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MILITARY RESPONSIBILITY

by

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A paper submitted to the ADM Colbert prize.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Israeli Navy or the IDF.

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INTRODUCTION

The term, military responsibility is being used most commonly in reference to some general notion of accountability, deemed to be inherent in the nature of the military service and quite unique in the burden it imposes.

However, we use it to describe what seems to be three apparently distinct concepts.

When a soldier is being ordered that fulfilling a certain mission is under his responsibility, the nature of this responsibility would be quite different than the case in which he is told that a specific order, is under his responsibility to carry out.

Were he to fail in the former, we would usually hold him accountable for not fulfilling his mission, while in the latter, we might charge him for disobedience.

The fact is, that under combat situations many missions are not being accomplished, though they are given as formal orders. Yet very rarely it will be conceived of as a matter of lack of discipline or disobedience per se.

Apparently we are using here different concepts of responsibility. Those might be either legal, functional or professional ones, or ethical responsibilities, all three of them strongly bound together by the hardest of human environments, the battlefield, and quite often in rather confusing way.

The legal and the professional concepts of responsibility seem somehow close to each other. Primarily in the sense that both concepts are well established in the bodies of military law and field manuals. The conjunction of both concepts constitutes, in essence, the unique structure of military discipline.

However the third concept, concerning the ethical responsibility, is much more loosely formulated. Moreover, what we refer to as the body of military ethic itself, is very often taken to be some sort of a by-product of military discipline.

Notions like loyalty or volunteering for example, are assumed to derive in some way directly from the fact that one is a well disciplined soldier. While on the other extreme, there exists the interpretation that suggests the ethical and disciplinary bodies, to be essentially unrelated to each other. In which case, ethical responsibility is sometimes preceived as a ground for an upper class partnership in the military, meaning that discipline is for soldiers, officers can do with ethics.¹

The purpose of this paper is to distinguish between these three concepts of responsibility, and to emphasize the importance of the ethical one. Based on the premise that neither the professional nor the legal concepts can fully account for what soldiers are really going though in a combat situation, it argues that it is in fact the military ethic and its concept of

responsibility that holds everything together.

This argument is being put forward along with a profound conviction - which will not be elaborate and focused upon here - that the primacy of the ethical over the legal and the professional notions, is all the more important in armies of democracies.

Finally, it is a soldier's response, not a scholar's or a lawyer's one. As such, it is not an attempt to make neither philosophical nor legal observations about the military. Essentially, it is nothing but an expression of what combat experienced servicemen know very well anyway, in somewhat more meaningful terms.

As for the case itself, some details were altered or omitted, mainly out of consideration for the privacy of those involved. None of these details, however, distorts the factual nucleus of the episode, or altering its tragic course for artistic purposes. It is an authentic story, though not the whole story. But then that is always the case with authentic stories.

* * *

THE EVENT

In autumn of 1970, during the War of Attrition, a small IDF patrol boat was on routine night assignment in

the Gulf of Suez. While the vessel was out at sea a malfunction caused its ammunition to go off. The explosion wrecked and sank the patrol boat, and its crew was left in a desperate strait, treading water in the darkness in the middle of the Gulf of Suez.

The vessel's commanding officer (whom we shall call L) and another man (R) were injured. Both of them were conscious, but neither was able to judge the extent of his injuries. Another member of the crew (B), who had been furthest away from the center of the blast, had received wounds in his hands and face, but was able to determine that his injuries were relatively light. A fourth crew member (N) could not be located.

For awhile the men called to him, but there was no reply. Then B swam out on his own to search for N, but failed to find him and returned to his injured comrades. The men assumed that N had been thrown from the vessel and killed. L, the vessel's commanding officer, was still in full control of his faculties, but R was beginning to lose consciousness from time to time.

The life jackets of the crew kept only the men's heads above water, and in the dark it was impossible to make a reliable assessment of the situation. L's initial decision seems to have been for the crew to try

to hold out until morning, since a search for them was bound to begin at first light. But R's condition was steadily deteriorating, and that of L was apparently far worse than he had let on to B. As time passed L seems to have reassessed the crew's chances for survival. He ordered B to swim for shore and call for help. B however refused to leave. "No way," he said, "I'm staying with you." Realizing that a mere order was not going to get B to make for shore, L proceeded to explain that he himself was in good shape and would have no difficulty in taking care of R until a search party reached them. Halfheartedly B set out in the direction of the shore.

