MILITARY ETHICS AS THE BASIS FOR THE SENIOR LEADER TO ENSURE THAT MILITARY FORCE IS USED RESPONSIBLY

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DONALD E. KOENIG, JR.
LCDR, JAGC, USN
NAVAL WAR COLLEGE
STRATEGY AND POLICY
PROF. C. C. CHADBOURN
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15. Abstract:

This paper reviews the myriad definitions of military ethics and fashions a definition that is applicable to the unique demands of the Joint Chiefs of Staff. It also reviews the ethical conflict of interest inherent in the JCS positions, as Presidential-appointee senior military advisers, as well as military officers. The paper reviews the ethical collapse evident in the aborted resignation *en masse* by the JCS in August 1967, and reviews two mechanisms available for JCS level senior military leaders to voice ethical opposition to Presidential use-of-force decisions. The paper concludes that a return to a more purely military focus on the part of JCS and senior military leaders will ensure that Presidential force use decisions comport with military ethics requirements.

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MILITARY ETHICS AS THE BASIS FOR THE SENIOR LEADER TO ENSURE THAT MILITARY FORCE IS USED RESPONSIBLY

The leak in the dike always starts from within.
-- *VADM James Bond Stockdale*[1]

I. INTRODUCTION

This paper will analyze the critical role that military ethics plays in providing a defensible basis for the most senior military leaders to ensure that the President, as Commander-in-Chief, deploys military forces in a Constitutionally responsible fashion. After surveying the myriad definitions of military ethics offered, the paper will propose a working definition of military ethics tailored for the unique responsibilities of the most senior military leaders -- the Joint Chiefs of Staff (JCS).

The paper then assesses the peculiar ethical dichotomy facing the members of the JCS: each is both a ranking senior military officer in command of an Armed Service, sworn by oath to the defense of the U.S. Constitution,[2] and each is a principal military advisor to the Commander-in-Chief (often to the same President responsible for selecting the Chief for his present position) and who must loyally defend the military policies of the President before Congress and the public. The obvious potential conflict of ethical interests in these two discrete obligations is analyzed through the JCS's crisis surrounding their contemplated resignation on August 25, 1967, and the lost opportunities as a result of this difficult episode.[3]

The paper then examines two mechanisms of military ethics offered for military officers in command who oppose the policies proposed by the senior civilian leadership of the Armed Forces, and concludes that one model is preferable for the United States' JCS to meet their Constitutional obligations and, thereby, ensure that the use of American military forces promulgated by the Commander-in-Chief is a militarily ethical choice.

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[1] Stockdale, James B., "In War, in Prison, in Antiquity," reprinted in The Parameters of Military Ethics, edited by Matthews, L.J. & Brown, (McLean, VA: Pergamon-Brassey's Internat'l Defense Publishers Inc., © 1989) p. 171.

[2] The same ethical dilemma faces the Chairman and Vice Chairman of the Joint Chiefs, although neither is the senior military officer of a branch of the Armed Forces.

[3] The recent revelations of then-Secretary of Defense Robert S. McNamara that, within 90 days of the Chiefs' contemplated and rejected-- but never revealed-- resignation *en masse* in protest over President Johnson's Vietnam policy, he, too, was convinced of the futility of the Commander-in-Chief's continued policy of gradulalization in Vietnam only underscores the magnitude of the lost opportunity when the entire constellation of military counsel to the Commander-in-Chief oppose his decision yet none acts on the opposition and all remain silent.

II. MILITARY ETHICS

> Victory is the main object in war. If this is long delayed, weapons are blunted and morale depressed.
>
> -- ***Sun Tzu***[4]

"Military Ethics" is a term bandied about as the shorthand reference to a myriad of philosophical, theological, political, behavioral, and inspirational writings, teachings, theories, policies, orders, and exhortations. They run the gamut from St. Augustine's "Just War" theories of *jus ad bellum* -- the justness **of** war -- and *jus in bello* -- the justness **in** war, to the real-time observations about the Medici Dynasty in Italy, faithfully reported by Nicolo Machiavelli, to the utilitarianism of John Stuart Mills, to numerous modern ideations, variations, and interpretations.

In simplest terms, "ethics" attempts to answer the question "why" in human conduct choices. Major General Clay Buckingham persuasively argues that ethics is "the study of human actions in respect to their being right or wrong."[5] Further, he argues that ethical reflection has been seldom carried out in isolation from theology. "Ethical values generally reflect our view of human life as it is embodied in the teachings of the prevailing religion, because all human conduct, essentially, takes place in relationship to other human beings."[6] It is Western Civilization's eternal battle of good against evil; the conflict of right and wrong. Following that thesis, "military ethics" should guide, explain, or rationalize why military personnel conduct themselves, or ought to, in certain ways in the execution of their military duties and why military forces refrain -- or ought to -- from other conduct during military operations. As General Buckingham opines:

> [O]ur whole moral and ethical concept of right and wrong stems from this thesis-antithesis of good and evil, and I believe we cannot consider right and wrong within the military profession outside this framework; that whatever protects and enhances life is good, and whatever destroys or degrades life is evil. The great concepts of justice, mercy, compassion, service and freedom are immediate derivatives of this central distinction between good and evil as received from our Judeo-Christian heritage.[7]

Before surveying the various definitions postulated for "military ethics" or attempting to fashion a working definition of military ethics for senior military leaders, a fundamental foundation must be established: Why does a military exist? What is the purpose of a military organization?

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[4] Sun Tzu, The Art of War, translated by Griffith, Samuel B., (London, Oxford University Press © 1963) p. 73.
[5] Buckingham, Clay T., "Ethics and the Senior Officer," reprinted in The Parameters of Military Ethics, edited by Matthews, L.J. & Brown, D. E. , (McLean, VA: Pergamon-Brassey's Internat'l Defense Publishers Inc., © 1989) p. 87.
[6] Ibid.
[7] Ibid., p. 88.

Political Science and Philosophy Professor Donald Zoll links the existence of a military to its society:

> No military establishment exists exclusively for its own internal benefit, even in instances of rulership of states by explicit warrior societies. War, for sport or conquest, has frequently been a prime preoccupation of a society, but warfare has never been the sole *raison d'être* of a culture. Thus, a military organization is ancillary to the social whole, at least in rudimentary role as protector of the physical safety of a society.[8]

Thus, per Zoll, the military exists to serve some need external to the military; not existing for its own sake, but to serve the society it defends. Zoll's view is a modern version of Carl von Clausewitz's truism that "war is not a mere act of policy but a true political instrument, a continuation of political activity by other means,"[9] which squarely places the military's purpose as subservient to the needs and goals established by the political leadership of the nation. This view is echoed by former Vietnam Prisoner of War and Medal of Honor winner Vice Admiral James Bond Stockdale, whose micro-ethics observations about the role of ethics for the individual officer transcend and encompass the macro-ethics of the military as a profession:

> I knew that civic virtue, the placing of the value of that society above one's personal interests, was not only admirable, it was crucial to self-respect, and I knew that to preserve that culture, sometimes symbolic battles had to be fought before the real battles could start.[10]

General Buckingham finds that the moral basis for the military is set in our primary source document of civilian governance -- the Constitution:

> The moral justification for our profession is embedded in the Constitution -- "to provide for the Common Defense." . . . The word "defense" is key. We are to defend our territory, because that is where our people live, but in an expanded sense, we are defending our value systems, our way of life, our standard of life, our essential institutions, and whatever our government declares to be our national interest.[11]

Victory on the battlefield remains the touchstone purpose and goal of all efforts related to "providing for the Common Defense." Within the concept of the "common defense," General Buckingham expands well beyond the physical self defense of the North American

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[8] Zoll, Donald Atwell, "The Moral Dimensions of War and the Military Ethic," reprinted in The Parameters of Military Ethics, ed. by Matthews, L.J. & Brown, D. E. (McLean, VA: Pergamon-Brassey's International Defense Publishers Inc., © 1989) pp. 118-19.

