

Ultimate Integrity: A Reformulation of Unlimited Liability

Christopher M. Maier

Bio: Christopher M Maier, CD, MA is a PhD student in Philosophy at the University of Victoria. He is a former Naval Warfare Officer and veteran of numerous operations. <https://orcid.org/0000-0001-9372-9439>

Abstract: This paper examines the idea of Unlimited Liability in the *ethos* of the Canadian Armed Forces (CAF) as a reason for the acceptance of lethal risk tasking faced by its members. It argues that the idea of Unlimited Liability is at best unhelpful as a concept and needs to be replaced with ‘ultimate integrity.’ This new concept links directly to the CAF’s first ethical principle: respect the dignity of all persons. It also corresponds better with our beliefs about the nobility of military sacrifice.

Keywords: Canadian Armed Forces (CAF), dignity, ethics, *ethos*, integrity, military, motivation, sacrifice, Unlimited Liability.

“Duty is the great business of a sea officer; all private considerations must give way to it, however painful it may be.” (Vice-Admiral Viscount Horatio Nelson, KB, etc.)

INTRODUCTION

Unlimited liability (UL) has been a mainstay of the *ethos* of the Canadian Armed Forces (CAF) and is seen as an expectation that obligates CAF members to accept as legally binding an order that will result in their death. It can be found in the statements of professional values *Duty with Honour* (DWH) and *Canadian Armed Forces Ethos: Trusted to Serve* (TTS).¹ These documents outline the expectations of professional behaviour for members of the CAF. However, the concept risks becoming coercive, and the term is unfortunate as both ‘unlimited’ and ‘liability’ are inaccurate and unhelpful. This paper seeks to improve TTS by suggesting the elimination of UL and how to compensate for its removal. At worst, UL provides reasons for action through veiled legal threats, and, at best, it is unexceptional and unhelpful because it pushes service members to make rational outcome-based decisions from a personal point of view. This paper tries to clarify what is meant by UL, exploring it from the perspective of the person receiving an order,² and offers an alternative notion - Ultimate Integrity (UI) as a replacement. There are philosophical reasons why UL, if it is seen as a reason to motivate the mortal risk-taking of members, should be dropped from a dignity-based *ethos*, but also practical reasons; the concept is hard to pin down and it seems to have moved away from the words that gave it rhetorical force when the concept was coined. Philosophically, an *ethos* based on UI will be shown to be more appropriate to the CAF, the first principle of which is to ‘respect the dignity of all persons,’ and corresponds better with deeply held beliefs about the nobility of military sacrifice. Practically, there is little that is unlimited in military duty, and the idea of liability complicates the analysis.

Ultimate Integrity

UNLIMITED LIABILITY

If you ask a sailor on a ship what UL means, they will say something like: “it’s the thing that makes it legal for me to be ordered to my death.” Sir John Hackett is widely seen as the originator of UL and his book, *The Profession of Arms* (1983), is quoted and acknowledged in TTS:

The essential basis of military life is the ordered application of force under an unlimited liability. It is the unlimited liability which sets the man who embraces this life somewhat apart. He will be (or should be) always a citizen. So long as he serves, he will never be a civilian.³

In Patrick Mileham’s discussion of UL’s use across numerous like-minded nations (the UK in particular), he notes that Sir John was not advocating UL as a doctrine but as a descriptive turn of phrase for a complex idea. Mileham also points out that “Canada is the only other nation to express this same idea as self-evident truth and Hackett is fully acknowledged in Canadian publications.”⁴ Arguably, Sir John saw the idea in much stronger terms, bluntly saying in an interview that as soldiers “you offer yourself to be slain” and “by becoming soldiers, men agree to die when we tell them to.”⁵

In the Canadian publications (DWH and TTS), the ideas under the heading of UL have changed in such a way that the headings are incongruous, making the terms the most confusing part of the idea. The concept should be discontinued for no other reason than the fact that the words “unlimited liability” no longer corresponds with the evolved concept. DWH (2009) summarises the idea: “Members accept and understand that they are subject to being lawfully ordered into harm’s way under conditions that could lead to the loss of their lives.”⁶ This is a spirit of self-sacrifice and dedication to duty that is undoubtedly needed to accomplish hard and dangerous missions. The acceptance of the possibility of mortal risk is already a departure from the blank cheque envisioned by Sir John. In TTS (2022), UL is an ‘expectation’ that forms one of the seventeen elements of the *ethos* and is described as follows:

Unlimited liability means that we may be ordered, or may have to order others, into harm’s way during the performance of duty. Therefore, as military professionals, we understand and accept that we have unlimited liability to Canada to perform our lawful duty. Unlimited liability is one of the most unique components of our ethos. It lies at the heart of our understanding of duty and service to Canada. It means that we may have to injure or kill to achieve the mission and that we may suffer injury or be killed while performing our lawful duty.⁷

TTS’ discussion is unique because it contextualises UL within the leader’s obligations to that one’s subordinates: “unlimited liability is mitigated by a leader’s obligation to ensure the team’s welfare and minimize losses when in pursuit of mission success. However, leaders also bear the moral burden of making decisions that could lead to loss of life or limb.”⁸ Though it is not clear what a ‘mitigation’ to an ‘expectation’ does, it is clearly a decisive step away from anything that could rightfully be called “unlimited.”

