SISYPHUS AS A SOLDIER: ETHICS, EXIGENCIES, AND THE AMERICAN MILITARY

by

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In a world in which ethics and exigencies all too often clash, how do men and nations resolve the tensions of their human—and, in the present context, their military—circumstances? Because there may be no universally applicable answer, this inquiry is meant to be seminal rather than definitive. It will briefly explore the settings in which the American soldier and the American nation find themselves, and will attempt to demonstrate the striking similarity between those settings.

Both the American soldier (a term used generically for military personnel in any branch of the armed forces) and the American nation frequently find themselves at an impasse. On the one hand, there are liberties and rights and prerogatives to be preserved; on the other hand, there are responsibilities and duties and obligations to be discharged. Like Sisyphus, who was given a task destined never to be accomplished despite his most heroic efforts, democratic soldiers and nations must perpetually choose between those things which they must do if they are to satisfactorily discharge their responsibilities and those things which they cannot do if they are to satisfactorily preserve their raison d'etre.

For the past three decades, the armed forces have been at the vortex of social and political change in the United States. American involvement in the Vietnam War—the longest and perhaps the most dissentious war in American history—has aggravated an already difficult situation. While there is and will be debate about the extent to which the military has deserved the scorn which has in ample measure been heaped upon it, there is hardly any doubt that the American military has become, as never before, a target of opportunity in a political shooting gallery.

Regardless of the many species of charges against the armed forces, the genus of those charges is, in a word, militarism, which is defined by Laurence Radway as "a doctrine or system that values war and accords primacy in state and society to the armed forces."[1] According to the critics, American militarism has manifested itself in two principal ways.

The first is through instances of American national aggression. Peter Barnes, in discussing American "non-defensive foreign policy," and Edward King, in writing that "Army managers have not yet learned that the US Army cannot involve itself and the nation in the internal problems of underdeveloped countries without becoming engaged in a massive protracted military adventure,"[2] are reminiscent of what is termed "revisionist history." Simply stated, the revisionist historians usually disregard or discount the actions of America's enemies, and concentrate the blame for any international tension or war upon the United States.[3]

Because the military has the responsibility of executing national defense policy, it is frequently, if mistakenly, attacked when it is discharging a function that may be politically unpopular. "It is with some sense of despair," wrote Charles C. Moskos, Jr., "that I observe the completely justified hostility toward the

war in Vietnam focus into a concerted attack on the armed forces per se."[4] The debate over the issues of whether and for how long the President can commit the armed forces to combat underscores the essentially political nature of the matter; and public antipathy toward the military merely because it has been ordered to unpopular duty is entirely misdirected. Whatever the scholarly merits or demerits of the notions of American national aggression, as reflected especially by the historical revisionist school, the issue itself cannot rightly be considered as one that requires a military reply.

To some observers, militarism is also evident in the so-called American "military-industrial complex." To those citizens who annually attempt to understand something of the federal budget, a fact is brought home that all economics students are expected to grasp quickly: The maintenance of defense forces (guns) is achieved at the price not simply of so many billions of dollars, but also in terms of other services or commodities (butter). It is in this sense that one is reminded of Alfred Vagts' point that militarism also means "the imposition of heavy burdens on a people for military purposes, to the neglect of welfare and culture, and the waste of the nation's best man power in unproductive army service."[5]

But it is not merely the expense of the military that rankles the most. There has been the lurking suspicion—at least since the Nye Committee investigations of the 1930's—that there is an insidious partnership between the military and the "merchants of death." In fact, even before the "military-industrial complex" became a cliché, Walter Millis was pointing out that "the control of the colossal modern military machinery" was in the hands of soldiers, industrialists, and bureaucrats who exerted a "powerful influence over foreign, budgetary and manpower policies."[6]

When President Eisenhower said in January 1961 that "In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex,"[7] he exposed a legitimate problem in American politics. Yet even to the extent that it may be true that American foreign policy has become militarized, the problem, fortunately, retains a political character meant for political solution, and once again vitriolic attacks upon the military mistake the shadow for the substance. Condemnations of the military cannot cure the deficiencies nor correct the mistakes of recent *political* programs.

The notion that the free enterprise economy has become dependent upon military spending is itself, as Yarmolinsky argues, a "Marxist cliché,"[8] and is the kind of obscurantist polemic that does little to help us deal with the legitimate problem diagnosed by Eisenhower. And those convinced that a conspiracy is afoot are hard-pressed to explain how Eisenhower, himself a career military man, somehow was overlooked for membership in the cabal.