[9] Clausewitz, Carl von, On War, ed. and transl. by Howard, M. & Paret, P. (Princeton, NJ: Princeton University Press, © 1976) p. 87.

[10] Stockdale, p. 170

[11] Buckingham, p.88.

continent, encompassing the trade, economic, commerce, cultural, and governmental interests of our nation.. Further, he applies the good versus evil foundation of Western-Judeo-Christian ethics to the military profession and offers this definition of "military ethics":

> In essence, professional ethics is that body of written or unwritten standards of conduct by which that profession disciplines itself. . . . In the general case then, that conduct which contributes to the attainment of the purpose of that profession is good. The conduct which detracts from the achievement of the purpose of that profession is bad . . . then for the military profession, whatever enhances the common defense essentially is good, and whatever diminishes the common defense is bad. But this must be tempered by the larger issue, that whatever protects and enhances human life is good and whatever destroys life or diminishes the quality of life is bad.[12]

Manuel Davenport, in his presentation at the Fifth Joint Services Conference on Professional Ethics, answered, in succinct terms, the question about the purpose of a military organization, and clearly echoed General Buckingham's ethical basis:

> [T]he objective of the military organization is to exercise and manage violence to promote and preserve the safety and welfare of the human species and do so inasmuch as possible in a manner consistent with the interests of the client-nation which sanctions the objective and the dignity and status of those who carry it out.[13]

If Zoll's view was Clausewitz writ modern, then Davenport's and General Buckingham's definitions might be called "Clausewitz with a soul", as they clearly spring from both the Clausewitzian foundations of political primacy in setting military objectives, and that military victory is the primary focus for the military, as well as the Augustinian foundations of a just basis for sending forces into battle (*jus ad bellum* -- the justness **of** war concept) and the preservation of dignity within the military forces (*jus in bello* -- the justness **in** war concept.) This is not to imply that Clausewitz had no appreciation for the role of the ethical or moral element; to the contrary, he devoted three chapters in his "On Strategy in General" book within On War to the impact of moral factors and military virtues.[14]

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[12] Ibid., p. 89.

[13] Davenport, Manuel M., "Ethics and the Military Organization," presented at the Fifth Joint Services Conference on Professional Ethics, National Defense University, January 1983; reprinted in Military Ethics, (Washington, DC: National Defense University Press, © 1987) p. 71.

[14] Clausewitz is quite clear on the vital nature of the moral factors:

> [T]he moral elements are among the most important in war. They constitute the spirit that permeates war as a whole, and at an early stage they establish a close affinity with the will that moves and leads the whole mass of a force, ... Clausewitz, p. 184.

The linkage of military victory to ethical character traits, practices, and methods, especially regarding the preservation of life wherever possible, is a common theme throughout history: Sun Tzu's statement at the opening of this section specifies that rapid victory is the goal of war.[15] Both Sun Tzu and Clausewitz cite the massing of sufficient power to ensure rapid victory as a key component of attaining the military objective.[16] Machiavelli concurs, citing enduring "energy and power" as the essential ingredient of military victory.[17] General Dwight D. Eisenhower stated that morale is "the greatest single factor in successful war."[18] Thus, applying General Buckingham's definition of military ethics, we would conclude that military ethics should focus on encouraging those factors upon which military victory rests -- speed, morale, numerical superiority, and that support the ethical values of the nation. General Maxwell Taylor, former Chairman of the Joint Chiefs of Staff, offered a summary of these points in defining a military ethics code:

> The starting point of such an effort would be to arrive at an accepted standard of excellence for an ideal officer in the military profession. I would propose the following: an ideal officer is one who can be relied upon to carry out all assigned tasks and missions and, in doing so, get the most from his available resources with minimum loss and waste.[19]

Thus, General Taylor's proposition is that our military ethics should champion that which cultivates, inculcates, and perpetuates the "ideal" traits and values in an officer which, by definition, will facilitate the achievement of military victories while exercising prudent stewardship as a public official: maximum efficiency in achieving the objective, with minimum expenditure of resources, with preservation of human lives the overarching stewardship concern.

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[15] Sun Tzu was even more direct in his statement: "For there has never been a protracted war from which a country has benefited." Statement 7, Waging War, The Art of War, p. 72.

[16] *See*, "Superiority of Numbers" (Book Three, Ch. 8) and "Concentration of Forces in Space" (Book Three, Ch. 11) in Clausewitz, C. v., On War, *and* "Offensive Strategy" statements 12 - 17 in Sun Tzu, The Art of War, pp. 79-80. Sun Tzu lays out the offensive options across the military spectrum, from eluding and ensuring the capability to withdraw when one is undermanned *vis á vis* an opponent, to engaging the opponent when equally matched, to dividing the opponent when double his size, to attacking when five times his size, to surrounding him when one is ten times the size.

[17] "In *The Prince*, Machiavelli concludes, time after time, that it takes energy and power to win a battle, hold a territory, or claim lasting victory in a war." From McCarron, William E., "On Machiavelli and Vietnam," reprinted in Military Ethics, (Washington, DC: National Defense University Press, © 1987) p. 105

[18] Shinn, Roger L., "Ethical Aspects of the Exercise of Command," essay given at Fort Meyer, Virginia, 26 Jul 1973:

> General Eisenhower in his Crusade in Europe wrote: "Morale is the greatest single factor in successful war. . . . In any long and bitter campaign morale will suffer unless all ranks thoroughly believe that their commanders are concerned first and always with the welfare of the troops who do the fighting."

Footnote omitted – quoting from Eisenhower, D.D., Crusade in Europe (Garden City, NJ © 1948) p. 210.

[19] Taylor, Gen. Maxwell D., "A Do-It-Yourself Professional Code for the Military," reprinted in The Parameters of Military Ethics, edited by L.J. Matthews & D. E. Brown, (McLean, VA: Pergamon-Brassey's Internat'l Defense Publishers Inc., © 1989) p. 127.

