned responsibility.

REVIEWING THE OPTIONS

An officer confronting a moral situation belonging to the third category (an assigned responsibility performed only at the significant compromise of one's moral standards) must make a decision. In each of the other three categories, the preferable choice is clear. If the assigned responsibility causes minor moral discomfort, complete the assignment anyway. If the assigned responsibility causes substantial moral discomfort, complete the assignment while striving to effect change from within the system. (Efforts to achieve change should not entail a shirking of responsibility, slow execution of orders, substandard performance, undercutting of civilian authority over the military, or any other behavior that manifests a lack of loyalty to the officer's primary duty to defend the Constitution.[85] Morally appropriate methods to effect change emphasize providing the cognizant authority complete, cogent analysis and forthright opinions in a timely, tactful, and appropriate manner.) Finally, if the assigned responsibility is one an officer must not perform, refuse to obey the order.

In responding, however, to a situation from the third, least clearly demarcated category, an officer has four options:

1. Stay on quietly, hoping for the best, trying to resist from inside.
2. Depart quietly, physically severing one's connection with "the team."
3. Depart with public protest, alerting the public to the egregiousness of the problem.
4. Try to have it all ways—first holding on for as long as possible, then departing and walking a tightrope between discreet silence and public protest.[86]

How does an officer choose the best option in any given situation?

Successful examples of an officer choosing the first course of action—staying on quietly and trying to resist from within—are inherently the most difficult to identify. Publicizing an officer's ability to effect this type of change sabotages

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that officer's future viability as a team player and hence his or her career. Most organizations tolerate only limited dissent and ostracize those who transgress that boundary;[87] General Shinseki, for instance, enjoyed until the end of his career a well-deserved reputation as a team player.[88]

The Nobel Prize–winning German scientist Otto Hahn, who codiscovered uranium fission in 1938, covertly arranged the escape of his Jewish collaborator and then sabotaged the German research program to prevent the Nazis from developing a nuclear weapon.[89] He is an example of someone who stayed on and was quietly effective from within the system. However, an important distinction between Hahn's situation and that of most U.S. military officers needs highlighting. The Nazis sought to implement a policy that was patently immoral and illegal. Further, unlike in the United States, the German legal system offered no avenue of redress. If an American military officer, in contrast, believes an order patently immoral and illegal, then that officer, like Lieutenant Watada, should refuse to obey and then rely on the legal process for vindication. An officer who chooses to remain in the U.S. armed forces and seek change from within cannot morally seek to subvert policy established by legitimate authority. The officer's moral duty at that point includes loyal obedience to orders.[90] The officer must seek change only in morally sound ways. The paucity of such approaches has historically rendered the option only rarely effective.

Robert McNamara, who as secretary of defense grew increasingly disillusioned about the Vietnam War yet did not resign in protest, is an example of opting to work for change from within and failing. McNamara found himself gradually stripped of power and then, abruptly, president of the World Bank.[91] General Harold Johnson's failed attempt to effect change from within has been noted.

For many officers, the first option—stay on and resist the policy from within—is often the most tempting, as officers generally are loyal team players who believe that they can make a difference.[92] The longer officers serve, the more likely they are to identify themselves with the institution of the armed services, becoming ever more heavily invested in preserving, protecting, and promoting it.[93] Flag and general officers may also believe that a new administration will change, or create the potential for changing, an objectionable policy and that accordingly, by remaining, they will have influence in the future.[94] As with any prediction, those calculations may be inaccurate. Parallel with but distinct from those laudatory goals are an officer's own career ambitions that promote commitment to the team. Also, the institution inculcates in officers with a deficiency of self-esteem a paternal-like dependency that binds them to the team.