But these problems are rooted more in concern about the socioeconomic circumstances in which the US armed forces find themselves than about the routines and organization of the armed forces themselves. In this latter area, particularly, there has been in the last decade an explosion of obloquy about military practices and priorities. Little, if anything, in the military has remained sacrosanct. Military leaders have been viewed as a "power fraternity" intent upon advancing their own selfish careers.[9] Military justice has been attacked as reactionary and discriminatory.[10] Military training has been described as sadistic at worst, or ineffective at best.[11] And the military bureaucracy has been viewed as so bloated and self-important[12] that the question may be asked, "Can America win the next war?"[13]

THE DEMOCRATIC SOLDIER

> I will never forget that I am an American fighting man, responsible for my actions, and dedicated to the principles which made my country free. I will trust in my God and in the United States of America.
>
> —Code of Conduct, Article VI

Most efforts at reform, it seems, stem from the idea that the American military must be democratized. In fact, it may be fair to say that the common denominator of the "reform movement" is the notion that every soldier is a citizen with rights as well as a serviceman with duties. That this is no "radical rhetoric" was amply testified to by former President Richard Nixon, who said in 1969, "I believe that every man in uniform is a citizen first and a serviceman second, and that we must resist any attempt to isolate or separate the defenders from the defended."[14]

Much of the debate about the legal status of "citizen-soldiers" has centered upon the Uniform Code of Military Justice (UCMJ), which was established by Congress in 1950 and revised in 1968. The UCMJ is a set of regulations which governs the conduct of soldiers and establishes a system of military courts to try soldiers accused of violating those regulations. If President Nixon's quoted assertion is correct, there may then be a basis in fact for Peter Barnes' charge that "Enlisted GI's [soldiers] constitute a class that in many ways is now the most oppressed in America."[15]

Under the UCMJ, for example, soldiers may be court-martialed for such offenses—some would call them innocuous—as behaving "with disrespect toward [a] superior commissioned officer" (Art. 89); feigning illness (Art. 115); using "provoking or reproachful words or gestures" (Art. 117); exhibiting "conduct unbecoming an officer and a gentleman" (Art. 133); or acting in such a way as to "bring discredit upon the armed forces" (Art. 134). Many would claim that it is surely anachronistic when a commissioned officer in 1977 can be punished for using "contemptuous words against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of the Treasury, or the Governor or legislature of any state . . . in which he is on duty or present" (Art. 88).

The existence of such apparently reactionary articles in the UCMJ has led to some boisterous criticism by certain American reformers. One writer put it this way:

> In the eyes of professional staffers of the American Civil Liberties Union, for example, the typical court-martial is a kangaroo proceeding in which a wretched conscript is dragged before a panel of sadistic martinets, convicted on the basis of perjured evidence and his own confession (which has been extracted by torture), and sentenced to fifty or sixty years of solitary confinement, chained to the wall of a subterranean dungeon, and fed on bread and water.[16]

But, in fact, as then-Chief Justice of the US Supreme Court Fred M. Vinson wrote in a 1953 Court opinion: "The Military courts, like the state courts, have the same responsibilities as do the federal courts to protect a person from a violation of his constitutional rights."[17] If it is true, as one writer argues, that "What the military reveres in the individual, democracy rejects; what democracy demands, the military expressly and vigorously forbids,"[18] then it may be time to recognize that American soldiers are civilians first and servicemen second.

Almost all the questions relating to the rights of soldiers-as-civilians are rooted in interpretation of the First Amendment to the Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of

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> the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Even the well-known conservative columnist James J. Kilpatrick has contended that citizens do not surrender their First Amendment rights upon entering the military service.[19] Is it, then, time to grant servicemen the unrestricted right of unionization,[20] of collective bargaining, of free speech and political activity, and of choice of duty station? Perhaps, with Barnes, it is time to recognize that "The real question is not whether discipline will survive but whether the American military will adjust to democracy or continue to insist that democracy adjust to it."[21]

