

## A Uniform Military Code of Ethics

The US military has been deeply ensconced in combat operations for the past 13 years. This has created turbulence and unrest throughout the force. Ethical digressions and failings have been widespread across all of the Services, especially among senior leaders. Ethical lapses, particularly among higher ranking officers and NCOs, make front-page news and degrade public trust across the Services.

Senior leaders, including the CJCS and SECDEF, have made an effort to curb the ethical lapses. SECDEF Hagel recently appointed RADM Margaret Klein to be his special assistant on military professionalism. CJCS Dempsey published a White Paper “America’s Military: A Profession of Arms” and has put an emphasis on ethics in the PME institutions through the recently released Desired Leader Attributes.

Although each Service has different core values, traditions, customs and courtesies, there is not a code of ethics. A quick search for “military code of ethics” takes one to the *Joint Ethics Regulation (JER)*, DOD 5500.7R dated August 1993. I believe that one ethical code should be uniform among all of the Services. Doctors, lawyers, accountants and other professionals all have a standard code of ethics. Snider, Oh, and Turner (2009) developed a framework for the Army’s Professional Military Ethic and cite the US Constitution as one of the primary components.

Commissioned officers all take the same Oath of Office and swear their allegiance to the US Constitution. The wording of this oath is similar to that for enlisted members with the exception that enlisted members swear to obey the orders of the officers appointed over them. The ethical code that governs their conduct should also be the same.

Military forces today fight joint and combined operations. They rely on the strengths and capabilities of each of the different branches of Service and what they bring to the fight in order to defeat the enemy. Different ethical codes would only breed confusion and misunderstanding especially among coalition partners.

Imiola and Cazier (2010) postulated that “The Army has long functioned without any formal expression of its professional ethic” (p. 11). Rather than working to develop different ethical codes for the different branches of Service I believe that the Services should work together to develop and implement a uniform military code of ethics. Now is the time to begin that process with ethics in the spotlight of our senior defense leaders.

A Uniform Code of Military Ethics

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Submitted by

Thomas J. Gibbons

U.S. Naval War College

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## **Introduction**

The U.S. military has been deeply ensconced in combat operations for the past thirteen years. Much of the combat has involved counterinsurgency operations which are difficult and costly, in terms of both resources and lives. Clearly, this has taken a toll on military service members and civilians and created turbulence and unrest throughout the force. The stress of combat operations and high OPTEMPO, along with uncertain budgets, has touched service members and their families. Through it all, public support and trust for the military remains strong. As Colonel John Vermeesch (2013) noted, "... America's trust is the lifeblood of the profession."<sup>1</sup> Indeed, in a 2014 Gallup Poll the military ranked highest as an institution in terms of confidence by American society.<sup>2</sup> Yet, there are indications that trust may begin to wane.

Ethical digressions and failings have been widespread across all of the Services, especially among senior leaders.<sup>3</sup> No Service has been spared from ethical embarrassment. Ethical lapses, particularly among higher ranking officers and NCOs, have been front-page news and degraded public trust and Congressional support in all the Services. In 2013, Senator Kirsten Gillibrand (D-NY) introduced legislation concerning the administrative discharge of military service members convicted of specific sex crimes.<sup>4</sup> Simply put, Congressmen did not trust military commanders to deal with these crimes. In a recent study on lying among Army officers, Professors Leonard Wong and Stephen Gerras (2014) postulated that "... repeated exposure to the overwhelming demands and the associated need to put their honor on the line to verify compliance, [Army officers] have become ethically numb."<sup>5</sup> Furthermore, the Atlantic Council reported that "... the string of [negative] reports have many seeing an ethical crisis in the

American armed forces.”<sup>6</sup> Is the American armed forces’ moral compass beginning to fail?