The fourfold delineation ignores a fifth option: do nothing. Perhaps that should have been included. However, in an institution that prizes moral

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behavior as much the U.S. armed services claim to, an officer should do *something* when assigned a responsibility that may compromise his or her moral standards. As a moral minimum, the officer should quietly seek to effect change from within the system. Nothing less is acceptable, given that an officer's primary moral aim is to defend the Constitution against all enemies foreign and domestic. For the officer whose moral standards align with the telos of duty and the virtues of prudence, courage, temperance, and loyalty, any assigned responsibility that compromises those standards implicitly represents an attack on the Constitution, whether by a diminution of its vision for the nation or a more frontal assault on its provisions.[95]

Only the naive would assume that no officer ever opts to do less than the moral minimum. Lieutenant General Newbold commented upon such officers in his *Time* column:

> Flaws in our civilians are one thing; the failure of the Pentagon's military leaders is quite another. Those are men who know the hard consequences of war but, with few exceptions, acted timidly when their voices urgently needed to be heard. When they knew the plan was flawed, saw intelligence distorted to justify a rationale for war, or witnessed arrogant micromanagement that at times crippled the military's effectiveness, many leaders who wore the uniform chose inaction. A few of the most senior officers actually supported the logic for war. Others were simply intimidated, while still others must have believed that the principle of obedience does not allow for respectful dissent.[96]

If General Newbold's assessment is correct, these officers are sadly deficient in prudence, courage, temperance, or all three. At a minimum, the officer who cannot comply with an assigned responsibility without significant moral compromise must either attempt to effect change in a morally appropriate manner or depart.

The second option, departing quietly, physically severs one's connection with "the team." The act of leaving, absent an explanation connected to the moral difficulty, is unlikely to change anything other than the personnel roster. This does nothing to rectify what the officer believed to be a serious moral problem; leaving quietly simply passes the responsibility to another officer, who will then face the same moral choices. General Newbold's decision to retire in 2002 exemplifies the inadequacy of this option. His departure caused no waves and apparently did not prompt a reexamination of the policies and plans with which he so vehemently disagreed.

The most important exception to that generalization arises when an officer has individual moral objections, not shared by all, to a particular assigned responsibility. "Individual moral objections" connotes objections rooted in values unrelated to the military officer as a professional. For example, some religious

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faiths, for moral reasons, have stringent dietary restrictions; other faiths are completely pacifist. Officers who commit themselves to such faiths will often find that commitment incompatible with continued military service. In that case, leaving quietly is the appropriate moral choice in this nation, whose constitution guarantees a plural, secular culture.[97]

The officer's third choice is to leave in public protest, drawing wide attention to an egregious moral problem. The best opportunity to communicate one's reasons for departing and, for those reasons, to influence policy is immediately following one's departure.[98] The short attention span of the media and their continuing requirement for new news drive this demand for immediacy. Waiting months or years tends to diminish the amount of media attention any pronouncement will receive, as well as its impact. The attention that Lieutenant General Newbold's column received four years after his departure represents an exception to the first part of this generalization. However, by waiting four years General Newbold abandoned the possibility that speaking out could change the policies and plans that caused him to depart. If his criticisms are correct, Americans now live with the consequences of those policies and plans: an invading force that was allegedly poorly prepared for the tasks of occupation and stabilization, resulting in avoidable casualties on all sides and a potentially failed policy. Nobody can know what might have happened had General Newbold publicly voiced his concerns at the time of his retirement.

Incumbents of high-profile positions (most officers in pay grade O7 and above, some in command, recipients of unusual media attention, etc.) are likely to see any departure request speedily approved. Leaders want all of their team members to be highly motivated and supportive of the leader's goals; teams comprising high-profile positions are likely to have a powerful team leader who can push the system to respond. Thus Lieutenant General Newbold, Director of Operations of the Joint Staff in 2002, is likely to have had little difficulty in making a reasonably quick exit, allowing him to present his reasons for departing to the public in a timely fashion.

Mackubin Owens notes that no policy forbids or discourages retired flag and general officers from publicly voicing their opinions. However, he thinks the public unlikely to distinguish between active-duty and retired flag/general officers and worries that retirees speaking out may encourage active-duty officers to undercut policy or to believe that the military has the right to insist that civilian leaders accept the military's policy prescriptions.[99] The long, honorable parade, which began with George Washington, of retired generals and admirals subsequently elected as civilian leaders illustrates the military's fundamental loyalty to the constitutional cornerstone of civilian control of the military, a retired officer's ability morally to juggle multiple roles, and the electorate's appreciation of

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both of those realities. Preventing or discouraging retired officers, especially senior officers, from speaking out on current affairs would deprive the nation of valuable wisdom and leadership.