Individual military officer ethics is a critical sub-component within the establishment of institutional military ethics. VADM Stockdale's comment about the essential need for individual selflessness for the sake of the common good is a truism sanctified by the blood of countless patriots who laid down their lives for the military goals the country set before them, and needlessly spilled, on occasion, by those who forgot the Admiral's wisdom and sent troops to their deaths out of fear for their careers if they objected.[20] Roger Shinn fixes the moral obligation of the individual officer squarely at dead center:

> The man in a chain of command turns over some of his rights of judgment; he must act on the judgments of his superiors, even though his own judgment differs. What he cannot turn over to anybody else is his conscience and his integrity.[21]

This simple statement dissects one of the most thorny and contentious issues facing the individual officer -- the difference between obedience and allegiance. When U.S. military officers receive a Commission, it is a commission from the President of the United States,[22] proffered as a result of the President "reposing special trust and confidence in the patriotism, valor, fidelity, and abilities" of the officer. To accept that Commission, we take an oath, set in Federal law, pledging our lives and allegiance to the defense of the Constitution "from all enemies, foreign and domestic," and promising our obedience to all orders from the President or other superior officers, when those orders are consistent with the Constitution and Federal law.[23] The natural corollary is that while obedience to the lawful orders of the President is required, a military officer's allegiance is to the Constitution, and the foundation values of life, liberty, and the pursuit of happiness upon which the Constitution, and our government, rests:

> The first moral obligation of any officer is to ensure that his conduct and that of his superiors is basically consonant with the values of the society and the constitution he has sworn to uphold together with the moral constraints of the military system.[24]

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[20] *See*, note 10, *supra.*

[21] Shinn, R.L., p. 55.

[22] Issued by the Secretary of the Service, acting for the President, under authority granted to the President in Art. II, Sec. 2 of the Constitution to "appoint . . .all other Officers of the United States."

[23] The Certificate of Commission, issued in the name of the President, directs the recipient thusly: "And this officer is to observe and follow such orders and directions, from time to time, as may be given by the President of the United States of America or other superior officers, acting in accordance with the laws of the United States of America." The U.S. Navy Regulations require any military member to refuse an illegal order. *See*, Article 1550, U.S. Navy Regulations, 1990. Further, the Uniform Code of Military Justice provides a complete defense to actions undertaken in compliance with an order, unless the order was illegal. *See*, Rule for Courts-Martial 916(d), Manual for Courts-Martial, 1995 ed.

[24] Gabriel, Richard A., "Legitimate Avenues of Military Protest," reprinted in Military Ethics, (Washington, DC: National Defense University Press, © 1987) p. 110.

The unique challenge for the most senior military leaders, the JCS, to keep separate their allegiance to the Constitution and their obedience to the President as Commander-in-Chief, will be addressed in the next section of the paper.

From all these inputs, it is possible to fashion a definition of military ethics that will apply to the unique challenges of the most senior military leaders -- the JCS: It is a slight variation on General Buckingham's following formulation:

> [W]hat is right is that which enhances the accomplishment of our basic purpose, the common defense, provided that it is consistent with our overall view of the value and dignity of all human life and that the means to accomplish it are acceptable.[25]

I would offer the following as a definition of military ethics for the JCS members:

> What is right for the senior military officer is that which accomplishes the military's Constitutional mandate to provide for the "Common Defense," provided that the employment of military forces is planned and executed in a way that is consistent with the goals of assuring a decisive military victory, exercising prudent stewardship of the national resources entrusted to us, preserving the sanctity of life, and using morally acceptable means to accomplish the military objectives.

III. THE ETHICAL CONFLICT FACING THE MOST SENIOR MILITARY LEADERSHIP -- THE JCS

> [T]here are admirals and generals who yearn to penetrate the "affairs of state" and politicians who wish to direct armies.
>
> **-- Donald A. Zoll**

The JCS face a unique conflict of ethical interests, different from other officers or military members. The conflict arises from the nature of their position and the "two masters" they are required to serve. First and foremost, each member of the JCS is a military officer sworn to allegiance to the Constitution under the identical oath of office that each commissioned officer executes. The four Service representatives to the JCS are additionally the senior ranking military officers of their respective branches of the Armed Services, the designated military commander of their respective branch.

Layered atop the constitutional allegiance is the unavoidable political reality of each Chief's position as a member of the JCS: Each is a principal military adviser to the

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[25] Buckingham, C.T,. p. 90.

President of the United States in his capacity as the Commander-in-Chief,[26] and each is appointed by the President to the Chief position he holds. As a designated member of the President's military policy team,. the members of the JCS are required to explain, defend, and sell the current administration's national security policies, plans, and budgets before the Congress, the media, and the American public. Each JCS member serves at the pleasure of the President. These factors can place an extraordinary pressure on a JCS member to toe the party line and place loyalty to the present administration's plans above the Chief's professional opinions or the constitutional allegiance in his oath of office. These pressures can tend to co-opt the pure military focus and outlook of the senior military leaders of the JCS as they become drawn unavoidably into the political maelstrom. The politicization of the JCS's role as military advisers to the President is a critical development that has existed since its formation.

> [T]he increasing preoccupation of the professional military officer with political affairs arose, in part, from understandable and even commendable motives prompted by the mounting complexity of world affairs. Greater understanding of political matters appeared a wholesome attribute for the post-World War II officer, especially in view of the advent of military situations in which operations were overlaid with often complex political considerations[27]

Specifically, two emerging developments at the end of World War II contributed significantly to the co-opting of the pure military focus of our senior military leaders. The first was the emergence of the bipolar, nuclear world power structure: The steady, focused emergence of the Soviet Union as an avowedly hegemonic, unequivocally nuclear probable adversary presented a sea-change in national security policy, theory, and strategy that was unheralded in U.S. history. American national security history until the late 1940s can be summed up as, essentially, 170 years of continuous multi-polar economic and military power dispersed across the globe; America plied the seas and championed democratic self-determination, free trade, and innocent passage. This world situation was combined with an essentially free national security for the United States for 170 years due to our bi-coastal insulation and large, pacifist neighboring buffer states. Both the multi-polar power and free national security concepts vaporized as the Iron Curtain fell, the Soviets announced their development of an A-bomb, and blast zone projections encircled every city of both nations. The salad days of a fairly simple, straight-forward national defense of the United States were over. American military leaders grappled with the increasing complexity of the newly emerging defense technologies and the precarious political balances as Warsaw and NATO picked their teams and squared off. The rapid

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[26] From 1949 to 1986, the JCS were the principal military advisers to the President, the National Security Council, and the Secretary of Defense. *See*, the National Security Act of 1947, Pub. L. No. 80-253, 26 Jul. 1947 *and* the National Security Act Amendments of 1949, Pub. L. No. 81-216, 10 Aug. 1949, Sec. 211(a). Goldwater-Nichols shifted the principal military adviser responsibility to the Chairman of the Joint Chiefs of Staff. *See*, Goldwater-Nichols Department of Defense Reorganization Act of 1986, Pub. L. No. 99-433, 1 Oct 1986, Sec. 151(b).
[27] Zoll, D.A., p. 120.