Former SECDEF Chuck Hagel and CJCS Martin Dempsey responded swiftly to the crisis. GEN Dempsey wrote a White Paper entitled *America’s Military – Profession of Arms* highlighting, “Our profession is defined by our values, ethics, standards, code of conduct, skills, and attributes.”<sup>7</sup> Dempsey also initiated Desired Leader Attributes (DLAs) for Joint Force 2020 to be incorporated into the PME schools’ curricula. One of the six DLAs is “... make ethical decisions based on the shared values of the profession of arms.”<sup>8</sup> Hagel appointed RADM Margaret Klein as the first senior adviser for military professionalism. Hagel noted, “This will be an absolute top priority for the service secretaries, the service chiefs, [Chairman of the Joint Chiefs] Dempsey and me.”<sup>9</sup> Yet have they done enough? What more can be done to reinforce ethical conduct within the military?

This paper will demonstrate that a uniform code of military ethics is essential for the U.S. armed forces today. “Without a stated ethic, the practice and climate of ethical behavior [in the military] is more difficult to directly assess.”<sup>10</sup> This uniform code of military ethics will become the cornerstone of military professionalism and promulgated by each of the military departments in their education and professional development for officers and enlisted. Moreover, this paper will underscore the reasons a uniform code of military ethics is needed and some of the objections to it. The paper then concludes with a way ahead after the uniform code of military ethics is established.

## **The Military Profession**

A uniform code of military ethics is essential first and foremost because the military is a profession. Ethics and professionalism are undoubtedly a top priority for the U.S. military. There has been much written about the military as a profession, especially in the U.S. Army by Professor Don Snider and many others.<sup>11</sup> In fact, the Army officially designated calendar year 2013 as “America’s Army: Our Profession” to provide education and training on the Army profession throughout the year. Professor Manuel Davenport (1987) documented three commonly accepted standards for an occupation to be a profession. His third standard is that “Members of this occupation state and enforce a code of ethical responsibilities.”<sup>12</sup> Yet, the U.S. military continues to lack a code of ethics.

Doctors, lawyers, accountants, and other professions all have a standard code of ethics that provides rules, procedures, and guidelines for ethical conduct. Why does the U.S. military lack a code of ethics? Major John C. Buckingham (1989) stressed:

Members of the military claim to be members of a profession, and most civilians see the military as a profession. Yet the military profession is set apart from that of a doctor or a lawyer by its lack of a unique code of ethics against which members can measure their own performance.<sup>13</sup>

For nearly 40 years, both active duty and retired military professionals have been promulgating a military code of ethics. The late General Maxwell Taylor, former Army Chief of Staff, called for a military code of ethics in 1978, “I conclude that it is worth the effort to undertake the formulation of an officer code, possibly as a first step toward one of the wider scope for the entire military establishment.”<sup>14</sup> Taylor was concerned about the poor ethical state of the U.S. Army immediately after the Vietnam War. In fact, several military professionals have even drafted codes of ethics to fill the void and

generate discussion.<sup>15</sup> Colonel (ret) Lloyd J. Matthews (1998) wrote, “No Armed service has elected to codify and officially promulgate a comprehensive prescription for ethical behavior along the lines of the American Bar Association’s *Model Rules of Professional Conduct* or the American Medical Association’s *Principles of Medical Ethics*.”<sup>16</sup> Thus, a uniform code of military ethics would provide legitimacy to the military as a profession.

### **Sources of Military Ethics**

Some may argue that there already are a plethora of publications dealing with military ethics and ethical conduct for the military profession. Why does the military need another document dealing with ethical conduct? Besides, upon initial entry and screening, all military service members take an oath ... enlisted ranks take an oath of enlistment while officers take the commissioning oath. Matthews (1994) underscored, “The officers’ grand corpus of ethical literature is so stupefyingly plenteous as to defy effective assimilation and practical use.”<sup>17</sup> Other documents that deal with military ethics include: the U.S. Constitution, the Code of Conduct, the Uniform Code of Military Justice (UCMJ), the Joint Ethics Regulation, Laws of War, the various NCO and Officer Creeds, and Service traditions. Each of these sources provides ethical direction and guidance to military service members. Yet, as Matthews (1994) concludes, “That guidance is so copiously profuse in quantity, so diffuse, in its sources, so amorphous in shape, that getting a useful handle on it is effectively impossible.”<sup>18</sup> Buckingham (1989) wrote “Numerous documents ... have alluded to various ethical norms for military officers and men. However, these do not provide a single repository of our ethical standards, nor do they provide for review under a code.”<sup>19</sup> The number of documents dealing with military ethics is overwhelming.