What are the soldier's rights? And where do his rights end and his duties begin? Perhaps the best answer to this question was provided, in stark terms, by Joseph W. Bishop, Jr.: "The [Supreme] Court has never to this day squarely held that a soldier has any constitutional rights when he is court-martialed, or indeed that he has any constitutional rights of any variety."[22] This is not mere military prattle; in fact, Bishop, who is a professor of law at Yale University, has been recognized as a "noted commentator" by Mr. Justice Harry Blackmun of the Supreme Court.[23]

Bishop's judgment is corroborated by a long tradition of legal opinion and scholarship. In 1890, for example, Mr. Justice David Brewer wrote that "An army is not a deliberative body. It is the executive arm. Its law is that of obedience. No question can be left open as to the right to command in the officer, or the duty of obedience in the soldier."[24] As one observer remarked recently, "These are views expressed, not by some blood-and-thunder desk-pounder, but by the Supreme Court of the United States."[25]

There does appear to be a contradiction here. While Mr. Chief Justice Vinson argued that the military courts must preserve the serviceman's constitutional rights, Professor Bishop steadfastly denies that there is true precedent in the law for such preservation. But the contradiction may be more a matter of appearance than reality. In the United States, civil and military law have a common parent—the Constitution. As the Supreme Court held in 1866:

> . . . [T]here is no law for the government of the citizens, the armies or the navy of the United States, within American jurisdiction, which is not contained in or derived from the Constitution. And wherever our army or navy may go beyond our territorial limits, neither can go beyond the authority of the President or the legislation of Congress.[26]

But what must be emphasized and underscored was expressed as recently as 1974 by Mr. Justice William Rehnquist:

> This [Supreme] Court has long recognized that the military is, by necessity, a specialized society separate from civilian society. . . . While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission requires a different application of those protections. The fundamental necessity for obedience, and the consequent necessity for imposition of discipline, may render permissible within the military that which would be constitutionally impermissible outside it.[27]

For one to examine these issues at length requires the availability of a law library and a good deal of time for reading and research. But a point often overlooked by legal scholars is that argument on the subject of the serviceman's rights is invariably based upon a simple opinion on one issue: At what point does the liberty granted to soldiers as civilians begin to erode their proficiency as soldiers? On this issue, scholars and soldiers alike will reasonably differ.

Thus, while it is true that civil and military

law both emanate from the same Constitutional parentage—and while courts-martial are subject to review by the federal courts—the ultimate questions about military matters are *not* judicial; they are political. In a 1953 opinion, for example, Mr. Chief Justice Vinson wrote that:

> ... [T]he rights of men in the armed forces must perforce be conditioned to meet certain overriding demands of discipline and duty, and the civil courts are not the agencies which must determine the precise balance to be struck in this adjustment. The Framers [of the Constitution] expressly entrusted that task to Congress.[28]

And Mr. Justice Douglas, writing 16 years later, agreed:

> The Constitution gives Congress power to 'make Rules for the Government and Regulation of the land and naval forces,' Art. I, [sec.] 8, cl. 14, and it recognizes that the exigencies of military discipline require the existence of a special system of military courts in which not all of the specific procedural protections deemed essential in Art. III [the Constitution's judicial powers article] need apply.[29]

The question of where rights end and duties begin will never be solved by those who hurl epithets or insults at one another. If a formula exists to settle the issue, it is this: The soldier should have as much freedom as is consonant with his primary responsibility, which is to help insure the nation's safety and security. If that is a vague formula, it is because the problem is essentially a political one, requiring the best of the political art of doing what is possible, rather than striving vainly in pursuit of what appears perfect. On balance, the judgment of F. B. Wiener seems correct:

> It should never be forgotten that if members of the armed forces were just as free to sound off as all in the civilian population indubitably are, then two predictable consequences would ensue. First, there would be no armed forces worthy of the name. Second ... the nation would risk periodic contests between its military and civilian leaders.[30]

The UCMJ is very clear that it is a court-martial offense for any soldier to disobey a lawful command, order, or regulation (Articles 90, 91, 92). At the same time, a US Army field manual proclaims that:

> The fact that the law of war has been violated pursuant to an order of a superior authority, whether military or civil, does not deprive the act in question of its character of a war crime, nor does it constitute a defense in the trial of an accused individual, unless he did not know and could not reasonably have been expected to know that the act ordered was unlawful.

The same manual also states that:

> The fact that domestic law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.[31]

It is thus entirely possible for the soldier to be caught between the competing demands of his conscience and those of his military circumstances. Since the judgments at Nuremburg and at other war crimes trials, the United States has declared itself to be squarely in favor of the soldier's right and duty of disobedience to unlawful orders.