The equivalence of ‘mortal peril’ with ‘unlimited’ is imprecise and can lead to abuse. It cannot mean that if mortal peril is the limit, a member’s obligation is to die and everything short thereof. Such duties would include any imaginable degradation, and those we prefer not to imagine. A captain can order a subordinate to that one’s death but cannot order that one to wax the captain’s personal car. So, it does not include abuse. It also excludes ‘fates worse than death’ - torture, yet it is CAF policy that the duty of prisoners of war is to resist torture and offers courses on how this can be done. These

Ultimate Integrity

examples may seem trivial, but the imprecision can lead to abuse, especially in situations where military necessity is not in play. There may be no urgent operational reason to submit personnel evaluations on time, yet the order to adopt a sixty-hour work week (without further compensation) may seem like a permissible response. That same order is more than reasonable when preparing a defensive position for a suspected enemy attack, or when establishing a ship's watch rotation.

The connection to legal compulsion is also of concern, a point of confusion, and part of the way in which the idea is unhelpful. 'Unlimited' sets out the boundaries (none) to 'liability' – a word that has an almost exclusively legal sense from contract law. The implication is that a CAF member is under a legal obligation that has no limit, i.e., a legal obligation which imposes unlimited cost to the member including death. The idea, though, is a turn of phrase and not a legal concept. It appears in statements of ethics and not legal documents. This means that regardless of what the settled legal opinion is, it does not matter, because the idea is aimed at the barracks, and messes where members discuss their professional duties. In other words, it links a normative expectation of extreme dedication to the mission to an opaque (to the member) legal expectation. This is where the idea can go from coercive to corrosive. It is not hard to see the opening UL gives for abuse in the hands of a poor leader with just enough knowledge to be dangerous. The connection between UL and the idea that one must do anything because one 'signed on the dotted line,' 'gave up your rights when you joined' or 'we're here to protect democracy and not practice it' is not hard to make. These sayings represent the ideas at the top of a slippery slope of abusive leadership that seeks to apply the will of a tyrant, instead of guiding the willing volunteer; the sayings represent one side of a contrast between the CAF member treated as means to an end against an ideal where members are treated as respected individuals with dignity.

The idea of liability, however, does need some analysis. There are two dimensions of liability (to the member receiving the order): 'what can a member be ordered to do,' and 'what following an order can cost the member.' It is inaccurate to call either sense "unlimited." What a member can be ordered to do is limited by what may be permissibly ordered, from a legal perspective. The cost to the member is only relevant if the member chooses to follow the order. The cost of refusing to follow an order is limited by law to fines, reprimands, or jail time. Without summary capital punishment, only obedience is potentially fatal. What we are really talking about is the fact that the cost of a permissible order – an order one ought to follow - can be fatal – or, that an order known to be fatal can be permissively given. The question is whether UL helps or hinders those facing this reality? The person facing these situations is asking normative question, "What *ought* I to do?" UL answers the normative question with a legal-sounding reason, an implication of contract enforcement, and the threat of punishment.

The terms of UL make this amateur legal analysis inescapable, which only highlights its limited nature. Mileham argues "... 'unlimited liability,' whether intuitive or carefully conceived as a matter of intellectual reasoning, ultimately consists in the surrendering of rights – by legal instrument, the oath of allegiance and armed forces' regulation."⁹ Mileham moves from term of art to an appeal to legal reasoning. The use of the term 'unlimited' in the legal context is challenging as the equal rights of CAF members have some protection from the Charter of Rights and Freedoms and the Supreme Court.¹⁰ In virtue of this, *pave* Mileham, freedoms and rights cannot be easily stripped from CAF members.¹¹ The Charter imposes on the CAF the same constraints, protections and requirements as other government agencies and offers members the same protections as other citizens. So, if UL has any connection to legal obligation, then that obligation is limited by what can be legally ordered and the liability (cost) up to the maximum penalty the Charter permits a court to impose, regardless of mission

Ultimate Integrity

risk. CAF members can always choose to refuse an order and accept a consequent punishment. In this way, refusal of a legal order is the correct metric of liability. Given the absence of capital service-offences, any punishment of a court will be *limited*, unlike the violence of the enemy, and the risks of a mission. Even if intended to be interpreted as a professional expectation (in contrast to a legal principle), the legal wording of UL invites an amateur legal interpretation, boiling down to ‘why should I view my liability as unlimited, when what I can actually be held liable for is limited?’ This incongruity creates a *motivational* challenge that is only exacerbated by the poor wording of UL.