If you GOOGLE the term “military code of ethics” there are 47,700,000 results. The first entry that appears at the top of the list is Department of Defense Regulations 5500.7-R dated 11 February 2005 otherwise known as the Joint Ethics Regulation (JER). Chapter 2 deals specifically with Standards of Ethical Conduct. Unfortunately, the language is confusing and often difficult to comprehend, much less apply to one’s daily life. Clearly, the JER is a poor source document for military service members. The JER is more suited to a bureaucracy than the profession of arms because of the legalistic and compliance-based tone.<sup>20</sup>

A single uniform code of military ethics provides an ideal way to baseline all of these different sources into one comprehensive yet simple document. Snider (2014) noted “... the Army has too many statements of its ethic. What the Army lacks is consensus on a single understanding, concise and accessible to all.”<sup>21</sup> A single uniform code of military ethics would minimize any confusion and uncertainty within the ranks.

### **Core Values**

The Department of Defense and each of the different Services have adopted and circulated their own unique core values. Why does the military need a uniform code of ethics if the core values have already been adopted and promulgated? Some may argue that the core values are equivalent to a code of ethics and provide a framework for ethical decision-making. However, the core values themselves can be misleading. Lieutenant Colonel Mark S. Patterson and Lieutenant Colonel Janet E. Phipps (2002) concluded that:

While the Army values are imperative, they do little to assist soldiers in making decisions in situations where two or more values seem to clash or when they must choose between the harder right versus the easier wrong, or right versus right. The Army values by themselves are too general and do not provide soldiers with the framework for making these tough decisions.<sup>22</sup>

In other words, in and of themselves, the core values appear ambiguous, simplistic, and do not provide enough detail as an ethical framework. Matthews (1998) reiterates this point:

Finally we should emphasize again that this type of ethic – consisting of merely a brief set of one-word values, virtues, and traits – does not attempt to set forth explicit ethical principles tailored to address questions of right and wrong within the broad professional milieus as do the conventional codes of conduct governing other professions.<sup>23</sup>

The core values are clearly not sufficient to serve as a code of ethics.

With the exception of the Navy and Marine Corps, the core values are different for the Department of Defense and each of the Services. As a part of the Department of the Navy, the Marines have adopted the Navy's core values. Colonel Mark Mattox (2010) emphasized "The first thing one notices about these statements is that each is different, even though the uniformed members of these respective organizations are all members of the same executive department and of the profession of arms."<sup>24</sup> Does the fact that each Service has different core values cause confusion among the ranks, especially since the U.S. military conducts operations in a Joint and Combined environment? Mattox concludes with a recommendation that the Department of Defense and the Services re-evaluate their core values to determine if they really reflect the Service's core values and whether or not there should be differences between them.<sup>25</sup> A uniform code of military ethics would supplement the Service's core values by providing a comprehensive framework for ethical decision-making.

### **The Joint Environment**

Each of the different Services plays a key role supporting U.S. interests. Yet, the U.S. armed forces do not fight or conduct independent combat operations as a single

stand-alone Service anymore. Since the passage of the Goldwater-Nichols Act, U.S. armed forces have increasingly been working together in a joint environment. More and more, this combat role is expanding to include coalition forces. It is often difficult enough for U.S. forces from different Services to conduct joint combat operations, yet when coalition partners are involved the difficulty increases exponentially.

Combat operations in Afghanistan over the past several years have involved insurgency and counterinsurgency. These operations are significantly more difficult than conventional combat operations because friendly combatants often cannot determine who the enemy is. Likewise, combatants must be prepared to make split-second decisions in life or death situations. As Major Michael P. Manning (2010) noted, “Thus in an insurgency or complex contingency, and Soldier inexperience with the nature of the fight, the ethical decision-making process is greatly complicated.”<sup>26</sup> A uniform code of military ethics would provide the ethical framework for soldiers to make these tough decisions.