transformation to a bipolar, nuclear, MAD world unavoidably thrust military strategists and leaders into increasingly political activities, as the potential geopolitical and national security implications of apparently minute political decisions had to be analyzed. Within a brief period of time, American military leaders found themselves presiding over and enforcing the political division of the spoils of Berlin, to be followed by the massive humanitarian airlift to Berlin. With these actions, the modern-day concept of Military Operations Other than War (MOOW) was born. Finally, the elevation of former Army Chief of Staff George C. Marshall to Secretary of State to lead the economic and political rebuilding of Europe and the reintegration of Germany into the Western European community sealed the transformation of senior military leaders into politico-military leaders. Professor Zoll laments the evolution:

> It would be simpler, I grant, if military professionals restricted themselves to military matters and politicians attended solely to political ones. Needless to say, these areas overlap (most apparently of course in "grand strategy," an amalgam of the two); but even if they did not, there are generals and admirals who yearn to penetrate the "affairs of state" and politicians who wish to direct armies.[28]

The second post-War development that contributed to the political co-opting of the purely military focus of senior military leaders was the formal creation of the Joint Chiefs of Staff as the principal military advisers to the President, the National Security Council, and the Secretary of Defense and the increasing cooperation and integration of the national security planning of the Commander-in-Chief and the JCS. While formally constituted by law in 1947 (see note 27, *supra*,) the JCS, as an entity, dates to February 1942.

After the Pearl Harbor bombing, President Roosevelt and Prime Minister Churchill established the Combined Chiefs of Staff (CCS) to carry out the strategic direction of the U.S.-British war efforts.[29] The British contingent was made up of the British Chiefs of Staff Committee. As the Americans had no similar standing organization, the American military officers whose duties and positions most closely matched their British counterparts formed the U.S. JCS to fulfill their duties in the CCS. Thereafter, the JCS assumed responsibility for the planning and strategic direction of the U.S. war effort, and have continued to coordinate strategic and national defense military planning ever since.[30] The first JCS meeting included the Chief of Staff of the Army, General George C. Marshall; the Chief of the Army Air Corps, General Henry H. Arnold; the Chief of Naval Operations, Admiral Harold Stark; and the Commander-in-Chief, U.S. Fleet, Admiral Ernest J. King. The need for a presiding officer among these titans was felt almost immediately; they desired an impartial leader without a service portfolio to guide their

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[28] Zoll, D.A., p. 120.

[29] Webb, Willard J. & Cole, Ronald H., The Chairmen of the Joint Chiefs of Staff, (Washington, DC: Joint Chiefs of Staff Historical Division, © 1989) pp 3-4.

[30] Ibid., p.4.

deliberations and represent them before the President, in view of the increasing time demands on both the Chiefs and the President in waging a two front war.[31] On July 20, 1942, Admiral William D. Leahy reported for duty as the presiding officer of the JCS, carrying the auspicious title of "Chief of Staff to the Commander in Chief of the Army and Navy." Of note, Admiral Leahy's office was at the White House vice at the War Department next door; he met and briefed the President daily, and traveled extensively with FDR, including having a private office in the President's rail car. Admiral Leahy immediately became one of the President's closest *confidantes* and served in this capacity until March 21, 1949.[32] Admiral Leahy described his role as:

> maintaining of daily liaison between the President and the Joint Chiefs of Staff. It was my job to pass on to the Joint Chiefs the basic thinking of the President on all war plans and strategy. In turn, I brought back from the Joint Chiefs a consensus of their thinking.[33]

The Chairman of the Joint Chiefs of Staff historical volume allows that Admiral Leahy's role soon "grew beyond the realm of military affairs," and tensions in the increasing politicization of Admiral Leahy's role was noted by his JCS colleague, Army Chief of Staff General George C. Marshall, who commented that Admiral Leahy has become "more the Chief of Staff of the President and less the chairman of the Chiefs of Staff."[34] These frictions led to some changes in the 1947 and 1949 legislation formalizing the JCS's status; including providing for a Chairman of the JCS, who would be both without a Service leadership portfolio, and without a vote within the JCS.

In 1949, President Truman sought to have the Chairman designated as the principal military adviser, but Congress balked, naming the JCS the principal military advisers, and specifying that the Chairman had no command or control over the individual JCS Chiefs in order to preclude the Chairman from becoming the *de facto* chief of staff over the services. The Chairman was also assigned the responsibility to inform the Secretary of Defense, and the President as appropriate, of issues when the JCS could not agree.[35] It is that last responsibility, looming large during the continued politicization of the JCS in the midst of President Johnson's gradualization policies in Vietnam in 1967 to which we will turn for an example of the abandonment of military ethics through the politicization of the JCS's role.

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[31] Ibid.

[32] Ibid., pp. 4-5. Leahy and FDR's association dated from 1913 when LT Leahy had worked extensively with ASN Roosevelt.

[33] Ibid., pp. 5-6, quoting Leahy, W.D., I Was There: The Personal Story of the Chief of Staff to Presidents Roosevelt and Truman Based on His Notes and Diaries Made at the Time (© 1950) p. 96.

[34] Ibid., p. 6, quoting Pogue, Forrest C., George C. Marshall: Ordeal and Hope, 1939-1942, (© 1950) p. 298-300.

[35] Ibid., pp. 6-9. The elevation of the Chairman, JCS, to the role of principal military adviser would wait almost 40 years, until Goldwater-Nichols. *See*, note 27, *supra*.

IV. THE ETHICAL CRISIS OF AUGUST 1967 AMONG THE JCS

> This is mutiny. If we resign, they'll just get someone else. And we'll be forgotten.
>
> **Gen. Earle G. Wheeler**, USA,
> CJCS, addressing the JCS,
> 26 Aug 1967.[36]

The events of August 1967 are a dark chapter in military ethics, and a missed chance for a turning point for the Vietnam War, but the opportunity was squandered by an overly political focus among the senior military leadership that abandoned military ethics, as well as allegiance to the Constitutional oath of office. The increased blending of politico-military analyses and activities by senior military officers is viewed as a disasterous trend:

> Greater understanding of political matters appeared a wholesome attribute for the post-World War II officer, especially in view of the advent of military situations in which operations were overlaid with often complex political considerations. . . .But despite the apparent logic of this new orientation, the effort was excessive and resulted in three regrettable consequences: (1) a neglect of purely military art which, I believe it is fair to say, inhibited the success of American efforts in Indo-China; (2) a further obfuscation of a military ethic and a professional appreciation of the vocation, and a growing tendency to replace a military perspective with a political one; and (3) an increasing interest on the part of military professionals in wider governmental assignments.[37]

The Chairman of the JCS was General Earle G. Wheeler, U.S. Army, who, like many of his predecessors, became a close *confidante* of his President -- in this case, Lyndon Baines Johnson. Much of President Johnson's strategy planning occurred among a small group who met as the "Tuesday Lunch" group. While initially consisting of the President, his National Security Assistant, the Secretary of State, and the Secretary of Defense, General Wheeler quickly became a regular participant. General Wheeler described the discussions as wide-ranging across the full spectrum of presidential interests, and explained, "Mr. Johnson didn't confine me to commenting on military affairs at all."[38]

The events of this period are covered in detail in two compelling books: journalist Mark Perry's Four Stars, the book that broke the story of the JCS's long August night in

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[36] Perry, Mark, Four Stars, (Boston, MA: Houghton-Mifflin Co., © 1989) p. 165.
[37] Zoll, D.A., pp. 120-21 (parenthetical numbers added for clarity.)
[38] Webb, W.J. & Cole, R.H., pp.21-22, quoting an interview with General Earle A. Wheeler by McSweeney, Dorothy P., (21 Aug 1969), Lyndon B. Johnson Library.