Personnel in lower-profile positions (most officers in grades O1–O6) are generally less able to depart expeditiously, since their team leaders have less influence within the institution. The process of leaving may involve two steps: transfer from the billet currently held to a large, nonoperational command and then release from active duty when the officer's formal request to resign or to retire receives approval.

This difference raises a question: Whom does the officer wish to influence by his or her departure? Those in lower-profile positions who confront responsibilities that will cause them to make unacceptable moral compromises have normally been assigned them by their commanding officer, commander, or the next higher echelon. Those seniors would invariably give close attention to a voluntary request for immediate transfer, which are relatively rare and usually career ending. In such a case, the request is in effect the officer's public statement of protest. The formal letter of resignation that an officer must submit affords a second opportunity to draw the chain of command's attention to what the officer believes is an egregious moral situation.

Officers in higher-profile positions have a more difficult challenge in bringing their cases before people who might be able to alter the situation. They typically enjoy much freedom with respect to day-to-day matters; issues most likely to raise substantive moral difficulties for them will be policy decisions made by civilian authorities, whether Congress, in the executive branch, or both. Civilian decision makers expect external dissent and therefore tend to discount it.[100] Further, both civilian and military decision makers at the highest levels function in an environment in which decisions result from convergence of interests and centers of gravity. This means that officers departing from high-profile positions who wish to make their views heard must likely address multiple audiences and do so forcefully.[101]

The challenges and costs of protest departures lead some officers to attempt the fourth and most difficult exit strategy—holding on for as long as possible, then exiting and walking a tightrope between discreet silence and public protest. Some officers may consider a protest departure in order to provide decision makers with the information necessary for informed debate.[102] However, in the case of military policy, the essential information (say, war plans) may be classified and therefore not disclosable, at least in a timely manner. The illegality of disclosing vital classified information will convince some officers that the fourth option is their only real alternative.

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Any officer contemplating a protest departure should heed two cautions. First, the officer must carefully avoid the appearance of conflict of interest—that is, there must be no impression given that the officer stands to profit or benefit by departing. Otherwise, that gain, not the protest, becomes the center of attention; escaping that pitfall requires the virtue of temperance, avoiding the excess of self-indulgence. Second, protest departures, even with optimal publicity to appropriate decision makers, may not visibly alter policy. Departure does mean, however, that the officer no longer has to perform a morally objectionable assigned responsibility. Further, a prudent and temperate officer who courageously departs and who appropriately makes known the reasons for that departure has loyally performed his or her constitutional duty in attempting to effect change.

"I TOLD YOU SO . . ."

The three-step model developed in this article provides a useful framework for analyzing the actions of Generals Johnson and Newbold. General Johnson recognized that he faced a situation belonging to category three of the taxonomy delineated above—that is, a situation in which continuing to perform his assigned responsibility would require significant moral compromise. Time proved him unable to effect change from within the system. Nobody will ever know if the war in Vietnam would have ended sooner, how many fewer casualties there might have been, and whether people would have more trust in the U.S. government if he and the "five silent men" had resigned in protest. In retrospect his decision to remain on active duty was, no matter how well intentioned, not the morally right choice. McMaster is correct. General Johnson and his colleagues failed to do their moral duty to defend the Constitution.

Lieutenant General Newbold, prior to retiring, clearly recognized that he too faced such a situation. In chronological order, he:

- Recognized the situation belonged to the third category, facing assigned responsibilities he could perform only by significantly compromising his moral beliefs (he exercised the virtue of prudence)
- Voiced his objections to decision makers (that he did this without being fired shows that he exercised the virtues of prudence, loyalty, courage, and temperance)
- Retired (rejected option one, continue to work from within the system)
- Publicly, after some years, voiced his objections (chose option four, first work from within and then from without, publicly voicing objections only as a last resort).

