

**"Ethics and the 'Professionalization' of the U.S. Military"
James E. Roper (Michigan State University)**

ABSTRACT

After briefly characterizing two meanings of the word 'professional,' I argue that the first, which is limited to "certified expertise," does not describe what we usually mean by a professional, while the second meaning, which is associated with being a true professional, expands certified expertise to include the broader ethical import of what these individuals do. I describe two kinds of ethics codes associated, respectively, with those who are only certified experts and those who are true professionals. I also show that true professionals participate in what I call a social "covenant"—not a social "contract." Finally, I explain how this social covenant applies to the U.S. Army and, by implication, to its soldiers. I also argue that "contractors" do not participate in this social covenant; rather, these companies and their certified experts fall under the usual idea of a contract—one that emphasizes the bottom line. They are not true professionals. On the other hand, the U.S. military, in virtue of its covenant with the American people, also focuses on "all the other lines"—the ethical ones. This organization and its members ARE true professionals for the reasons explained.

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Section 1: Introduction

This paper explores the issue of whether, and to what extent, members of the U.S. military, with special emphasis on the Army, are "professionals." Additionally, if Soldiers should be deemed professionals, how would this status relate to their personal ethics in situations where they were acting "professionally"?

Section 2: Two Meanings of 'Professional'

The term 'professional' appears to have at least two distinct meanings. First, it sometimes refers to what might be called 'certified expertise'. In this sense, a "professional" must possess expertise in some specified field or endeavor; and this expertise must be certified. That is, simply having the requisite knowledge of such an "expert"—being "qualified"—is not sufficient; one must also be "certified,"

usually by an appropriate authority, as *genuinely possessing* that knowledge. For example, a professional plumber must pass various tests that demonstrate his or her knowledge of plumbing. That knowledge must encompass both what philosophers call “knowing that” and also “knowing how.” That is, he or she must be able to apply the knowledge of plumbing in practical situations likely to arise in the pursuit of a career as a professional plumber. A major part of the professional plumber’s “knowing that” consists in knowing various plumbing codes. These encompass the rules incorporated into the “building codes” which the plumber’s work must meet. To become certified as a professional plumber usually requires passing both paper and practical tests administered by the requisite professional organization or civil authority.

When the word ‘professional’ is used in this way, it is usually combined with another word or phrase. For example, one might speak of a professional plumber or a professional electrician. While such individuals are sometimes referred to simply as professionals, that is an atypical and arguably inappropriate usage. But there is another sense of the term ‘professional’ in which it is *not* unusual to refer to such individuals simply as professionals. “Professionals” in this sense also possess certified expertise like those of the first type. But unlike “professionals” of the first kind, they have also accepted that, in their roles as professionals, they must be sensitive to the broader ethical ramifications of their practice. Physicians exemplify this second sense of ‘professional.’ Physicians must, of course, pledge that their practice will be guided by accepted “standards of care” and they typically take some version of the Hippocratic Oath, as well as various examinations; but beyond these formalities, we expect medical doctors to be sensitive to the broader ethical implications of their patients’ medical conditions—including making sure that

the treatments they administer are done with the “informed consent” of their patients. This is why medical schools now require their students to take serious courses in “bioethics” taught by ethicists, who are typically philosophers with special training in medical ethics and the philosophy of medicine.

Section 3: Some Philosophical Preliminaries

The second sense of ‘professional’ mentioned above speaks of sensitivity “to the broader ethical ramifications of their [the “professionals”] practice.” While we typically assume that almost everyone has some sense of the moral implications of his or her actions, our purposes here require a more nuanced concept of what an ethical action is and how it can be differentiated from other actions. A widely accepted philosophical analysis of the concept of an ethical action is that it is one that is done “all things considered” or “no holds barred.” Such an act might also be characterized as *unconditional*. A *conditional* act is one that is done relative to some stated or understood circumstance. “If you want to unlock the door, you should use your key.” “If you want to win the chess game, you ought to move your rook to king’s bishop’s four (which will give you checkmate in four moves).” And so on. Unconditional actions, on the other hand, are not done relative to some objective. The judgments that such acts should be done are, in the words of renowned 18th Century German philosopher Immanuel Kant, “categorical” (or “unconditional”).¹