1967, and former Defense Secretary McNamara's recent *apologia*, In Retrospect. I am summarizing a significant portion of each book's coverage of this brief period in history in reciting these events in order to understand the ethical crisis, and the response thereto by the actors involved.

The Congress, the President, the Secretary of Defense, and the JCS were on a collision course over the prosecution of the war in Vietnam: manpower, targeting, escalation versus gradualization, funding, strategy, and outcomes were being analyzed, criticized, studied, and debated on Capitol Hill, in the press, and on campuses throughout the country. The JCS had concluded that a successful conclusion to the War could only be achieved if the supply routes into North Vietnam were cut -- both land and sea routes -- and not just a continued focus on disrupting the North's re-supply lines into the South. A CIA report had also indicated that continued focus on disrupting only the re-supply routes was unlikely to be fruitful, although the report was little more optimistic over the possibility of interdicting North-bound supplies in sufficient amounts to affect the war in the South. The JCS's recommendation had been forwarded by the Chairman of the JCS, General Earle G. Wheeler, via Defense Secretary Robert S. McNamara, to President Johnson, along with a collateral report on the additional funding and manpower necessary to disrupt the supply lines into the North, as well as a request for authority for additional bombing and mining targets. The Joint Chiefs testified as to the necessity for this expansion and new focus before the Senate Armed Services Committee's Preparedness Investigating Subcommittee in mid-August, 1967, and mentioned that some of the targets they were seeking to bomb had been on the JCS recommended target list for just shy of two years.[39]

One week later, on August 25, 1967, Defense Secretary McNamara was called before the same subcommittee, and grilled over the rejection of the JCS advice. McNamara testified that the President had rejected the JCS recommendation, as was his right and prerogative, and that the Administration's program of gradualization and disruption of the re-supply routes into the South was both correct and proving to be very effective:

> "As long as October 1965," he (Senator Howard Cannon, D-Nev,) said, these targets . . . were unanimously recommended by the Joint Chiefs of Staff. I am wondering whether or not you have confidence in the members of the Joint Chiefs . . ., and just what the reason is their recommendations on military matters and military targets are not followed."
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> I replied that "the Constitution gives the responsibility of Commander in Chief to a civilian, the President, and I am sure it didn't intend that he would exercise that by following blindly the recommendations of his military advisers. So you must assume that under

[39] Ibid., pp. 150-165.

> the Constitution, it was recognized that the President would act contrary to his advisers at times.
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> "The Constitution," I went on, "recognizes that other factors than the narrow military factors must be taken into account by the Commander in Chief in making decisions in this area, and that, of course, is exactly what has happened."[40]

The impact of this public repudiation of the JCS's advice, as well as the throwing down of the gauntlet that the President would accept or reject the counsel of the JCS as he saw fit, was profound within the JCS:

> The JCS was stunned. Not only had McNamara ignored the CIA's report, he had dismissed the most important JCS contention: that a successful conclusion could only be gained by shutting off supplies to the North, not to the South . . . .
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> The highest ranking officers now believed that they had been betrayed by their civilian leaders, that the war could not continue without an irrational loss of American lives, and that, given McNamara's bad-faith defense of a clearly discredited strategy, there was little reason to hope for an eventual American victory.[41]

JCS Chairman Wheeler recognized that the situation was grave between the JCS and the White House, and that the JCS must act:

> Within hours of the testimony, Wheeler realized that in order to convince the American people that the tenuous consensus on the war between the nation's elected leaders and it's military officers had been shattered, he would have to convince all the JCS members to make their break public. . . .For Wheeler, it was paramount that the public event . . . shift the public debate from an argument over the scope to an argument over the type of American involvement in Vietnam.
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> On the late afternoon of August 25, Wheeler presented his plan to the rest of the JCS. The meeting was unprecedented. Not only did it not take place in the tank, Wheeler barred all JCS aides and did not allow anyone to take notes. . . .His next step was even more unusual, When the chiefs convened in his office, he asked each of them to pledge that what they were about to discuss would be kept strictly secret as long as any of them remained alive; they agreed. . . .Wheeler said he believed they should resign "*en masse*" during a press conference to be held the next morning.

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[40] McNamara, Robert S., In Retrospect: The Tragedy and Lessons of Vietnam, (New York, NY: Times Books, Random House, Inc. © 1995) pp. 289-90 (parenthetical added.)

[41] Perry, M., pp. 162-3.

> The chiefs weren't shocked; the idea had come up during informal discussions over a period of three months. Now, though, the talk was serious.[42]

After three hours of intense soul-searching, the Chiefs agreed to resign *en masse* the following morning because of their professional and ethical objections to the conduct of the war. The simple conclusion reached by the JCS should have been determinative of their conduct: Continuation of the current military strategy and policy would not bring about a victorious conclusion to the war and, failure to alter radically the policy, strategy, and intensity of the war would perpetuate both the combat and the fatalities unnecessarily -- both among American servicemembers and Vietnamese citizens. The ethical imperative to act to prevent this policy from continuing was compelling. The JCS decided that they would call a news conference and explain the reasons for their actions. Agreed as one, they JCS went home. Wheeler hardly slept, tormented by the decision, and he returned to his Pentagon office, less than five hours after he had left, early in the morning of August 26. At some point, JCS Chairman General Wheeler changed his mind. He summoned the Chiefs to his office again at eight-thirty:

> The same rules, he said, would be in effect: no aides, no notes, and a pledge of absolute secrecy.
>
> Wheeler began with a startling statement: "We can't do it. It's mutiny.". . ."This is mutiny," he said again. "If we resign, they'll just get someone else. And we'll be forgotten. Twenty-four hours from now there will be new guys sitting in our places and they'll do what they're told. . . All our lives we've been told to obey orders, we've been schooled in it. We've been told to give our lives for our country. Now, we're going to throw all of that away."[43]

That the JCS's resignation *en masse* would not be a mutiny is clear, especially upon a reading of the Uniform Code of Military Justice (UCMJ). The JCS, at that moment, were not, with intent to usurp or override lawful military authority, acting in concert to refuse to obey orders or otherwise do their duty.[44] The tenor of their discussions clearly indicates that they had no intent to usurp or override the lawful military authority of the Commander in Chief; nor were they subject to some specified order at that moment that they were conniving to disobey or ignore. The President, via his Secretary of Defense, had announced that the war strategy and bombing objectives of the JCS were not accepted by the Commander in Chief, who was choosing to maintain the present strategy. A mutiny would have commenced had the JCS conspired to order the U.S. forces in Vietnam to implement the JCS plan, after the President had rejected it.