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General Newbold has publicly pondered whether he should have more assertively challenged views with which he disagreed.[103] Given his opinions that invading Iraq was unnecessary, relied on plans that would produce avoidable casualties, and was a distraction from greater threats to national security, he was morally deficient in not doing everything he could to prevent the war. The timing of his retirement suggests that he recognized the moral compromise he faced. If he could have made a persuasive case against the policies and plans he found morally objectionable without revealing classified information, then, given the magnitude of the issues at stake, he should have chosen option three (resign and speak out) instead of option four. That failure points to deficiencies in one or more of these three virtues: prudence (lacked wisdom to see the full importance of the issues at the time he resigned), courage (too timid), or temperance (too concerned about his position on the team or future influence). Waiting until after the fact to declare "I told you so, but you wouldn't listen" is a manifestation of unhealthy civil-military relations, a decision that lacks any moral justification. In any event, some degree of excessive loyalty to the JCS team, fellow officers, the Marine Corps, etc., probably blurred Newbold's perception of his constitutional duty—an inescapable consequence for all senior officers of long service and multiple loyalties.

Officers facing difficult moral situations must perform their duty to defend the Constitution against all enemies, foreign and domestic, at all costs. They can profitably use this model to chart their course as well as to learn from previous decisions. Step one is to determine which of the four categories of moral situations an officer faces. If the situation belongs to the third category, a situation in which performing the assigned responsibility would cause an officer to make moral compromises, the officer should take step two and consider the situation from the perspective of the relevant moral factors: the aim to defend the Constitution as shaped by the virtues of prudence, loyalty, courage, and temperance. Finally, step three requires the officer to select the best course of action from one of the four that may be morally appropriate.

Several caveats, however, are necessary. Complete information for moral decision making is never available. Any ex post facto review must consider whether the officer, given information available at the time, acted prudentially. Moral virtues are situationally determined means between two extremes. An officer who displays an excess or deficiency of a moral virtue may still strongly embody that virtue in other ways. Finally, the complexities of human behavior preclude simplistic conclusions about motives. Even extensive psychoanalysis cannot always clarify the motives or reasons behind particular actions. Nevertheless, habitual reflection on the actions of others as well as one's own actions cultivates moral growth and development.