Although the United States has no claim to purity with respect to the commission of war crimes, the trial of Lieutenant William Calley, who was convicted of the premeditated murder of more than 20 unarmed and unresisting Vietnamese, was conducted not by foreigners, but by members of his own military service and his fellow countrymen. No other country has done such a thing in time of war.

Because the Declaration of Independence justified the birth of the American nation as an entitlement of the "Laws of Nature and of Nature's God"; because American coins and currency proclaim that "In God We Trust"; and because, since 1954, the American pledge to the flag assumes "one nation under God"—the American nation can hardly do other than to recognize the soldier's conscience as complementary to, and not necessarily destructive of, military discipline.

The American soldier, for his part, is urged by his Code of Conduct to "trust in [his] God and in the United states of America." Should circumstances require him to choose between the two, honor obliges him to be "responsible for [his] actions," and to accept willingly and manfully the consequences of that choice.

THE DEMOCRATIC NATIONAL SECURITY POLICY

> There is probably a good deal of truth in the adage that a democracy gets the military establishment it deserves.
>
> —Robert G. Gard, Jr.,
> *Foreign Affairs*, July 1971

Prussians of the 19th century believed that the nation existed to serve the army. Few Americans of today would endorse that idea. There is, however, little doubt that military affairs are of great importance to contemporary Americans. Spending figures from 1976, for example, indicate that defense gets 24.3 percent of the federal budget, or 5.7 percent of the gross national product; defense employment represents 4.8 percent of the American labor force; and the US military now numbers 2.1 million members.[32]

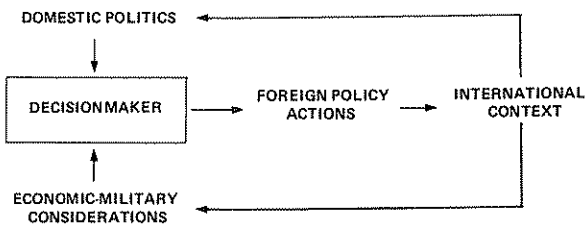
Foreign and military affairs have been significant to the United States since the first permanent settlement in this nation by Captain John Smith in Jamestown, Virginia, in 1607. In part, the American Constitution was established in 1787 to "provide for the common defense," and to "secure the blessings of liberty to ourselves and our posterity." More than half of the paragraphs which specify the powers of Congress (Article I, Section 8) are concerned with foreign or military affairs. Similarly, the next two sections of the Constitution contain provisions which aim at reserving to the new federal government the exercise of certain powers—commercial, diplomatic, and military—formerly within the jurisdiction of the several states. Under the provisions of Article II, Section 2, of the Constitution, the American President is named commander-in-chief, and is empowered to make treaties and nominate ambassadors.[33] Under the provisions of Article III, judicial power is extended to such matters as treaties, cases affecting ambassadors, admiralty and maritime affairs, and controversies with foreign countries and nationals. Article IV, Section 4, obliges the federal government to protect every state against invasion. And Article VI, Section 2, specifies that all treaties made by the United States "shall be the supreme Law of the Land."

It is not necessary in the present context to get into a semantic imbroglio over what is meant by "foreign policy" and what by "military policy"; presumably, the latter is part of the former. The terms will be used interchangeably here because they both have to do with national security, which may be understood as "the ability of a nation to protect its internal values from external threats."[34]

Recent scholarship has been replete with books, articles, monographs, charts, diagrams, and other materials which seek to explain or depict the manner in which American foreign and military policy is made. It may be best to choose one theory and comment briefly on that specifically, rather than to try to discuss such foreign policy models generally.

William Coplin contends that four factors can be identified as foreign policy determinants: the decisionmaker, the policy influencers, economic-military considerations, and the international context. In turn, he divides the policy influencers into four classes: bureaucratic influencers, partisan influencers, interest influencers, and mass influencers. These influencers attempt to direct the course of foreign policy in four

major areas: national security, foreign economic policy, historical-ideological issues, and procedural issues (such as demands, say, for a more peaceful foreign policy).[35] If the pressure exerted upon the decisionmaker by the various policy influencers can for the moment be understood as the impact of domestic politics upon foreign policy formulation, Coplin's model of foreign policy formulation can be diagrammed:



We should note that, while Coplin's analysis is pedagogically valuable, it may be missing the forest of fundamental national values for the individual trees of the factors Coplin names. Although such models serve a didactic purpose, they are inevitably constructed in a kind of ethical vacuum: The models implicitly recognize that external threats exist, but there is little, if any, commentary provided on which internal values the described policy mechanism or model is meant to protect.