The defects of UL can be illustrated through two examples: ‘The Forlorn Hope’ and ‘9mm Motivation.’ Their purpose is to show that there is nothing unlimited at play (except the violence of the enemy), and that the possibility of legal compulsion is limited. By drawing out what may be legally asked and what can be compelled, these examples will show that the use of legal and contract-based reasoning by UL is unhelpful. Such reasons are not able to reliably secure compliance, or better – cooperation - *in extremis*. It is through personal commitment to see one’s own commitments as normatively authoritative that they become sufficient for action. This is what is needed to bridge the difference between what is asked and what compulsion can achieve.

EXAMPLE 1 – THE FORLORN HOPE

Imagine an infantry private in a regiment ordered on a mission to charge the breach in a defensive position. There is still resistance, and the enemy is likely reinforcing behind the breach. Regimental officers develop a clever frontal assault and our private’s platoon is part of the vanguard. Our private is unsure that he really wants to be part of the charge, so he questions his captain. The captain is willing to explain her orders to the private. The private is convinced that, though necessary, it is a doomed mission for the first troops into the breach.

The private is asking, “What ought I to do?” Our analysis must focus on the reasons that can be given to convince the young private to join the attack. We can imagine a conversation between the private and captain prior to the assault. If the captain draws on the language associated with UL to provide reason for the private to charge, it drives the exchange to contract-style legal arguments (‘you signed on the dotted line’), and an appeal to the consequences of refusing legitimate orders (the punishment of a court-martial). When seen in ‘contract’ style terms, where consequence determines the weight of the reasons, those reasons tell against following the order. This line of reasoning encourages the private to make his own risk assessment – to weigh the cost of following against the cost of not-following the order. Once that happens, the effort is lost; death is not what an officer can impose, and the sanction of a court-martial may be seen as the lesser evil, compared to the near certain death of the charge. So, in our example, the private refuses to participate and tells the captain that he does not like the odds, and ‘will sit this one out.’ The captain understands, calls over the sergeant-major who witnesses the refusal, and leads the private away. After the successful assault where the unit suffers over 75% losses, the captain and the sergeant major take the steps to investigate and charge the private, who is then court-martialled for refusal to follow a legal order, and perhaps cowardice. The sentence he is liable for is up to life in prison.¹² To our private, this seems like a good bargain. UL is at best unhelpful in providing reasons for action in this situation because it brings forward the calculation of risk and reward. When risk is seen through that lens, the calculus will often favour the limited risk of courts-martial in extreme cases.

Ultimate Integrity

EXAMPLE 2 – 9MM MOTIVATION

Imagine the same scenario as Example 1, but instead of reasoning with the private, the captain pulled her pistol, and threatened to shoot the private if he did not advance with the rest of the platoon.

In this case it is the captain who would be investigated, charged, and court-martialled for ill treatment of a subordinate with a liability of up to two years in prison, or criminally charged for threatening behaviour.¹³ Likewise, she cannot order the sergeant-major to follow behind the charge, threatening the private or anyone who lags behind the charge. In other words, the truly unlimited threat is from the enemy, and not from one's own military chain of command.

AN UNHELPFUL DOCTRINE

What these two cases show is that a concept which leads to legal-based reasoning cannot give the person issued a very likely fatal order sufficient reason to act because that one's liability for refusing such an order is *not* unlimited.¹⁴ It directs attention towards the rational assessment of potential costs, which highlights the decision to refuse or disregard the order as reasonable, in the sense that it is 'within the range of conclusions to which a rational person could come.' The question is, "What is the problem with which UL is supposed to help?" It is trying to articulate a normative expectation that members of the CAF will risk life and limb in dangerous and violent situations? The problem can be solved two ways. UL is the traditional solution and follows the traditional approach that leads to an articulation of the traditional Crown-soldier relationship based in law, which is inherently coercive and appeals to external mechanisms of enforcement. The other way, which TTS tries to articulate, but cannot because it uses the terms "unlimited," "liability," "awful duty," and "orders," is to appeal to a normative authority that respects the status of the member as a reasoner – that puts the reason for accepting risk within the person. If the problem is what I ought to do when my resolve falters in the face of risk and peril, then the only thing that will be helpful is an appeal to something that I already find compelling - my own commitments.