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[42] Ibid., pp. 163-4.
[43] Ibid., p. 165.
[44] Article 94, Uniform Code of Military Justice, 10 U.S.C. § 894(a)(1).

Nothing in the UCMJ prohibits an officer, regardless of rank, from tendering his resignation. Of course, nothing in military law requires that the President accept such a resignation request; the President could decline and order the officer to continue performing assigned duties. A more interesting esoteric discussion surrounds the clause that links a mutiny to the usurpation of **"lawful** military authority": Would the commission of acts that are in conflict with the Constitutional oath of office transforms an otherwise lawful authority into an "unlawful military authority? Put another way, would the President's continuation of a military policy that is acknowledged to neither ensure rapid, efficient victory nor prevent the needless loss of lives transform the President into an "unlawful military authority" such that the refusal of his order would not constitute mutiny? Or, does "lawful military authority" refer merely to those military authorities established under the law, regardless of the lawfulness of particular actions by that authority? Such questions are unsettled in the law, although under other sections of the UCMJ, the lawfulness of general orders is predicated on their consonance with the Constitution, the laws of the United States, or other lawful superior orders, and other orders are assumed to be lawful, provided the order does not conflict with the statutory or constitutional rights of the recipient of the order.[45]

In hindsight, the political realities for the President militated against any realistic possibility of repercussion or recrimination against a JCS member who resigned over an ethical objection to the President's policies: Would a sitting President, enmeshed in an increasingly unpopular war, want to order a court-martial (for mutiny, disobeying an order, or whatever other offense could be fashioned from these facts,) where the defense to such charges would subject the policies, strategies, and competence of the White House and the Secretary of Defense to sustained public scrutiny, analysis, and criticism? Would the White House want it to become public knowledge that the President and the Secretary of Defense were marginalizing the JCS's counsel on the prosecution of an increasingly unpopular war, and that the nation's "principal military advisers to the President, the National Security Council, and the Secretary of Defense" were unanimous in their belief that the war could not be brought to a successful conclusion, absent a significant and substantial shift in military policy and strategy regarding the interdiction of supplies to the North?

Given Secretary McNamara's cavalier dismissal of Senator Cannon's concerns over the administration's divergence from the advice of the JCS, it is very likely that, as General Wheeler predicted to the JCS, the President would replace the JCS members, quickly and quietly, with five other flag and general officers who were willing to publicly support the Johnson Administration's war strategy. From a pure military ethics standpoint, the only remaining questions are: What would have been so wrong, so bad, or so dangerous for the American military structure (as General Wheeler intimated in his comment about throwing away all their combined dedication to obeying the orders of the civilian leaders) if the JCS had suddenly resigned, in public, over an ethical dispute with the Commander in Chief over his prosecution of the war? Would resignation *en masse* by

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[45] *See,* Article 92c(1)(b), 10 U.S.C. § 892, *and* Article 90c(2)(a)(iv), 10 U.S.C. § 890(2).

the JCS have created legitimate dangers to the troops in the field, or just dangers to the place in history for the five individuals who comprised the JCS that fateful August night? Due to the paucity of specific examples, contained in the recollected discussions of the JCS's deliberations, of legitimate dangers to the troops or to the U.S. national security that a resignation *en masse* of the JCS would visit upon the United States, these questions become largely rhetorical.

After discussing the merits of their decision to resign, and General Wheeler's entreaty for them to reconsider as he had earlier that morning, the JCS decided to not resign. They did not inform the President or the Secretary of Defense of their discussions and, in fact, many details surrounding the JCS's deliberations on that potentially fateful day were shrouded in secrecy for a number of years. General Wheeler died in 1973 with his silence unbroken. Other JCS members who participated in those meetings revealed details grudgingly, and one JCS member acknowledged how close the JCS came to resigning.[46]

The most troubling unresolved issues surrounding the JCS actions of August 25-26, 1967 surround the JCS decision to not inform the Secretary of Defense of their discussions and how close they came to resigning.[47] The issue is especially troubling in view of the obligation under the National Security Act Amendments of 1949 for the Chairman of the JCS to

> inform the Secretary of Defense and, when appropriate as determined by the President or the Secretary of Defense, the President, of those issues upon which agreement among the Joint Chiefs of Staff has not been reached.[48]

While some might argue that the JCS Chairman had no obligation under this provision to report their profound opposition to the President's policy, as promulgated in the Secretary's testimony that day, since there was no material issue in dispute among the Joint Chiefs, that rationale begs the question of the function and purpose of the section. The plain language of the statute, as well as the legislative history,[49] makes it clear that Congress wanted to ensure that the Secretary of Defense and the President received any minority opinion or dissent from a JCS member on any issue being decided by the Secretary of Defense or the President. Surely if the section is intended to ensure that a single dissenter's view will be formally presented by the Chairman of the JCS to the

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[46] Perry, M., pp. 164-165.

[47] McNamra indicated that he heard rumors of an aborted mass resignation of the JCS, but he did not believe it. He cited two of the Chiefs' public denial of the story after the emergence of the Perry book. *See*, McNamara, p. 291.

[48] *See*, National Security Act Amendments of 1949, Pub. L. No. 81-216, 10 August 1949, § 211(e)(3).

[49] Difficulties in dealing with a JCS unable to reach consensus in 1947 led Secretary of Defense Forrestal to call for a Chairman or Presiding Officer for the JCS to serve as the principal liaison between the President and the JCS. The National Security Act Amendments of 1949 ultimately imposed checks and balances on the authority of the Chairman, including the requirement for him to present all dissents to the Secretary of Defense and the President. *See*, Webb, W.J. & Cole, R.H., pp. 6-9.

Secretary of Defense and the President, the same provision would also apply to the dissent of all five members of the JCS on such a critical issue as the strategies, policies, and prosecution of the war. Thus, it appears that Chairman Wheeler may have failed to execute his statutory responsibility to the Secretary of Defense and the President under the National Security Act Amendments of 1949 by failing to apprise the Secretary of Defense and the President, formally and in writing,[50] of the JCS's unanimous opposition to the Administration's Vietnam policy.