The upshot of this “all things considered”/“no holds barred” language is that, if anything—fact, background assumption, perspective, and so on—can be brought up while considering a judgment about whether to act in some way—it must be considered. One widely accepted way to carry out such an enterprise was

¹ *Foundations of the Metaphysic of Morals* and other works. Also see Roper, *The Covenant of Democracy* (2012).

introduced by the eminent late 20th Century social philosopher John Rawls. He called it the “Wide Reflective Equilibrium” (WRE) method, and many philosophers consider it the most important general method for justifying (broadly) ethical claims.² The idea is that in order to justify both our individual moral judgments (which Rawls requires to be “carefully considered”) and our general moral intuitions (or ethical principles), we must balance them against one another—sometimes giving up an individual judgment when it clashes with an important principle and sometimes discarding a principle when it conflicts with a strongly held individual moral judgment. For example, if the individual judgment “The Holocaust was morally wrong” conflicts with some ethical principle (and it does), we would probably give up the principle and retain the specific judgment. The result is to bring our individual and general moral intuitions into harmony—or equilibrium. We call it WIDE Reflective Equilibrium when we are not only balancing individual moral judgments against ethical principles but are ALSO balancing both principles and judgments against our background beliefs and commitments. Such background assumptions might include established scientific truths, philosophical views about, for example, the nature of a person, legal principles, as well as various professional and perhaps religious commitments. These assumptions would also include belief in our founding documents, but more about that complex issue later.

Section 4: The Soldier as a “Certified Expert”

I return to the distinction made in Section 2 between someone who has what we called “certified expertise” but lacks any general commitment to addressing the broader ethical implications of his or her actions and someone with certified expertise who has also accepted that, in their role as a “professional,” they must be

² Note: this “method” derives from philosopher Nelson Goodman’s proposal that we employ a “reflective equilibrium” to justify inductive reasoning, hence, standard scientific practice (*Fact, Fiction, and Forecast*).

sensitive to the broader ethical ramifications of their practice. Physicians, I argued, exemplify this second sense of 'professional,' while plumbers and electricians are typical of the first, which is my focus in this section.

I do not question the fact that the modern U.S. soldier has *expertise* and that those who are accepted into the ranks of the Army must be *certified* as having the requisite expertise in the arts and sciences of modern warfare. What more is required for someone to be a U.S. soldier? We saw that plumbers, for example, must show that they have knowledge of the requisite building codes' plumbing requirements. Are these codes comparable to a "code of ethics"; and, if so, what sort of an "ethics code" is it?

I want to distinguish between two very different kinds of "ethics codes." My model for the first type is the kind of "code of ethics" that virtually all modern corporations use to spell out how they see their "social responsibilities," but this type of ethics code is not limited to corporations or businesses in general. I call this kind of "ethics code" a "Ten Commandments Type 'Ethics Code'." I place the term 'ethics code' in scare quotes because I will argue that these are not really ETHICS codes at all.

An organization that uses a Ten Commandments type code expects the members of that organization to memorize a list of rules. Usually these rules reflect different roles within the organization. For example, in a business, welders may have one set of rules and lower level managers another. One feature of such codes remains constant, though: *they reduce "ethics" to a checklist.* To say that the actions of an organizational member "comply" with the code entails that the

individual can “check off” all the pertinent rules of the code—indicating that the individual’s actions are “compliant” with the code.³