It is hardly possible for a nation to endure unless its people share—and, in fact, cherish—some fundamental beliefs. It is in the name of these beliefs, after all, that the nation explains its existence. Similarly, it is in the name of these beliefs that the nation must examine its existence. Political scientists and students of military affairs are chary, to say the least, of the idea that democratic national security policy depends for its ultimate justification upon the historical and intuitive scrutiny of the people. In an age of quantitative analysis, such a prescription seems damnably qualitative! And, of course, it is.

National security policy is inherently teleological. It is designed to win some end, calculated to achieve some purpose. Few will argue that security is its own goal. Theories may indicate *how* foreign policy is puzzled together; they do little to explain *why* that foreign policy is designed as it is; and still less do they shed any light on the ethical orientations of those who cooperate or compete in the foreign policymaking process.

How, then, can we hope to know when a foreign policy is at odds with fundamental national values? If the national interest exists, how do decisionmakers know when their policies advance or impede it? What are the principles (if any) for which the nation stands? Whose responsibility is it to identify the national purpose and to develop policies in light of that analysis?

In a representative democracy, statesmen are confronted with the perennial dilemma of leading the nation while following the good sense of the people's will and the nation's traditions. No mature thinker has ever suggested that the statesman's task is a sinecure. Prudent defense policy is thus a careful balancing of realism and idealism struck by statesmen with an ear to the desires of the citizenry and an eye to the imperatives of world politics. But American defense policy, one hopes, is not founded merely upon what is expedient; it must be founded as well upon an ordered conception of what is ethically required, for that, in essence, is what makes American society worthy of protection.

A major objective of all security policy is to insure the survival of the nation. But survival alone makes no sense unless it is in the service of some fundamental values which imbue the nation's existence with some meaning and purpose. The late Dean Acheson, a former American Secretary of State, put it well: "[T]he means we choose to overcome the obstacles in our path must be consonant with our deepest moral sense." Thus could Senator Frank Church say of alleged CIA murder plots: "The notion that we must mimic the Communists and abandon our principles [is] an abomination."[36]

Here, then, is the possible rub between the preservation of national values and the perpetuation of the society itself. How are we

to judge? The pathetic example of France between the wars comes to mind. If ever there were a nation so intent upon perpetuating itself that it lost sight of—and then seemed to forget—the reasons for that existence, it was France. Thus, despite the possible mortal dangers that might exist for a nation either in adopting a principled and steadfast stand on certain issues (which required a national strength which the French of the late 1930's could not muster), or in refusing to compromise their principles on others (certain recent transgressions of American intelligence agencies rush to mind), the nation must hold fast to those truths in whose name its existence was first consecrated. Harold Nicolson has put it succinctly:

> There does exist such a thing as international morality. Its boundaries are not visibly defined nor its frontiers demarcated; yet we all know where it is. If other countries transgress these frontiers, we at least should respect them. *Allis licet: tibi non licet*. That is to say, what is right for others is not right for us. That should be our motto; by that we shall in the end prevail.[37]

The practical ramifications of this feeling about the importance of morality in statecraft go to the root of American principles of diplomacy. There have been, it must be admitted, a number of flagrant examples of departure from this theme. But one should not forget that crimes committed, for example, by American Army lieutenants, are in complete and clear contradiction with the policies which they were expected to uphold, whereas the commission by other states of other crimes, such as the Soviet perpetration of mass murder at Katyn Forest, are sometimes state policy.