There is one additional compelling reason why the most senior military leaders must make the tough ethical choices: Generally, flag officers are already vested in their pensions; they have the option of exercising a moral prerogative without forfeiting their military pension; they can seek immediate retirement. Moreover, since junior officers would walk away from military service with nothing if they resign over ethical or political issues, it is unlikely that junior officers will do so, due to the significant personal risks involved. Additionally, junior officers are more likely to repress their ethical concerns if they observe their superiors remaining and functioning despite the troubling policy. This rationale, a variation on the *respondeat superior* theory, buttresses the argument that senior flag officers have an even higher ethical obligation that their subordinates to resist ethically untenable policies, as much out of recognition that no one else is likely to resign, and that, as the senior officer within a service, the Chief must set the example for every junior Sailor, Soldier, Airman or Marine member.[51]

The final indignity to be heaped on this frittered opportunity to act ethically as the senior military leaders and, perhaps, change the course of the war from 1967, arises from the recent acknowledgment by Defense Secretary McNamara that he reached the same conclusion as had the JCS by November of the same year -- only some 90 days after the August deliberations. McNamara advised LBJ, in a personal memo, that "[c]ontinuation of the present course of action in Southeast Asia would be dangerous, costly in lives, and unsatisfactory to the American people."[52] Would the Chairman's statutory notice to the Secretary of the unanimous opposition of the JCS and their considered resignation pushed Secretary McNamara to his eventual conclusion a bit earlier? Would such notice have strengthened McNamara's will to object? Would an empathetic response by McNamara strengthen the JCS to go public with their opposition? These are the unanswerable possibilities that were lost during the summer and autumn of 1967.

Criticisms of the performance of the military and political leadership during the Vietnam War are legion. Professor Richard Gabriel, author of several books addressing the ethical issues for military leadership, rails against the ethical lapses of American military leaders in Vietnam:

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[50] And thereby creating a permanent government record of the opposition of the appointed military leadership of the nation, with all the attendant potential for political embarrassment.

[51] *See*, Gabriel, Richard A., in Military Ethics, pp 105-106.

[52] McNamara, R.S., pp. 306-307. McNamara states that LBJ neither replied, discussed, nor acknowledged the memo.

> The extent of the problem of ethical failure is obvious and embarrassing. In the ten years of war, not a single general or flag officer resigned in protest over the policies pursued in Vietnam . . . . although in retrospect it appears that a substantial number of them did have serious ethical and pragmatic objections to the policies they were asked to execute. . . . During that same time period, twenty seven officer of flag rank in the Canadian forces resigned in public protest over questions of policy. The contrast is staggering.[53]

Admiral Noel Gayler was a harsh critic of the ethics of President Johnson's policy of gradualization, abetted by the JCS's knowing silence, that slowed the escalation of forces below levels recommended by the JCS:

> [F]or many years in Vietnam, we had applied the efforts of two presidents, three secretaries of state and countless others in the notion of raising the ante, simply raising the threshold of pain, until the North Vietnamese would deal with us. If you can't figure out something better to do with a military force than to kill a lot of people and lose a lot of people in the hope that the other guy will get tired of the bloodletting before you do, you are not only not much of a leader, but you're not an ethical one either.[54]

Critics also railed against the failure of senior military and political leaders in Washington to understand or maintain a military focus -- the politicization of the military officer decried by :Zoll:

> In Vietnam, the decisions of immediate importance were, of course, made in the heat of battle, but the philosophy of war, the underlying principles of battle, were made in buildings half a world away by men more interested in counting bodies than in the objectives of winning and holding ground, of engaging and beating an enemy, and of establishing and maintaining a just and lasting peace.[55]

In conclusion, the period of August 1967 provides a telling example of the costs of the abandonment of military ethics for a blended politico-military view by senior military officers who focused their loyalty elsewhere than upon the sacred duty entrusted to them under the Constitution: to preserve, protect, and defend the Constitution by providing for the common defense, via bringing the forces and resources to bear in combat to ensure rapid victory and thus preserve human life to the widest extent possible. Whether it was

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[53] Gabriel, R.A., To Serve With Honor, (New York, NY: Praeger Publishers, © 1987) p.184.

[54] Gayler, Admiral Noel, "Nuclear Deterrence – Its Moral and Political Implications," speech at the United States Air Force Academy, May 1983, reprinted in Military Ethics, (Washington, DC: National Defense University Press, © 1987) pp. 164-65.

[55] McCarron, W.E., p. 196.

displaced loyalty, rampant careerism, or fear is of less concern than acknowledging the inability of these most senior leaders to act on their ethical opposition to preserve the forces entrusted to them in the face of clearly unethical military policies. The obvious next question is: What options are there for the most senior military leaders facing an ethical conflict in the support of the military policies and strategies of the present administration *vis á vis* their Constitutional oath of office?

IV. MECHANISMS FOR ETHICAL OPPOSITION BY THE SENIOR MILITARY LEADER

> An officer's ultimate commanding loyalty at all times
> is to his country and not to his service or his superiors.
> **-- General George C. Marshall**

That the JCS even seriously discussed and considered resigning *en masse* is a significant departure from the normal and expected conduct of our military leaders. Such discussions are exceptionally rare within the professional American military society. Perhaps as a consequence of our reverential fixation on the Constitutional checks and balances on power among the three branches of Federal government, we spend scant time contemplating or discussing the possibility of a President ordering the military to carry out orders that would violate the Constitutional rights of the military members or other citizens. As Professor Gabriel argues persuasively, the real danger in the absence of an institutional ethical protest mechanism is not that the military will become susceptible to pressures to usurp legitimate civilian authority when ordered to execute an unethical plan or order, but just the opposite: that the military will rigidly adhere to the concept of complete and unquestioned obedience to "lawful military authority" with no moral assessment of such orders for Constitutional compliance.[56] For whatever reason -- fear, naïveté, or lack of American political experience with resignations over questions of honor -- the American professional military society has not developed an acceptable mechanism for an officer to voice opposition on moral grounds.[57] Other countries have long accepted the concept of moral opposition by a senior military officer that might preclude him from executing the orders of the monarch, president, chancellor, prime minister, or emperor. Generally, the mechanism used abroad is the one contemplated by the JCS: resignation in protest.

A. Resignation in Protest. The moral declarative in resigning is clear-cut and obvious: the refusal to condone, abet, or perpetuate an unethical policy by placing one's stars, birds, or anchors on the table and announcing your intent to depart the profession in protest over the particular policy, before one will personally execute such an order. As

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[56] Gabriel, R.A., To Serve With Honor, p. 177.

[57] In an all volunteer force, the concept of "conscientious objector" has limited serious viability, as it requires a moral objection to all manner of bearing arms in opposition to other people or nations based on religious beliefs. There is no corollary "conscientious objection" to a particular order.

noted above, Canada is one ally with an established, institutionalized ethical resignation mechanism Both French and British society accept the concept of the ethical resignation of a military officer, and expect it when an officer faces an ethical conflict over a question of honor. German military society distinguishes between the lesser offense of *Hochverrat*, disloyalty to a superior -- the monarch or head of government -- and *Landsverrat*, disloyalty or betrayal of the nation. German military society sanctions the possibility that an officer may to have to violate the former in order to remain faithful to the latter. The Japanese *Bushido* code of honorable suicide when in ethical conflict with one's military superiors is the most extreme level of social pressure for ethical conduct by military leaders.