OBJECTIONS

A) UNLIMITED LIABILITY AS RISK ACCEPTANCE

It is possible that UL is being misconstrued. Perhaps the key to understanding the concept is to focus on the idea as a turn of phrase meaning that members are to *accept risk* in virtue of their employment. This way, UL is not a legal liability, but a way of saying that members have already accepted all risks when they joined, which is an internal reason in the sense above. If this is the proper understanding, then it is neither a unique aspect of the profession, nor is it a sufficient reason to take risks *in extremis*.

There are many dangerous occupations, and the risks are well known. Loggers, for instance, have a fatality rate of about 70 per 100,000 workers.¹⁵ You have a higher likelihood of

Ultimate Integrity

dying as a logger than as a sailor in the Royal Canadian Navy. The statistical risk is not the point. The point is the voluntary assumption of risk, including the risk of death associated with a legal work assignment, which is not a unique feature of military service. There is, however, a crucial difference in the risk assumed. Mortal danger in logging and roofing is accidental, and everything is done to avoid it. Armed-force mortal risk, however, though mitigated, is never purely accidental – when civilians are fleeing the front, the military is heading towards it.

Loggers can legally refuse unsafe work. CAF members cannot legally refuse *some* risky work. Orders that are negligent of safety or reckless are not tolerated, just like in logging or roofing. An order to scale the mast of a ship without readily available safety gear or attacking an enemy machine gun emplacement using an eighteenth-century infantry line, are not reasonable orders and ought not to be followed. Something other than the presence of mortal risk differentiates these orders from the forlorn hope. The element of risk acceptance that UL illuminates is not a commitment or obligation to accept risk; rather, it is an acknowledgement that death is a foreseeable consequence of some duties, and under certain circumstances. If that is all that UL does, then it is merely a limited background fact when considering one's reasons for following an order. It is subject to professional disagreement about whether it is a reasonable risk, or to use TTS, whether the leader has sufficiently mitigated the risk. Risk acceptance seen in this way does not provide an unambiguous reason to follow any one order; instead, it provides normative force in the consideration of risk, but it is not a sufficient reason for action.

B) OBEDIENCE TO LAWFUL AUTHORITY

If risk acceptance is not a sufficient reason for action, then perhaps an appeal to a higher, and explicitly normative, principle would. After all, UL is simply expanding the CAF principle of obedience to lawful authority. In this way, a lawful order is a sufficient reason to act. The principle states:

CAF personnel act decisively in following lawful commands and orders to achieve mission success. As military professionals, we always obey and support lawful orders and the authority that issues them.¹⁶

The objection would state that the obligation to follow a lawful command is not legal, but ethical, and it appeals to one's identity (internal) as a military professional. So, in this sense UL is an ethical obligation to accept risk and gives one a criterion that is sufficient for action.

If this holds, it does not make the military profession any different from firefighting, police, EMS, or many other first-responders, and it is not helpful in the dark places where it is truly required. First responders all have some clear ethical obligations to act and accept risk. However, this objection is a misreading of the principle. The explanation in TTS is a legalistic description which says: "The strict obligation to obey lawful commands is a binding regulation that enables the chain of command's duty to achieve the mission."¹⁷ Unfortunately this language of 'strict,' 'binding,' and 'obey' in the principle moves it out of the realm of moral principle to one of instrumental reason. It is a coercive reminder of the power of law. It is an ethical principle only in so much as it serves to support ethical ends with legal sanction. It is not coercive only in so much as those who obey agree with the ends brought about by the orders. The crucial element that this

Ultimate Integrity

principle adds is the limit of the obligation to obey: “Everyone also bears the responsibility not to follow manifestly unlawful commands and to report them to a higher and appropriate authority.”¹⁸ There is nothing new that will provide reasons to members or avoid the rational bargain. UL says to follow legal orders even at mortal risk; obedience to lawful authority says the same thing but adds the exception of manifest unlawfulness. It is here that liability, in the scope of what can be asked of a member, is limited in principle.

If one grants the two hypotheticals: that orders are in the service of some good, and that those who are in the CAF agree with those ends, then it can be seen as non-coercive ethical principle. Importantly, this principle can be seen as a decision procedure over the question of reasonable risk acceptance. Legal authority is a mutually acceptable procedure for determining risk, and deciding on action, and the appeals to identity make it internally motivating, but it is not helpful enough. That is, it is helpful only in instances when lawful authority is present. It does not help our private who, we can imagine, has now accepted the captain’s risk assessment, followed her lawful order, and charged into the breach; however when she has subsequently been cut down by enemy fire, the private, lacking command authority, decides that the risk is no longer reasonable and sits out the remainder of the charge in a shell crater. Obedience to lawful authority is sufficient to act in some situations and helps to decide when some situations of risk are reasonably accepted, but it does not create the willingness to voluntarily expose oneself to almost certain mortal risk.