Probably the most important aspect of America's diplomatic principles is the traditional American concern not only that foreign policies serve the national interest, but that they be rooted in the very soil of the national interest, in those values and beliefs which cannot be compromised. "Who would dare explain American policy as derived from our 'sacred honor'?" asked Max Ways. "The phrase has become worse than hollowly archaic; moderns find it downright offensive." Such a phrase, of course, may be found in the American Declaration of Independence, but not in the contemporary lexicon of political science. "Yet it is with 'sacred honor' that the political function of the people has most to do." He adds: "Freedom is what we need so that we may bear our moral responsibility for what the government does in our names."[38] *Time*'s editor in chief had it exactly right in saying simply, "... [W]e also expect our foreign policy to enable us to feel good about being Americans."[39]

In brief, the argument here is that, despite the possible concomitant loss of international political advantage, there are things that the United States should not and cannot do. With respect to the problem of preserving internal values from external threats, the national conscience, like that of the individual, should be understood as complementary to, and not destructive of, the national security. A nation might do well to take to its national heart the words of Paul: "For our boast is this, the testimony of our conscience that in simplicity and godly sincerity—not in carnal wisdom, but in the grace of God—we have conducted ourselves in the world . . . ."[40]

An aspect of national security which should not be overlooked is the problem of preserving internal values from *internal* threats. That astute 19th-century observer of American society, Alexis de Tocqueville, wrote that "Nothing is so dangerous as an army amidst an unwarlike nation; the excessive love of the whole community for quiet continually puts the constitution at the mercy of the soldiery." He went on to argue that "The general spirit of the nation being infused into the spirit peculiar to the army, tempers the opinions and desires engendered by military life, or represses them by the mighty force of public opinion. Teach but the citizens to be educated, orderly, firm, and free, and the soldiers will be disciplined and obedient."[41] Writing in *The Federalist*, a series of 85 essays composed in 1787 and 1788

by Hamilton, Madison, and Jay to urge ratification of the proposed American Constitution, Alexander Hamilton expressed a judgment similar to that of Tocqueville:

> Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty to resort for repose and security to institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free.[42]

In a similar sense, Benjamin Franklin once had Poor Richard admonish, "They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety."

The tension that exists between a liberal society and a conservative military is not undesirable. It is, in fact, a highly advantageous and healthful situation which has the single drawback of requiring constant vigilance and adjustment—like a checks and balances system—to insure the complete triumph of neither militarism nor civilianism. As Morris Janowitz has put it:

> To deny or destroy the difference between the military and the civilian cannot produce genuine similarity, but runs the risk of creating new forms of tension and unanticipated militarism.[43]

Scholars will long debate whether human nature changes or remains fixed, with only changes in circumstance. So, too, will the question long be discussed whether there are elements in politics that are axiomatic and immutable. But one idea which seems to recur with dismaying regularity in political history is that once liberty is established in a political regime, its opponents, both external and internal, will seek to subvert it. Writing more than 2,000 years ago, Thucydides, in the first book of his classic work, *The Peloponnesian War*, has Pericles utter a timeless warning: "What I fear is not the enemy's strategy, but our own mistakes."

IS SISYPHUS SMILING?

This paper has examined two major questions: What is the status of the soldier-as-civilian? And what or who is the ultimate judge of American military policy? The answers provided here are, regrettably, not definitive. All that is suggested is that the conscientious soldier may occasionally discern tension between his temporal and supra-temporal obligations. No shibboleth exists to tell him always and everywhere when he must choose the one over the other. To exercise such a choice, the soldier is endowed with reason by his Creator and with latitude by international law.

The situation is much the same for the nation. The nation's leaders must chart a prudent course between the Scylla of naive utopianism and the Charybdis of unprincipled Machiavellianism. No simple choices exist.

Individual and national military choices are a part of the human condition. Like Sisyphus, American soldiers and statesmen are condemned by the circumstances of an imperfect world forever to try to solve problems which admit of no full and final solutions.

Perhaps, with Albert Camus, we may find some consolation in the knowledge that "The struggle itself toward the heights is enough to fill a man's heart. One must imagine Sisyphus happy."[44]

NOTES

1. Laurence I. Radway, "Militarism," *International Encyclopedia of the Social Sciences*, 1968, X, 300.

2. Peter Barnes, *Pawns: The Plight of the Citizen-Soldier* (New York: Warner, 1971), p. 26; Edward L. King, *The Death of the Army: A Pre-Mortem* (New York: Saturday Review Press, 1972), p. 225.

3. For an excellent bibliographical article on the revisionist school and similar advocacy theories, see Ole R. Holsti, "The Study of International Politics Makes Strange Bedfellows: Theories of the Radical Right and the Radical Left," *American Political Science Review*, 68 (March 1974), 217-42.

4. Charles C. Moskos, Jr., *The American Enlisted Man: The Rank and File in Today's Military* (New York: Russell Sage Foundation, 1970), p. 184.