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NOTES

1. H. R. McMaster, *Dereliction of Duty* (New York: HarperCollins, 1997), p. 330.
2. Quoted by Lewis Sorley, "To Change a War: General Harold K. Johnson and the PROVN Study," *Parameters* (Spring 1998), pp. 92–109, citing Brigadier General Albion W. Knight, Jr., interview, 1 February 1997, and telephone interview, 16 June 1995. Also Knight letter to Colonel Harry G. Summers, Jr., 4 August 1984, copy provided to the author by Colonel Summers. General Johnson made similar statements to or in the presence of several other officers, including Colonel Summers, Colonel Harold Birch, and General Bruce Palmer, Jr. Available at www.carlisle.army.mil/USAWC/parameters/98spring/sorley.htm.
3. Ibid., pp. 92–109.
4. Lieutenant General Greg Newbold (Ret.), "Why Iraq Was a Mistake: A Military Insider Sounds Off against the War and the 'Zealots' Who Pushed It," *Time,* 9 April 2006, available at www.time.com/time/magazine/. Two high-profile media reports on his column are Tom Shanker, "Third Retired General Wants Rumsfeld Out," *New York Times,* 10 April 2006, and Fred Kaplan, "The Revolt against Rumsfeld: The Officer Corps Is Getting Restless," *Slate,* 12 April 2006, www.slate.com/id/2139777/. The most authoritative history of the Iraq war to date also prominently featured Newbold's assessment: Michael R. Gordon and Bernard E. Trainor, *Cobra II: The Inside Story of the Invasion and Occupation of Iraq* (New York: Pantheon, 2006), p. 4.
5. Newbold, "Why Iraq Was a Mistake."
6. Ibid.
7. As explained below, a protest departure may take the form of a request to retire, to resign, or for reassignment.
8. Kaplan, "The Revolt against Rumsfeld." Cf. General Tony Zinni and Tony Koltz, *The Battle for Peace* (New York: Palgrave, 2006), pp. 26–30.
9. Mackubin Thomas Owens, "Rumsfeld, the Generals, and the State of U.S. Civil-Military Relations," *Naval War College Review* 59, no. 4 (Autumn 2006), p. 72.
10. Newbold, "Why Iraq Was a Mistake."
11. The article is Owens, "Rumsfeld, the Generals, and the State of U.S. Civil-Military Relations," pp. 68–80.
12. Martin L. Cook, *The Moral Warrior: Ethics and Service in the U.S. Military* (Albany: State Univ. Press of New York, 2004), pp. 79–93.
13. "Assigned responsibility" is necessarily vague, as it may refer to specific acts or broad support for policy articulated in formal orders, verbal or informal written guidance from a superior, law, regulations or official instructions. "Assigned responsibility" may connote the work of a staff officer (e.g., Lieutenant General Newbold as JCS operations director) or of a commander of a unit from platoon size to the Joint Forces Command.
14. Political appointees similarly cope with many issues of this type without resigning. Charles Frankel, *High on Foggy Bottom* (New York: Harper and Row, 1969), p. 57.
15. For example, cf. James H. Toner, *Morals under the Gun: The Cardinal Virtues, Military Ethics, and American Society* (Lexington: Univ. Press of Kentucky, 2000), pp. 48–53.
16. John Kifner and Timothy Egan, citing the opinion of Brookings Institution military analyst Michael E. O'Hanlon, in "Officer Faces Court-Martial for Refusing to Deploy to Iraq," *New York Times,* 23 July 2006.
17. Toner, *Morals under the Gun*, p. 49.
18. Seymour Hersch, "Torture at Abu Ghraib," *New Yorker,* 10 May 2004, available at www.newyorker.com/printables/fact/040510fa_fact.
19. Michelle Tan, "Army Charges Officer Who Refused to Deploy to Iraq," *Army Times,* 5 July 2005, available at www.armytimes.com.
20. Kifner and Egan, "Officer Faces Court-Martial for Refusing to Deploy to Iraq."
21. *U.S. Manual for Courts-Martial,* Rule 196.
22. Uniform Code of Military Justice, art. 85(b).
23. Alfred Avins, "Right of Military Officers to Resign: An Historical Footnote," *George Washington Law Review* 31 (1962–1963), pp. 431–61.
24. Frankel, *High on Foggy Bottom,* p. 109.
25. Cook, *The Moral Warrior,* p. 63.