The advantage of resignation by flag and general officers is seen in the unmistakably powerful symbolism of the warrior parting company with the civilian leader who represents the lawful military authority sanctioned by our Constitution:

> Resignation or retirement in public protest is almost always a more powerful resource when used by a general or other high-ranking officer. Indeed, it is likely to be the most powerful means that a general officer can employ to effect a change in policy by focusing attention on the objectionable policy itself. Since he is likely to be closer to the decision-making level than his subordinates, his resignation of a general officer can be expected to have greater public impact.[58]

Of course the crux of the question is whether a flag or general resignation will have the desired effect? Unfortunately, we have scant experience in this country to turn to as examples: Major General George Rowney resigned in the 1979 over opposition to the SALT II Treaty; although it was never ratified, circumstances surrounding the Soviet invasion of Afghanistan preordained its withdrawal from Senate consideration by President Carter. The theory is valid, and has been observed with greater frequency in Canada and other countries with a greater experience: Public resignations by senior officers almost always directs intense press attention at the policy that precipitated the public protest. At a minimum, such a resignation will thrust the president and the civilian leadership into the position of having to defend the morality and Constitutionality of such a policy. As such a debate evolves, it can generate intense public interest and concomitant pressure on elected officials, thus achieving the desired end of subjecting the policy to public scrutiny and ethical analysis. And, in societies where the possibility of senior military leadership resignation is a reality, such a potential imposes an ethical check and balance to civilian war planning, at least to the degree of requiring civilian leaders to factor in the potential senior military reaction, and public reaction should the policy generate senior-level resignations. Finally, as Professor Gabriel trenchantly observed, the alternative to resignation -- exercised by General Wheeler and the JCS in August 1967 -- is even less attractive:

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[58] Gabriel, R.A., Ibid., pp 188-9.

> [A]vailable evidence drawn from the past suggests that staying within the system and trying to change it simply do not work. Consider that during the 10 years of the Vietnam conflict, a multitude of individuals faced the problem of moral choice over one policy or another. Yet, since no one resigned at the general officer level, we may assume that such men stayed on to continue their efforts to change the system. However, it seems clear for all their efforts, little in the way of major policy change was accomplished and the Vietnam "horrors" endured . . . .In the end, it seems more probable that the system changed the dissenters than that the dissenters changed the system.[59]

The social opprobrium attendant to contemplation of ethical resignation within military society is severe: one who does so is branded a "quitter" or "disloyal." Given our unique political history and lack of familiarity with the concept of public official resignations over moral issues, a sea change within professional military attitudes would be required before the concept of ethical resignations could become an effective ethical check on the civilian authority direction of military forces.

B. Ethically Pure Military Focus As Basis for Politics-Free Public Commentary. A second alternative is to retreat from the increasing politicization of our senior military leaders in order to reestablish their pure military focus on national security issues under consideration by the civilian leadership and the President. As Professor Zoll proposes:

> It is necessary to rethink the relationship of military officers with the political realm, if only to revive an ethical foundation for the profession that is transfused with political dicta. Politics obeys an ethics of its own -- more intricate and no less noble in its composition than that of the military -- but such a moral outlook is not appropriate to military circumstances. It is not merely a question of repulsing the enticements of political power; it is a matter of not adulterating military competency by an excessively political orientation, a world view....usually only dimly understood by most career officers. . . .The sharp line must be reestablished between the political and the military, and the reconstituted professional military ethic must include a strict prohibition against the incursion of professional military officers into political government service and a reconcentration of talents and energies on the development of military arts. This change of posture must also include . . .the refusal of senior officers to become expressly identified with specific governmental administrations.[60]

The products of such an effort are two-fold:

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[59] Gabriel, R.A., Military Ethics, p. 114.
[60] Zoll, D.A. p. 121.

First, a return to a more purely military focus will facilitate the military leadership's adherence to concepts of military ethics: to ensure proper forces and resources are applied to combat situations to maximize chances for victory and minimize risk of loss and fatalities through rapid attainment of military objectives. This combines a Clausewitzian victory focus with the public stewardship component advocated by General Taylor.

The second beneficial product is that the maintenance of such a militarily pure focus would tend to reduce the politicization of comments by senior military leaders -- by distancing themselves from the hurdy-gurdy of White House politics, the JCS's voices grow in stature, independence, and credibility when discussing the ethical imperatives of any particular course of action under contemplation. Instead of being co-opted into the White House public relations stable of talking heads, the JCS remain above the political fray, offering the definitive analysis of the military ethicality of the force, strategy, resources, weapons, rules of engagement, etc. that the political leadership intends to deploy. Ultimately, the divergent views of JCS and White House officials would coalesce into a policy that meets military ethical objectives before deployment of forces occurs. Such a course of events is in the fullest possible compliance with the Constitutional oaths of the JCS to provide for the common defense, and would work to impose a military ethics filter on all White House strategizing, without sucking the JCS into becoming the politico-military partners of the transient occupants of 1600 Pennsylvania Avenue. Professor Zoll argues that such restrictions would enhance, not restrict, the freedom of military officers to engage, even publicly, in dissent and discussions about the military aspects of national security policy that are within their professional competence.[61]

By unshackling the newly-refocused JCS to engage in sophisticated public discussions of military policies, both the independent stature of the JCS, and the level of public discourse and understanding about these critical national issues, would be enhanced significantly. Such a discourse would necessarily refocus military force deployment debates on ethical questions that go to the heart of the Constitutional oath of military officers: -- Does the policy contribute to the common defense? Is the policy designed to provide sufficient force and resources to ensure a rapid attainment of the military objective while minimizing the risk of fatalities wherever possible?

Because of the absence of a moral-resignation history within the U.S. military, this mechanism for senior level military ethics may be most feasible for the JCS to pursue.

V. CONCLUSIONS

Military ethics is critically important for every military officer, both personally and institutionally. Military ethics are an essential readiness issue for the JCS and other senior flag leaders because military ethics provides a mechanism for the JCS to impose military ethics parameters and filters onto the national security deliberation and decision process

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[61] Ibid., pp. 121-122

and thereby ensure that force use decisions of the President are Constitutionally supportable, and ethical by military ethics standards. The loss of adherence to a purely military focus by senior officers is a continuing and bedeviling problem that contributes to actions and decisons decried as careerism vice militarily ethical force leadership. And, as seen in the Vietnam era, the alternative to moral protest or dissent by senior officers was effectively impotent in effecting the unethical policies. The silent acquiescence of the JCS in August 1967 abetted the immoral continuation of a policy that was determined to guarantee neither a military victory nor the fewest fatalities possible in achieving the military objectives. Two ethical mechanisms for voicing opposition were analyzed for effectiveness in applying an ethical control filter to Commander in Chief policies, as well as a "fit" with the American historical perspective. The more comprehensive return to a pure military perspective and focus by the JCS is the preferred alternative. Restoring the pure military focus will provide the JCS the politics-free academic liberty to speak freely, authoritatively, and above the political din on military issues within their competence, and ensure that the ethical demands of military leadership positions, based on the loyalty to Constitutional principles contained in the oath of office, are applied to all force use decisions by the President. Such applications will ensure that force is used responsibly and ethically.