The rules that make up the code are usually clear, simple, and straightforward (though sometimes difficult) to apply. The organizations that utilize such codes view it as an advantage that their codes are clear and straightforward. The actions of a member of the organization either comply or do not comply with the code. If they comply, the individual in question can “check off” on the rule(s) that are in play. Attorneys appreciate the “moral minimalism” of such codes because it tracks the moral minimalism of the law itself, which does not typically reflect the nuances of real world ethical problems. Indeed, that failure to mirror the subtleties of substantive ethical issues is the fundamental failing of such Ten Commandments type codes. It is why they are not really codes of ETHICS at all. Because they are not codes of ethics, these codes also fail to reflect what Robert Nozick has called “symbolic meanings.” In explaining why he rejected the Libertarian view of government he was primarily responsible for popularizing (*Anarchy, State, and Utopia* [1974], National Book Award, 1975), Nozick said the following:

... [W]e want the institutions demarcating our lives together to express and saliently symbolize our desired mutual relations. Democratic institutions and the liberties coordinate with them are not simply effective means toward controlling the powers of government and directing these toward matters of joint concern; they themselves express and symbolize, *in a[n] ... official way*, our equal human dignity, our autonomy... That symbolism is important to us. *Within the operation of democratic institutions, too, we want expressions of the values that concern us and bind us together. The libertarian position I once propounded now seems to me seriously inadequate, in part because it did not fully knit the humane considerations and joint cooperative activities it left room for more closely into its fabric. It neglected the*

³ Note that the “Ethics Officers” of modern corporations are now called “compliance officers.”

symbolic importance of an official political concern with issues or problems, as a way of marking their importance..., and hence of expressing, intensifying...and validating our private actions and concerns toward them. Joint goals that the government ignores completely...tend to appear unworthy of our joint attention and hence to receive little. There are some things we choose to do together through government in solemn marking of our human solidarity, served by the fact that we do them together in this official fashion and often also by the content of the action itself (The Examined Life [1989], pp. 286-287, my italics).

Here Nozick clearly rejects the Libertarian minimal state view of government that is arguably constructed in the image of a large business corporation. Nozick tells us that this "vision" not only failed to symbolically express our "human solidarity" but also took too constricted a view of government's proper aims. In the same way, Ten Commandments type codes focus too narrowly on the organization's internal goals and ignore its obligations to the broader society—obligations which often carry profound moral force.

Although these codes often begin by citing a few "values" to suggest that they are concerned with ethics, the rules that make up the bulk of the code invariably lack the nuance of real world ethical situations. Critics of my view will point out that such "Ten Commandments" codes often contain very general "rules" that seem to incorporate the "values" that are used to make them seem like ethics codes. For example, some business codes include things like "Always serve the customers' needs." What such "rules" are doing is essentially saying that some "value" should be promoted, but there is no specification that this value is to be supported "all things considered" or "no holds barred." In other words, "rules" of this sort are not ethical principles at all. They simply assert that members of the organization should, for example, serve the customers' needs. But these codes contain other rules; and without some indication of how all these rules are to be

prioritized, the “no holds barred” or “all things considered” I have argued are necessary conditions for ETHICS cannot be met. These kinds of rules are really nothing but “mantras”: non-specific “chants” to encourage compliance with the rules of the “Ten Commandments” code.

The upshot for this paper’s original question of whether the (U.S.) soldier is a professional is this: If the “code of professional ethics” the soldier signs onto is a Ten Commandments type code, the (U.S.) soldier is more like a professional electrician or plumber than like a doctor. Please do not misunderstand me. I do not mean to disparage what the soldier does, that he or she risks life and limb in a way other certified experts do not; but my point is that, if the “code” they agree to is a Ten Commandments type, the soldier is not a professional in the sense we usually have in mind when we speak of doctors, lawyers, and so on as “professionals.”

Section 5: The Soldier as a “Professional”

As we saw in Section 2, there is a second meaning of ‘professional’—one that seems more in tune with what we really mean when we use the word by itself—as opposed to using it with another word, as in “professional electrician.”