5. Alfred Vagts, *A History of Militarism*, Greenwich ed. (n.p.: Meridian Books, Inc., 1959), p. 14.

6. Walter Millis, *Arms and Men* (New York: Capricorn Books, 1956), p. 346.

7. Quoted in Stephen E. Ambrose and James A. Barber, Jr., eds., *The Military and American Society: Essays and Readings* (New York: The Free Press, 1972), p. 63.

8. Adam Yarmolinsky, *The Military Establishment: Its Impacts on American Society*, Perennial Library, Abridged ed. (New York: Harper and Row, 1971), p. 235.

9. K. Bruce Galloway and Robert B. Johnson, Jr., *West Point: America's Power Fraternity* (New York: Simon & Schuster, 1973); Anthony R. Herbert with James T. Wooten, *Soldier* (New York: Dell, 1973); the novel by Josiah Bunting, *The Lionheads* (New York: Popular Library, 1972); and King, *Death of the Army*.

10. Robert S. Rivkin, *G.I. Rights and Army Justice: The Draftee's Guide* (New York: Grove Press, 1970); James Finn, ed., *Conscience and Command* (New York: Vintage, 1971); Robert Sherrill, *Military Justice is to Justice as Military Music is to Music* (New York: Harper & Row, 1970). In "Against the Evidence," *Commentary* (June 1971), Joseph W. Bishop, Jr., contends that "The listing and documentation of Mr. Sherrill's errors, great and small, could literally be prolonged until the review is longer than the book" (p. 92); for other rebuttals of the critics, see *idem*, *Justice Under Fire: A Study of Military Law* (New York: Charterhouse, 1974), which is an excellent study of the UCMJ and the US Constitution; Frederick B. Wiener, "Are the General Military Articles Unconstitutionally Vague?" *American Bar Association Journal*, 54 (April 1968), 357-64; *idem*, "The Perils of Tinkering with Military Justice," *Army* (November 1970), 22-25; and John R. Prosser, "Reforming Military Justice: Three Views," *ibid.* (April 1973), 38-43.

11. Barnes, *Pawns*; John Sack, *M.* (New York: Signet, 1967); Peter Tauber, *The Sunshine Soldiers* (New York: Ballantine Books, 1971). Cf. James H. Toner, "Basic Training: No 'Free Lunch,'" *Army* (February 1975), 39-41.

12. Ward Just, *Military Men* (New York: Knopf, 1970); and J. W. Fulbright, *The Pentagon Propaganda Machine* (New York: Liveright, 1970).

13. Drew Middleton, *Can America Win the Next War?* (New York: Scribner, 1975); Stuart H. Loory, *Defeated: Inside America's Military Machine* (New York: Random House, 1973). For an excellent bibliography, which includes references to the "counter-culture" publications, see Bruce Russett and Alfred Stepan, eds., *Military Force and American Society* (New York: Harper Torchbooks, 1973), pp. 196-371.

14. "Excerpts from the President's Speech at the Air Force Academy on Military Critics," *The New York Times*, 5 June 1969, p. 30.

15. Barnes, *Pawns*, p. 26.

16. Bishop, *Justice Under Fire*, pp. 19-20.

17. Burns v. Wilson, 346 U.S. 137, 142 (1953).

18. Peter G. Bourne, M.D., "The Military and the Individual," in *Conscience and Command*, ed. by Finn (see *supra*, n. 10), p. 153.

19. James J. Kilpatrick, syndicated column, *The South Bend Tribune*, 14 March 1977, p. 12.

20. At present, the prospect of unionization is very slight. On 16 September 1977, the US Senate passed a bill by a 72-3 roll call vote which would prohibit labor unions in the American military (*Burlington Free Press*, 17 September 1977, p. 6A). For useful background materials, see the "Special Symposium on Trade Unionism in the Military," *Armed Forces and Society*, 2 (Summer 1976); T. R. Manley, C. W. McNichols, and G. C. S. Young, "Attitudes of Active Duty U.S. Air Force Personnel Toward Military Unionization," in *ibid.*, 3 (Summer 1977), 557-74; and "Unions in the Military? Pro and Con," *Military Review*, 57 (August 1977), 35-53.

21. Barnes, *Pawns*, p. 239.

22. Bishop, *Justice Under Fire*, p. 114.

23. Parker v. Levy, 417 U.S. 733, 763 (1974).

24. *In re* Grimley, 137 U.S. 147, 153 (1890).