C) SERVICE BEFORE SELF

We might object that another CAF principle is able to rescue UL. The objection would go along the lines that UL is grounded in the ethical principle of service before self, which says that we must subordinate personal risk to accomplish a mission. The principle reads:

CAF personnel prioritize service to the country, the military, and their teammates ahead of themselves as a personal commitment to mission success. As military professionals, we place service before self to maximize team effectiveness.¹⁹

There is some value to this objection. If UL is the subordination of the consideration of personal danger to achieve the mission called for by a lawful order, then it is almost identical to the formulation of service before self, which provides no additional substance to the concept. UL is often seen as adding substance to the principle of service before self. Both TTS and DWH refer to this principle, saying that UL adds to it the idea that the self is subordinated to the point of mortal peril. As we have seen, that is precisely where UL falls down. It gives nothing useful to the captain faced with a subordinate who has decided to ‘sit this one out’ and wait for court-martial. For the private who is taking the risk, he has already decided that the risk is not worth taking. Once the appeal to external motivation and the rational calculus have been made, then further appeals are wasted. Fundamentally, the approach of UL, and obedience to lawful authority, is to appeal to reasons external to the CAF member. Of all the objections so far, service before self has the best chance of providing internal reasons sufficient for action and ongoing mortal risk taking.

The weakness of this system is in UL. The purpose of UL in the system is expressed in TTS: “Unlimited liability amplifies the notion of service before self beyond that of enduring great hardship because it elevates the risk to health to, potentially, the loss of life. Without this high

Ultimate Integrity

level of commitment to achieving mission success, our military effectiveness would be critically undermined.” This is precisely where it is unhelpful due to its historical associations, its unfortunate word choice, and the obeisance to amateur legal analysis.

ULTIMATE INTEGRITY: INTERNAL AND EXTERNAL REASONS

Before moving on to the alternative, it is worth asking what it would say about the forlorn private if the UL argument were to spur him to action. This is important because it outlines the difference between the contrasting approaches being used. If the private charged the breach and were killed, then would acting because of a legal compulsion correspond with our understanding of military sacrifice and its nobility? Because the UL-private is acting for reasons that are not his own, but imposed externally, we can say the UL-private ‘had to’ or ‘had no other choice.’ In other words the private ‘was sacrificed.’ Compulsion and legal threats take away from sacrifice in the normal sense that someone willingly ‘laid down their life.’

A reason that is internal, is one that is part of one’s accepted higher order ends, goals, or beliefs. When one is given a reason, and it becomes internal, it does so because it coheres with one’s ends, and those ends license the action. In contrast, an external reason does not necessarily cohere with one’s higher order ends and is acted upon out of necessity. When UL explains the reason for sacrifice, it is an external reason and takes away the private’s agency. Thus we might say the private had no choice; he had to follow the order to his death. When the reason for sacrifice is external, the private is more akin to the lamb led to the slaughter than the one making the sacrifice.

ULTIMATE INTEGRITY - A FORMULATION

We have seen that the concept of UL fails to provide the type of reason to spur voluntary individual action. The proposal is to replace UL with a concept called ultimate integrity (UI). It is designed to work within the elements that make up an *ethos* of a volunteer force of equal citizens. The work that UL was supposed to do, i.e., ground the acceptance of mortal risk, should be done in the statement about integrity. The term ‘Integrity’ should be replaced by ‘Ultimate Integrity’ and the existing statement about integrity in TTS should be reworded to draw on an understanding of the life of a serving member that emphasises the member’s own value in dignity and expressed in the first principle of the CAF: Respect the Dignity of All Persons.²⁰

The following formulation is proposed:

Ultimate Integrity is leading a life and career that is the embodiment of the *ethos* of the Canadian Armed Forces and is understood in terms of personal identification with the values and principles of Canada. It is about living a coherent career of service. A member’s first act, the swearing of allegiance to Canada, is an act of great dignity that anchors all subsequent acts of service and sacrifice. A career is made coherent by a series of decisions to continue in voluntary service, and to

Ultimate Integrity

continue to uphold the principles and values of Canada and the CAF. Part of being a CAF member who continues to serve is the willing acceptance that risk, danger, violence, and death are realities that must be faced with self-control, courage, and loyalty. These risks cannot be separated from the CAF's fundamental mission to defend Canada from violence with violence. CAF members meet these mortal challenges as volunteers on behalf of Canada.