Earlier I argued that an ethical action is one that should be done “all things considered” or “no holds barred”—that this is a necessary condition for its BEING an ethical action. I further claimed that John Rawls’ Wide Reflective Equilibrium approach to justifying ethical claims is arguably one that is widely acknowledged by professional ethicists. This approach justifies actions as ethical by virtue of three sets of considerations: carefully evaluated moral judgments, accepted moral principles, and various background suppositions. Putting together a professional code of ethics for the military might start with a list of particular military acts (or

decisions) that would usually be considered ethical. This would be a list of clear cases that military professionals and members of the broader community would usually deem ethical. Next, the code might enumerate principles of behavior that would generally be accepted as specifying ethical actions. The last area would consist of a list of background assumptions pertinent to determining the morality of military activities. Recall that these three considerations have to be brought into what Rawls called a "Wide Reflective Equilibrium." If conflicts arise, changes have to be implemented until the equilibrium is restored. There is no set way to make these changes; none of these three areas has priority. (But see my discussion below of what I call "the social covenant.")

Section 6: Social Contract and Social Covenant

One of the critical things that we would look for in the background assumptions of the WRE as it pertains to the (truly) professional soldier is something about the relationship between the individual soldier, the military chain of command, the U.S. federal government, and the American people. The writings of the Army speak of a "social contract" between ... well, it isn't clear what the parties to the contract are; and that's a problem. For example, would the contract directly involve individual soldiers or would it be between, for example, the Army and the U.S. Government or the American people? Traditional social contract theory from, Hobbes and Locke on, is about a relation between individual citizens and the state they are contracting with to protect them, regulate commerce, secure their rights, and so on. That would suggest the contract is between the American people and the Federal Government, which would then use the Army (and the military in general) as a means to fulfilling the contract.

One serious problem with contracts, though, is that they are constrained by the law. Since the law represents, as I said earlier, a “moral minimalism”—that is, a set of conditions that certainly do not conform to the idea of ethics as concerned with what should be done “no holds barred” or “all things considered.” This is the problem with hiring out our national defense and other “public goods” to “contractors.” These individuals and the large corporations which employ them ARE operating under a contract—a contract that they can renegotiate if it becomes inconvenient. It follows that the employees (mercenaries) who work for such companies are not true professionals—like doctors or, as I argue, soldiers IDEALLY are.

What is needed is a relationship that is informed, but not thoroughly constrained, by the law—a relationship that carries its moral commitments “on its shirtsleeve,” as it were. I want to suggest that we NOT think of our Army as involved in a social CONTRACT; rather, I suggest we think of the Army as part of a social COVENANT.⁴ I do not mean a religious covenant, but there are some similarities with the latter. By a covenant, I mean a relationship that involves a promise, a gift to seal the promise, and a determination of our future lives together on the basis of that promise. Covenants have traditionally incorporated their ethical commitments, so they are not absolutely constrained by the law. I suggest that the SOCIAL COVENANT involved here is between the American people and the U.S. Federal Government, which uses the Army (for example) as a means to fulfill that social covenant. Because of that “use,” individual soldiers participate in this social covenant.

⁴ I develop the idea of a social covenant in my book *The Covenant of Democracy* (Kendall Hunt, 2012).

The U.S. Federal Government *promises* to defend the American people (and provide other public goods) and the people *promise* to support that government as long as it conforms to the founding principles of the nation. Those principles are not restricted to what, for example, the Constitution says (its actual words); rather the principles are expressed in what is often called the SPIRIT of the Constitution. What I mean here is that the Constitution is ultimately a set of moral principles. As such, its commitments must accord with our Wide Reflective Equilibrium. In short, it must be understood in the “all things considered”/“no holds barred” unconditional sense of ethics. That means that, if something (or perspective) can be brought up, it must be considered in interpreting and evaluating the Constitution. For example, the Constitution once condoned slavery; but issues arose which, ultimately, led to the Constitution’s being changed so that it no longer condoned slavery.