25. Wiener, "Are the General Military Articles Unconstitutionally Vague?" p. 362 (see *supra*, n. 10). Wiener argued in the negative in this 1968 article. Six years later, the US Supreme Court agreed with him. See Parker v. Levy, 417 U.S. 733 (1974); and Secretary of the Navy v. Avrech, 418 U.S. 676 (1974). For the briefs of counsel to research these cases, see, respectively, 41 *U.S. Supreme Court* Reports, 1245-46 and *ibid.*, 1316-17.

26. *Ex Parte* Milligan, 71 U.S. 2, 141 (1866).

27. Parker v. Levy, 417 U.S. 733, 743,.758 (1974).

28. Burns v. Wilson, 346 U.S. 137, 140 (1953). Cf. the opinion in Orloff v. Willoughby, 345 U.S. 83, 94 (1953): "The military constitutes a specialized community governed by a separate discipline from that of the civilian." For an excellent commentary, see Wiener, "Are the General Military Articles Unconstitutionally Vague?" *passim*.

29. O'Callahan v. Parker, 395 U.S. 258, 261 (1969). In this case, the Court held that a crime, to be under military jurisdiction, must be service-connected. Many observers, and I include myself among them, are dissatisfied with this judgment. Here is a portion of Mr. Justice John M. Harlan's dissenting opinion in that case, which I think merits quotation:

> The United States has a vital interest in creating and maintaining an armed force of honest, upright, and well-disciplined persons, and in preserving the reputation, morale, and integrity of the military services. Furthermore, because its personnel must, perforce, live and work in close proximity to one another, the military has an obligation to protect each of its members from the misconduct of fellow servicemen. The commission of offenses against the civil order manifests qualities of attitude and character equally destructive of military order and safety. The soldier who acts the part of Mr. Hyde while on leave is, at best, a precarious Dr. Jekyll when back on duty (p. 281).

30. Wiener, "Are the General Military Articles Unconstitutionally Vague?" p. 363.

31. US Department of the Army, *The Law of Land Warfare*, Field Manual 27-10 (Washington: US Government Printing Office, 1956), pp. 182, 183.

32. Figures are taken from Nick Thimmesch, syndicated column, *The South Bend Tribune*, 25 September 1977, p. 4.

33. It should be added that the US Senate, as President Wilson seemed for a time to forget when he was helping to draft the Versailles Treaty after World War I, must advise and consent to treaties by a two-thirds vote; the Senate must also approve ambassadorial appointments. For details, see the excellent work by Louis Henkin, *Foreign Affairs and the Constitution* (New York: Norton, 1972).

34. Morton Berkowitz and P. G. Bock, "National Security," *International Encyclopedia of the Social Sciences*, 1968, XI, 40.

35. William D. Coplin, *Introduction to International*

Politics: A Theoretical Overview, 2d ed. (Chicago: Rand McNally, 1974), pp. 29, 86-89, 91, 175.

36. Acheson is quoted by William H. Vatcher, Jr., *Panmunjom: The Story of the Korean Military Armistice Negotiations* (New York: Praeger, 1958), p. 220; Church is quoted in *Time*, 16 June 1975, p. 10. "Ours is not a wicked country," said Church, "and we cannot abide a wicked government." For further discussion, see J. H. Toner, "National Security Policy: The Unspoken Assumptions, *Air University Review*, 38 (July-August 1977), 36-43.

37. Harold Nicolson, *Diplomacy*, 3d ed. (New York: Oxford University Press, 1963), p. 147.

38. Max Ways, *Beyond Survival* (New York: Harper and Brothers, 1959), pp. 5, 9.

39. Hedley Donovan, "America and the World Out There," *Time*, 19 May 1975, p. 20.

40. II Cor. 1:12.

41. Alexis de Tocqueville, *Democracy in America*, ed. and abridged Andrew Hacker, trans. Henry Reeve (New York: Washington Square Press, 1964), pp. 284-85, 287.

42. Alexander Hamilton, James Madison, John Jay, *The Federalist Papers*, 8 (1787).

43. Morris Janowitz, *The Professional Soldier: A Social and Political Portrait* (New York: Free Press, 1971), p. 440.

44. Albert Camus, *The Myth of Sisyphus and Other Essays*, trans. Justin O'Brien (New York: Knopf, 1961), p. 123.