### **International Partners**

The U.S. military increasingly relies on international partners’ assistance with combat operations. As Professor Paul Robinson (2007) highlighted, “Given the fact that few Western nations now send their military forces on operations independently, the lack of uniformity about what constitutes ethical behavior and how best to educate soldiers is potentially a cause for alarm.”<sup>27</sup> Ethical dilemmas are rarely simple black and white decisions but often involve shades of gray. These shades of gray increase as coalition forces with different ethical codes and values become part of the operation. Captain Gerald Faber et. al. (1997) articulated, “... with the expansion of coalition and combined

operations, it is critical that the U.S. military have a common code [of ethics] that can be shared with allies.”<sup>28</sup>

Several U.S. allies and international partners have already adopted codes of ethics for their military services. Faber et. al. documented that, “Foreign militaries recognize that a code of ethics is needed for their profession to establish norms for actions and set standards of right and wrong for its members.”<sup>29</sup> Lieutenant Colonel Clark C. Barrett (2012) provided a review of military codes of ethics from Canada, Great Britain, Australia, New Zealand, and Israel. He concluded that “Each nation has made a solid effort to construct ethical guidelines for its service members.”<sup>30</sup> If our allies have already developed a uniform code of military ethics, why is the United States lagging, especially now that professionalism and military ethics are in an increasingly negative spotlight?

### **Objections to a Uniform Code of Military Ethics**

There are several objections to a military code of ethics. Barrett (2012), Professor Richard Gabriel (2007), Matthews (1994), and Lieutenant Colonel Jeffrey Schwandner (1988) outline many of them. Some are as relevant today as they were almost 30 years ago.

One of the main reasons against establishing a uniform code is that the Services already have the UCMJ, core values, and a variety of other documents dealing with military ethics. As already pointed out, however, the core values are ambiguous and do not provide enough detail. The UCMJ is proscriptive in outlining exactly what the military member should or should not do. In his paper on “Ethics in the U.S. Navy,” Rear Admiral Walter E. Carter (2014) recommends that the Navy, “Build a culture of Navy ethics beyond compliance.”<sup>31</sup> The U.S. military does not need another code that

dictates compliance with ‘do’s’ and ‘don’ts’ outlining what should and should not be done. On the contrary, the uniform code of military ethics will provide ideals, goals, and principles for military professionals to emulate and employ under different circumstances. Additionally, the uniform code will tie together all of these other documents.

Another objection is that simply having a code of ethics does not guarantee that members of the profession will actually follow the code. The code would not be a law like the UCMJ and cannot be enforced other than by peer pressure. However, Matthews (1994) clarifies, “Any officer seen consistently by his peers and superiors to fall ethically short will find his days in the service numbered.”<sup>32</sup> Like other professions, the military will not tolerate those who consistently violate the code of ethics and they will be dealt with accordingly. In many organizations, especially the military, peer pressure can an effective tool to influence behavior.

Others argue that the code cannot possibly cover every circumstance the members of the profession will encounter. It cannot deal with every ethical dilemma. This objection is too simplistic. As Gabriel (2007) explained, “Ethical codes are not the same thing as legal codes. Ethical codes specify in general terms what soldier ought to do and permit the individual to choose which observations he or she will observe.”<sup>33</sup> Matthews (1994) cited this same response to this objection. Lieutenant Colonel Brian Imiola and Major Danny Cazier (2010) also highlight, “First, no list of rules could ever be long enough to capture all of the things that we should and should not do. Second, any list of rules – if enforced – really just approximates another *legal* code.”<sup>34</sup>

Some argue for the publication of more than one code of ethics. Professors Nicholas Fotion and Gerard Elfstrom (1986) postulated that several codes of ethics are needed. “The exact number of codes is not what is at issue. What is, is that having just one code is too few and ten is too many since, once again, one code has to bear too high a burden, while ten would make things too confusing.”<sup>35</sup> Fotion and Elfstrom suggested an internal code for peacetime operations, a fighting code for combat operations, and a prisoner’s code for use when taken prisoner. The adoption of several codes would only add confusion and uncertainty to an environment already overloaded with documents about military ethics. Colonel Anthony Hartle (2004) argued, “My own personal view is that a variety of codes would de-emphasize the importance of each, a result that would not serve well the purposes of the military.”<sup>36</sup>