UI ties an individual's identity to national and institutional values. The swearing of allegiance is mentioned because it symbolises the acceptance of these values. It eliminates the assumption of the two hypotheticals mentioned in the discussion of obedience to lawful authority. The oath is the singular act that begins a career. It is a strong commitment done voluntarily, without compulsion, and is performed in public in front of one's family and peers. The oath is a public commitment to Canada and the CAF, and it is the act that changes someone from a civilian to a CAF member. Without the oath, one cannot *be* a member of the CAF. The normative force of UI comes from the personal moral imperative to respect one's own decision, to explain the commitment, and to integrate subsequent acts and participation in the institution. The importance of the oath is not just that it is a starting point; UI is an application of the first CAF principle on oneself and is about respecting one's own considered acts of autonomy and agency. It is not a contract, with enforcement mechanisms, but a reminder of one's own values.

As new recruits or officers proceed, following the oath, to basic training, they learn about the culture, expectations, and values of the CAF. This experience is incorporated into the narrative of the member's life. Subsequent coursing, training, and acceptance into a unit, are all important stepping stones, often marked by ceremonies steeped in tradition and symbolism. Members must integrate these acts into their understanding of themselves and their institutional role as a part of their identity. These occasions and ceremonies change and shape a member's identity. Soon, someone *is* an infanteer, a sailor, a pilot. In this way, ongoing voluntary service within the CAF is a process of continuous refinement of identity, or a series of acts of autonomy (considered decisions) that need to be understood by members in terms of values and principles.²¹ When an appeal is made to integrity of this sort, it is directly to the identity and internal narrative of the person – it is *internally* motivating.

Integrity is a powerful normative force because it appeals to the ends to which one has committed. The reasoning one makes to oneself is a matter of demanding consistency. It asks oneself to hold to the considered judgements and commitments one has made. One cannot, for instance, claim to be a pilot and yet not want to fly an aeroplane. It does not mean that one's commitments are set in stone, but rather asks something to be reconsidered in the light of an apparent contradiction. If a commitment is believed to be important, then the contradiction will be resolved in favour of it. For integrity to function effectively at the level of the institution, the major principles and constitutive acts must be specified and made explicit. It is not sufficient to say, 'Integrity is the uncompromising adherence to strong ethical principles,' or that 'A person of integrity is honest.'²² Rather, to have normative force through integrity, the principles must be specified – those of TTS – and a member of integrity is one who lives up to, or dies by, the oaths and commitments one has made.

Ultimate Integrity

EXAMPLE 3 – THE DEATH OF SOCRATES

The death of Socrates is an example of someone choosing an order to die, when alternatives were available.²³ The example comes from Plato's dialogue *Crito* - set after the trial of Socrates and before his execution. While on death row, Socrates is lightly guarded, and his friends have arranged for his escape. Crito, a friend, arrives to convince Socrates to escape. There are many reasons offered favouring escape based on friendship, morality, family, and law. From a self-interested perspective, there are obvious reasons for Socrates to accept these arguments and escape. In one of the dialogue's last speeches Socrates personifies the Athenian Laws and imagines them scolding him for escaping. It is an argument for integrity in the face of death and, despite 'better' self-interested reasons, to decide otherwise:

So decisively did you choose us and agree to be a citizen under us. Also, you have had children in this city, thus showing that it was congenial to you. Then at your trial you could have assessed your penalty at exile if you wished, and you are now attempting to do against the city's wishes what you could then have done with her consent. Then you prided yourself that you did not resent death, but you chose, as you said, death in preference to exile. Now, however those words do not make you ashamed, and you pay no heed to us, the laws, as you planned to destroy us, and act like the meanest type of slave by trying to run away, contrary to your commitments and your agreement to live as a citizen under us. First then, answer us on this very point, whether we speak the truth we say that you agreed, not only in words, but by your deeds to live in accordance with us ... Surely you are breaking the commitments and agreements you made with us without compulsion or deceit, and under no pressure of time for deliberation. You have had seventy years during which you could have gone away if you did not like us, and if you thought our agreements unjust ...²⁴

Socrates chooses to drink the hemlock rather than to introduce into his life's story (including distinguished service in the army) a contradiction that would make meaningless his life's actions and commitments. Essentially, it is not the laws or the threat from the state that are motivating. Socrates would need to give up his identity as an Athenian to escape, an identity developed through decisions, statements, and actions over a lifetime (including service in the army). Similarly, through an oath, training, and ceremonies, a person in the CAF *chooses to be* a member, and so consents through participation to obligations and a set of internally meaningful commitments that can be appealed to in times of risk. It is the nature of that risk - that it cannot be easily avoided and is irreducibly mortal that is unique. Once the enemy is engaged, a CAF member can no longer just sit out the action. The price of sitting out is that one can no longer claim *to be* a 'CAF member.'