The Government’s gift to the people is that commitment to serve THEIR needs—not the needs of the most powerful or the wealthiest. To paraphrase the line from the film “The King’s Speech” that we must oppose the idea that “might is right,” we must also oppose the principle that “money is right.” Here is a place where the analogy with a religious covenant might be illuminating: “if you do it unto the least of these...” The Government’s gift to the American people is that even those with the least power, influence, money, and so on will each count as one (and no one will count as more than one). The people, for their part, give the gift of their support for the Government as long as it operates within what I called “the spirit of its founding documents.”

To that extent, the American people, and especially individual soldiers, who enter into this social covenant, fall under what philosopher John H. Shaar refers to

as Abraham Lincoln's idea of "covenanted patriotism."⁵ On this view, because the U.S. is grounded on the principles of political freedom—principles that philosophers like Rawls (1971) argue should never be "weighed" against utilitarian concerns (including business projections)—a true patriot (in Lincoln's sense) is bound by a special covenant with the other citizens of this nation—a shared promise to defend the nation and its defining principles, if necessary with their lives.⁶

These promises and gifts determine the on-going relationship between the people and the Government. The Army (and the Military in general) represents the means by which the Government fulfills its part of the social covenant. Individual soldiers participate in this covenant to the extent that they have some degree of autonomy to deal with situations that are not—and can never be—completely covered by "the rules of engagement" and other orders that they receive as members of the Army. Note: this is not to say that orders must not generally to be obeyed; rather it is to say that, to the extent that the soldier is a true professional (like a doctor, for example) he or she will inevitably face situations that will demand choices that have (often profound) ethical ramifications. The truly professional soldier must be trained not just to slavishly follow the orders of his or her superiors in the chain of command but to interpret (and, on rare occasions, to depart) from those orders in the face of circumstances that were not, and arguably could not have been, anticipated in advance. Such departures sometimes involve going "above and beyond" what one's normal "duty" to obey orders requires. These acts sometimes result in special commendations for "honor."

⁵ See John H. Shaar, *Legitimacy of the Modern State*, especially Chapter 13 ("The Case for Patriotism") and Todd Gitlin, *Intellectuals and the Flag* (which references Shaar)—especially p. 131.

⁶ Note: I assume Rawls would interpret such principles an ethically—that they are grounded in their ethical import.

Contractors, who might better be referred to as mercenaries, can not participate in this social covenant. Their company has a CONTRACT with the U.S. Government, and that contract is similar to any other business contract. Large corporations can make contracts, but they are incapable of entering into covenants because, as artificial entities, they lack the ability to make the kinds of commitments the covenantal promises require. This is why those individuals who work for companies like the former Blackwater are not true professionals. They MAY qualify as certified experts, but their contractual duties are focused on their companies' bottom lines. U.S. soldiers who fit the description I have provided for the truly professional soldier must have the autonomy to consider "all the other lines"—including those pertaining to the ethical ramifications of their acts.

Section 7: Conclusion

I have argued that U.S. soldiers CAN be viewed as true professionals under the circumstances I have spelled out—and I have argued that this is the best way to view them. On the other hand, the "corporate warriors" who work for various military contractors are not true professionals. Neither are U.S. soldiers who are viewed ONLY as certified experts without the autonomy to deal with situations that do not fall neatly into the pigeon holes of their various "rules of engagement" and other military orders. Soldiers should usually follow their orders, just as doctors should usually follow established "standards of care"; but both must have the autonomy and the knowledge to reevaluate things when required.

Appendix: Wide Reflective Equilibrium Diagram

BACKGROUND THEORIES, ETC.:
(1) Science (how the world is); (2) metaphysics (nature of a person, corporation, etc.); (3) the law; (4) the nature of the social covenant between the U.S. and the Army; (5) Etc.

Imagine double-headed arrows running between each of these rectangles, indicating that all three areas need to be brought into balance, *with no area having priority*.

CONSIDERED MORAL JUDGMENTS: Moral judgments about clear cases—carefully made. See discussion above.

ETHICAL PRINCIPLES AND IDEALS: (1) Principles of Justice; (2) Principles of Benevolence (Utility); (3) Principles with ethical import that are specific to the duties of the soldier at various ranks.