There are some military professionals who support each Service adopting its own unique Service codes of military ethics. Hartle (2004) postulated, “A further question is whether each Service should have its own formal ethical code, or whether one code should apply to all components of the armed forces.”<sup>37</sup> Army Chief of Staff GEN Raymond Odierno proposed a draft Army Ethic in *The Army Ethic White Paper* released in 2014. This is clearly a step in the right direction. Nevertheless, Service codes will only ‘muddy the waters’, create confusion, and add to the morass of documents that already deal with military ethics. Besides, each Service already has their Core Values. Today’s military fights in a joint environment. There should be one uniform code of military ethics for the joint force. Colonel Darryl Goldman (1998) argued, “More codes will not help. By the time the loaded ethics-related statements are defined with some consensus, the resultant code is little more than indefinite platitudes with no means of exacting

compliance.”<sup>38</sup> Manning (2010) suggested, “... that the U.S. military as a whole embrace the ethical values shared by all Services.”<sup>39</sup>

### **Way Ahead**

The Department of Defense in conjunction with the individual Services must make a commitment to develop and implement a uniform code of military ethics. “The adoption of a ‘Code of Military Ethics’ is no easy task for a military that has existed for more than 200 years.”<sup>40</sup> However the DoD must take the initiative and get the process started.

Lieutenant Commander W. Spencer Butts (1998) developed a framework consisting of four simple elements to reinforce the code once it is developed. He referred to it as the four E’s: Education, Example, Enforcement, and Evaluation.<sup>41</sup> They are explained as:

**Education** – As Carter (2014) documented, “... it is possible, for instance, for sailors to matriculate from accession source to retirement without having had more than basic ethics training over the course of an entire career.”<sup>42</sup> This is unacceptable. The uniform code of military ethics must be reinforced throughout a military professional’s career and milestones established within the PME schools.

**Example** – Leaders of all ranks must set an example and support the code. “The senior officers of the profession must support the new code by their actions, and they can be certain that their actions will be closely observed by their subordinates, who are searching for clues as to how to behave themselves.”<sup>43</sup> Without their support, the effort to establish a uniform code of military ethics will likely falter.

**Enforcement** – Enforcement is essential to the code’s success. Barrett (2012) noted, “For an Army ethics to be effective it must be backed by an organizational commitment to non-toleration for violations.”<sup>44</sup> Violations must be dealt with swiftly.

**Evaluation** – The military must continue to assess the code and make improvements over time. Leader involvement is vital to this assessment. This process will take time to implement. Butts (1998) stressed, “... there must be a means to continually improve the process and that comes in the form of evaluation.”<sup>45</sup>

### **Conclusion**

A uniform code of military ethics will not solve all of the ethical problems in the U.S. armed forces overnight. However, the Department of Defense and each of the Services are devoting a lot of resources and time to improving the ethical climate of our U.S. armed forces. The establishment of a uniform code of military ethics is a first step toward that improvement. Now is the best time to make it a reality.

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## **Dr. Tom Gibbons**

Dr. Tom Gibbons, a retired Army Colonel, is currently the Associate Professor of Professional Military and Graduate Education Effectiveness working for the Associate Provost at the US Naval War College. Dr. Gibbons served on active duty in the US Army for 29 years.

His teaching interests include leadership and ethics. His research interests include college honor codes, influences on ethical behavior, and assessment in higher education.

He holds a Bachelor of Science degree from the U.S. Military Academy, a Master's degree in Engineering Administration from The George Washington University, a Master of Arts in National Security and Strategic Studies from the U.S. Naval War College, and a Doctorate in Education Leadership from Johnson & Wales University. He received the 2007 Clifton J. Boyle Dissertation of the Year Award from Johnson & Wales University for his dissertation "Relationship of College Honor Codes and Core Values to Unethical Behavior in the Military Workplace." In 2011, he was recognized by Johnson & Wales University as an honoree of the Alan Shawn Feinstein Graduate School for his support to their doctoral program.