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26. Individuals discharged from the military may experience considerable anguish or financial consequences from this policy, but those are not irreparable harms. The number of these discharges compared to the size of the military and the nation's population remains relatively low, totaling 726 in 2005. John Files, "Military's Discharges for Being Gay Rose in '05," *New York Times,* 15 August 2006.
27. Aristotle, *Nichomachean Ethics,* trans. W. D. Ross (New York: Random House, 1941), Book 1, chaps. 1–8.
28. Alasdair MacIntyre, *After Virtue* (Notre Dame, Ind.: Univ. of Notre Dame Press, 1984), p. 148.
29. Ibid., pp. 186–91.
30. *Title V, U.S. Code,* §3331.
31. Some military ethicists believe that military officers have a proclivity for a rule-based approach to ethics; see, e.g., Chaplain (Colonel) Samuel D. Maloney, NCANG, "Ethics Theory for the Military Professional," *Air University Review* (March–April 1981), available at www.airpower.maxwell.af.mil/airchronicles/.
32. *Title X, U.S. Code,* §502.
33. Lieutenant General Gregory Newbold, quoted in Shanker, "Third Retired General Wants Rumsfeld Out."
34. Ibid., p. 191.
35. James Toner, "Ethics or Military," *Air & Space Power Journal* (Summer 2003), available at www.airpower.maxwell.af.mil/airchronicles/.
36. Francis J. Varela, *Ethical Know-How: Action, Wisdom and Cognition* (Stanford, Calif.: Stanford Univ. Press, 1992), pp. 21–41.
37. William D. Casebeer, *Natural Ethical Facts* (Cambridge, Mass.: MIT Press, 2003), pp. 118–21.
38. Lieutenant Colonel Kenneth Keskel, USAF, "The Oath of Office: A Historical Guide to Moral Leadership," *Air & Space Power Journal* (Winter 2002), available at www.airpower.maxwell.af.mil/airchronicles/.
39. As Toner acknowledges *(Morals under the Gun)*, these are the four cardinal virtues of Roman Catholic Christianity.
40. All of the military services include loyalty among their core values. The Marine Corps motto, *Semper Fidelis*—Always Faithful—explicitly recognizes the importance of loyalty. Loyalty is one of the seven Army core values. The other armed services also acknowledge the importance of loyalty, although they express it less explicitly in their core values, the Navy including loyalty as part of commitment and the Air Force as an aspect of service before self. Similarly, Joseph G. Brennan identifies loyalty as a commonly cited military virtue along with courage, skill, honor, obedience, and perhaps audacity and cunning but does not attempt to codify or organize his laundry list of virtues, in "Ethics Instruction in the Military: Teach Them Plato or Hammer It into Their Heads," *Naval War College Review* 42, no. 4 (Autumn 1989), pp. 55–65.
41. *Justice* defies easy definition, but most definitions recognize three forms: commutative, distributive, and legal. Toner, *Morals under the Gun,* pp. 85–89.
42. Cf. *Roe v. Wade* and *Gregg v. Georgia.*
43. Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), pp. 102–105.
44. Avins, "Right of Military Officers to Resign."
45. Thomas Aquinas, *Summa Theologica*, ed. Anton C. Pegis (New York: Random House, 1945), 1–2, Q58, Art. 5, Reply Obj. 3.
46. Toner, *Morals under the Gun,* p. 60.
47. Aristotle, *Nichomachean Ethics,* Book 6, chap. 5.
48. Fletcher Knebel, *Seven Days in May* (New York: Harper and Row, 1962).
49. For societal values, Toner, *Morals under the Gun,* p. 146. For careerism, Colonel Dan Smith, USA (Ret.), "Why Few Top Military Officers Resign on Principle: Candor or Career," www.counterpunch.org/smith04142006.html. Owens implicitly raises the specter of a coup ("Rumsfeld, the Generals, and the State of U.S. Civil-Military Relations," pp. 77–79).
50. U.S. Constitution, Article II, Section 2.
51. For a discussion of the military officer as professional, cf. Cook, *The Moral Warrior,* pp. 59–77.
52. Walzer, *Just and Unjust Wars,* pp. 309–16; *U.S. Manual of Courts-Martial,* Rule 196.
53. Cook, *The Moral Warrior,* p. 81.
54. Ibid., p. 88.
55. Ibid., pp. 59–77.