EXAMPLE 4 – THE STOKER

Imagine a stoker²⁵ on rounds in a remote space beneath the waterline of a warship at action stations when the ship takes damage. The space begins to take on water rapidly, filling quickly, and the water threatens to flood a vital fire-control space.²⁶ The hatch to the vital space is damaged and can now only be closed from inside the flooding compartment.

Ultimate Integrity

Therefore, to keep the ship fighting, the stoker, alone in the space, must lock herself inside the flooding compartment.

This differs from the other examples because there is no proximate legal order. UL is completely unhelpful as a guide to the stoker's actions; there is no legal sanction or compulsion. Rationally there is little downside; the stoker can escape the flooding compartment and close the next hatch, thereby controlling the flooding but destroying vital equipment. If the damage is too great, the ship will be forced to exit the fight, or the crew will need to abandon ship. Regardless, there is a good chance to survive or make it to the life rafts. It is unlikely she would face any serious legal repercussions. Our stoker's duty, however, is clear: she must protect the ship's vital equipment and lock herself inside the flooding compartment despite certain death.

How do we give our stoker reasons to make the fateful decision to sacrifice her life *voluntarily*? Socrates' decision to drink the hemlock is a close parallel to the decision faced by the stoker. UI is what is called for in this situation. Only an internally motivating force - the individual's very sense of self - could be sufficient to hold fast our stoker's will as the icy water fills the dark compartment while knowing that escape is at hand. The sense of 'must' comes not from any sense of compulsion, but from the very idea of what a navy sailor is - someone who will do everything she possibly can to save the ship and its crew.

Like Socrates, the stoker, must draw upon her commitments and the meaning of her life to muster the necessary strength. The decision to swear an oath, the training milestones, the various exercises, are all vital elements that paint a portrait of a stoker, *qua* crew, *qua* teammate, *qua* Navy sailor, and *qua* member of the CAF. The institution must inculcate identity and meaning in the life of service. Through that life of service - as a series of meaningful decisions - the commitments of members gain coherence and become reasons with the normative force of integrity. A coherent and authentic identity that integrates a life of service can become strong enough to provide reasons for action at the point of *extremis*, where members feel the normative force to be duty bound to sacrifice themselves.

THE NATURE OF SACRIFICE

We need to return to the understanding of sacrifice in the examples and, more generally, of the sacrifice of service members. Charging into the breach and perishing because of a legal obligation to follow orders and its threat of punishment lack both agency, and dignity. 'Just following orders' is a poor assessment of that sacrifice. We should not judge our private's decision to join in the charge as based on anything but his own decision. As the charge progresses, our private is increasingly like the stoker. As the bullets begin to fly, his willingness to continue to press the attack into the breach can only be based on internal reasons. At the extreme, then, it is his integrity that keeps him moving forward, and the decisions he has made that motivate him, not the lawfulness of the captain's orders. The meaningful acts, the oath, the identification as a soldier, and the inculcation of institutional values provide the background meaning to the normative force needed to press the attack. Sitting out the attack would be a contradiction or incoherent decision - *irrational* - for someone who has led the life of a soldier and made the decisions that led to being at the point of the charge. Thus, the private can answer his own question, "What ought I to do?" There is only one answer: what I have chosen - what an infantry soldier in the CAF would do -

Ultimate Integrity

charge! In this sense we can judge the sacrifice of the private soldier as noble, voluntary, and his own. Thus, UI provides an understanding which is more aligned with our common notions about the nobility of military sacrifice.

Finally, for the captain, facing that reluctant private, we can provide a helpful reply. Ultimate integrity means she can say: "Advancing is what you have chosen. Accepting risk is who you are. Make meaningful the decisions that have brought you to this point. Nobody has forced you to be here, you chose this, hold fast to your decision." These arguments are far more motivating to a volunteer who has identified with the institutional values than any legal obligation that forces a comparison of penalties. UI respects the dignity of CAF members.

CONCLUSION

We have seen that the notion of UL is not helpful, despite its long standing within CAF doctrine. It creates the impression of legal compulsion. Within an *ethos* that has equal dignity as its first principle, a value or expectation that is motivated by threat is out of place. TTS can only be improved by dropping the concept and using a more robust notion of integrity to anchor the spirit of self-sacrifice that UL was intended to instantiate. The proposed concept of UI has the virtue of drawing on internal reasons, dependent upon considered and free decisions for its normative force, and it is therefore more closely aligned with the CAF *ethos* expressed in TTS. Finally, the understanding that it provides of sacrifice tracks better our considered beliefs about the meaning and nobility of sacrifice. This paper, therefore, recommends that the CAF drop UL as a professional expectation from TTS and have 'Ultimate Integrity' replace the formulation of 'Integrity' as a CAF value.