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56. Gordon and Trainor, *Cobra II,* p. 4; Shanker, "Third Retired General Wants Rumsfeld Out."
57. Cook, *The Moral Warrior,* p. 43.
58. Anton Myrer, *Once an Eagle* (New York: Harper Collins, 1968).
59. Shanker, "Third Retired General Wants Rumsfeld Out."
60. E.g., Gordon and Trainor, *Cobra II,* p. 325.
61. Ibid., pp. 498, 502–503.
62. Kaplan, "The Revolt against Rumsfeld."
63. Except the virtue of justice, which has no excess. Aristotle, *Nichomachean Ethics*, Book 2, chap. 2.
64. Alfred Lord Tennyson, "The Charge of the Light Brigade."
65. For the telos of duty, Toner, "Ethics or Military."
66. Toner, *Morals under the Gun,* p. 110.
67. Aristotle, *Nichomachean Ethics*, Book 2, chap. 4.
68. Ibid., Book 2, chap. 7.
69. Conrad C. Crane, "Beware of Boldness," *Parameters* (Summer 2006), p. 96.
70. Carl Sandberg, *Storm over the Land* (Old Saybrook, Conn.: Konecky and Konecky, 1939), pp. 150–51. Owens offers a radically different interpretation of McClellan's actions, contending that McClellan willfully disobeyed Lincoln's orders because McClellan disagreed with Lincoln about the desired end state: Lincoln wanted to preserve the Union; McClellan wanted to minimize the killing and end the war through accommodation with the Confederacy ("Rumsfeld, the Generals, and the State of U.S. Civil-Military Relations," p. 75). If Owens is correct, McClellan was morally wrong. His duty to the Constitution afforded him only two morally viable choices: obey Lincoln's lawful orders to prosecute the war aggressively or resign.
71. Toner, *Morals under the Gun,* pp. 117–18, cites both McMaster and Timberg.
72. Robert Timberg, *The Nightingale's Song* (New York: Simon and Schuster, 1995), pp. 415–17.
73. Smith, "Why Few Top Military Officers Resign on Principle."
74. Neil A. Lewis, "Military Lawyers Prepare to Speak on Guantanamo," *New York Times,* 11 July 2006.
75. Kaplan, "The Revolt against Rumsfeld."
76. Aristotle, *Nichomachean Ethics*, Book 2, chap. 7, and Book 3, chap. 10.
77. Toner, *Morals under the Gun,* pp. 123–42.
78. Varela, *Ethical Know-How*.
79. Carroll Kilpatrick, "Nixon Forces Firing of Cox; Richardson, Ruckelshaus Quit," *Washington Post,* 21 October 1973, p. A1.
80. Edward Weisband and Thomas M. Franck found this was the primary reason more political appointees did not resign to protest policies with which the appointee disagreed (*Resignation in Protest* [New York: Viking, 1975], preface). Extensive anecdotal evidence suggests the same is true for military officers; the armed forces, for the career officer, constitute a highly politicized system in which service reputation often makes or breaks an officer's career.
81. Ibid., p. 3.
82. Smith, "Why Few Top Military Officers Resign on Principle."
83. There is no similar cost for three- and four-star officers with thirty years of service who depart in protest; they receive the same pay as two-star retirees with thirty years of service, because of caps on executive compensation. Ibid.
84. Avins, "Right of Military Officers to Resign," pp. 431–61.
85. Owens, "Rumsfeld, the Generals, and the State of U.S. Civil-Military Relations," provides several examples of officers acting immorally in response to policies with which they disagreed (pp. 69–70).
86. Adapted from a discussion of options that civil servants have when facing the same type of situation in Weisband and Franck, *Resignation in Protest,* p. 55.
87. Ibid., p. 8.
88. Gordon and Trainor, *Cobra II,* p. 502.
89. Weisband and Franck, *Resignation in Protest,* p. 91.
90. Cook, *The Moral Warrior,* p. 64.
91. Ibid., p. 93.
92. Frankel makes this same point with respect to political appointees (*High on Foggy Bottom,* pp. 220–21).

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93. For an explanation of this dynamic, see William H. Whyte, *The Organization Man* (New York: Doubleday, 1956).
94. Smith, "Why Few Top Military Officers Resign on Principle."
95. For the only set of exceptions to this presumption, see the discussion of the second option below.
96. Newbold, "Why Iraq Was a Mistake"; cf. Gordon and Trainor, *Cobra II,* pp. 128–34.
97. The First Amendment to the Constitution protects the free exercise of religion and prohibits the establishment of any religion.
98. Weisband and Franck, *Resignation in Protest,* p. 84.
99. Owens, "Rumsfeld, the Generals, and the State of U.S. Civil-Military Relations," pp. 70–71.
100. Frankel, *High on Foggy Bottom,* p. 112.
101. Owens, "Rumsfeld, the Generals, and the State of U.S. Civil-Military Relations," pp. 70–71.
102. Weisband and Franck, *Resignation in Protest,* p. 168.
103. Newbold, "Why Iraq Was a Mistake."

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