ENDNOTES

¹ To differentiate the term *ethos* from the CAF document of the same name, the document is referred to by its subtitle, *Trusted to Serve* - TTS.

² UL is equally concerning when looked at from the perspective of someone giving orders.

³ Canada, "Duty with Honour: The Profession of Arms in Canada," in Canadian Defence Academy (ed.), *HM The Queen in Right of Canada*, 2009, at p. 4 fn 1; General Sir John Hackett, *The Profession of Arms* (London: Sidgwick & Jackson, 1983), at p. 202.

⁴ Patrick Mileham, "Unlimited Liability and the Military Covenant," *Journal of Military Ethics*, 9:1 (2010), 23-40, at p. 25.

⁵ Hackett as quoted in Lieutenant Colonel Langley Sharp, *The Habit of Excellence: Why British Army Leadership Works* (Penguin Random House, 2021).

⁶ Canada, "Duty with Honour," at p. 27.

⁷ Canada, "Canadian Armed Forces Ethos: Trusted to Serve," in Canadian Defence Academy (ed.), *HM The Queen in Right of Canada*, 2022, at p. 34.

⁸ *Ibid.*

⁹ Mileham, "Unlimited Liability and the Military Covenant," at pp. 27-28.

¹⁰ R. v. Généreux (1992 1 SCR 259).

¹¹ One can debate the extent of the equality of CAF members, the idea of restrictions vs. surrendering of freedom in Canadian Law but, regardless of that debate, it is a legal debate and not an ethical debate that would lead to a moral ‘ought.’ Once the legal debate has begun, the cause is lost.

¹² Canada, "Queen's Regulations and Orders for the Canadian Armed Forces," (Government of Canada) at Vol II, Ch. 103, Canada, "National Defence Act," R.S.C., 1985, c. N-5 (Government of Canada) at Part 3, Division 2, Section 83.

¹³ Canada, "National Defence Act," at Part 3, Division 2, Section 95. Criminal Code of Canada charges could also be brought to bear in this case.

¹⁴ Even if both friend and enemy could threaten unlimited cost, it only pushes the problem down the road because it puts the member in a Hobbesian state of nature of all against all – a place of radical freedom where the threatened have every right to make survival-based decisions purely in their own interest.

¹⁵ See National Safety Council: <https://injuryfacts.nsc.org/> and US Center for Disease Control <https://www.cdc.gov/niosh/topics/logging/default.html>

¹⁶ Canada, "Trusted to Serve," at p. 23.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid., at p. 19.

²⁰ This paper sees dignity as that most basic part of our common humanity which commands respect through the exercise of autonomy, will, or decision making.

²¹ This conception assumes a just and fair set of rules for institutional exit. Without just terms of exit, the notion of a volunteer force, upon which this concept depends, will fail and the institution will be seen as oppressive.

²² Canada, "Trusted to Serve," at p. 24.

²³ See also Michael Walzer, "The Obligation to Die for the State." in Michael Walzer (ed.), *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, MA: Harvard Univ. Press, 1970).

²⁴ Plato, "Crito," in John M Cooper (ed.), *Plato: Five Dialogues: Euthyphro, Apology, Crito, Meno, Phaedo* (Hackett Publishing, 2002), 52 c-e; trans. G.M.A. Grube.

²⁵ A stoker is a naval occupation associated with marine mechanical engineering and maintenance. Stokers have responsibilities for monitoring the mechanical systems of ships. Stokers often conduct regular rounds at sea.

²⁶ Without fire control, a ship cannot engage the enemy or defend itself.

Ultimate Integrity

References

- Canada (2022), "Canadian Armed Forces Ethos: Trusted to Serve," in Canadian Defence Academy (ed.), *HM The Queen in Right of Canada*.
- (2009), "Duty with Honour: The Profession of Arms in Canada," in Canadian Defence Academy (ed.), *HM The Queen in Right of Canada*.
- "National Defence Act," *R.S.C., 1985, c. N-5* (Government of Canada).
- "Queen's Regulations and Orders for the Canadian Armed Forces," (Government of Canada).
- Hackett, General Sir John (1983), *The Profession of Arms* (London: Sidgwick & Jackson).
- Mileham, Patrick (2010), "Unlimited Liability and the Military Covenant," *Journal of Military Ethics*, 9:1, 23-40.
- Plato (2002), "Crito," in John M Cooper (ed.), *Plato: Five Dialogues: Euthyphro, Apology, Crito, Meno, Phaedo* (Hackett Publishing).
- Sharp, Lieutenant Colonel Langley (2021), *The Habit of Excellence: Why British Army Leadership Works* (Penguin Random House).
- Walzer, Michael (1970), "The Obligation to Die for the State," in Michael Walzer (ed.), *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge, MA: Harvard University Press).