The search for the missing crew began at first light. At 0700 hourse a helicopter spotted three corpses in the water. They were the bodies of L, R and N. The last was found floating about forty meters away from the others. B was picked up at 0800 hours, nearly at the end of his strength but still struggling to reach shore.

Authentic stories generally contain a great deal more than immediately meets the eye, and this tale is no exception. Much of its content lies beneath the surface, like the bodies of our swimmers, only whose heads were visible above water. As the

reader is probably aware, the actual episode was far more involved and complicated than my summary of it would suggest. The personal aspects of the affair were no less out of the ordinary than the objective circumstances I describe. But for obvious reasons these details must forever remain the property of those who were directly involved, both living and dead. However my omissions in no way detract from the relevancy of the episode to our immediate concern, which is B's quandry over the question: what should I do now?

* * *

B'S DILEMMA

First of all we have to bear in mind that B has been confronted here by an explicit order which he is considering in terms of two alternatives: "to execute" or "not to execute."

Nico Keijzer, in his comparative study of the concept of obedience among the armed services of six nations, names four sets of circumstances in which military law might grant B the right for consideration of this kind:²

1. The impossibility of carrying out the order.
2. The violation of a military legal norm in relation to:

- a) military service purposes;
- b) functional position within the organization;
- c) the order to commit an act which is illegal;
- d) the superior violating regulative norms or instructions.

3. Orders that contain contradictory interests, such as:

- a) changed circumstances between the time the order is given and the time of execution;
- b) orders harmful to service interests;
- c) contradictory orders;
- d) interference with the recipient's personal rights or interests.

4. Conscientious objection to a specific order.

(The last is chiefly concerned with moral opposition to military service and combat on religious or personal grounds; it has legal standing in the U.S., Holland and Germany, but not in Israel, France or Britain.)

Certainly L's order holds good with respect to every one of Keizer's criteria (although B is more than a little troubled by the feasibility of putting the order into effect). But somehow these legal aspects of the case seem to be irrelevant to B's efforts to reach a decision. As it appears those aspects did come into his mind only to be dismissed instantaneously as totally out of place.

While recuperating in the hospital, B was asked why he had failed immediately to carry out the orders he had been given. His response was succinct, if a little rude:

Orders?. . . Bullshit! What kind of orders can you give in a situation like that?

What B was saying in this laconic reply was that they were simply at a point in which the customary hierarchy of discipline, became meaningless. The usual relationship between the officer who is the one who issues orders, and the soldiers who are the ones that carry them out, became irrelevant.

In other words B found himself trying to work out the problem on the same plane as his commanding officer. In order to obey his superior's command, he himself had in a sense to repeat the same process of reasing that L had gone through before him. He first had to weigh up the pros and cons of the options that were available, and then arrive at the same conclusion that had led L to order him to swim to shore. Finally, he had as he said, to "give that order to himself."

As it were, the fact that his superior's order was valid in all respects only added to the severity of his quandry. The valid solution it offered immediately became part of the dilemma. It represented a summons to obedience that was in essential contra-

diction to B's efforts to come to grips with the problem. L's order "made it impossible for me to think," was the way B put it.

What then did B's dilemma consist of? In other words, since immediate obedience was ruled out, what was it, that he tried to work out? First there were the considerations that favored a decision to swim for shore, independent of the fact that he had been ordered to do so:

1. Fear. The urge to flee from the scene of disaster is objectively reinforced by the fact that the blood flowing from the wounds of the injured crewmen (the water was preventing their wounds from clotting) was likely to attract the sharks that infest these waters. Only those who have had the experience of being at the mercy of the sea at night could imagine the feelings involved. The most reasonable response would be to try to get away as quickly as possible.

2. Leaving might shorten the time it would take for a search party to reach the crew.

3. He was the only one of the three fit enough perhaps to make it to shore, and so save at least himself from death by drowning or sharks.

Then there are the considerations that militated against

swimming for shore:

1. Reluctance to abandon his companions. There were only about three hours left before morning, and the search for them would certainly begin at daybreak. By remaining with his shipmates he might be able to keep them alive until morning.

2. Would he actually succeed in making shore? There was no way of knowing precisely how far away they were from the coast. Would he meet any of the search party, and if so, when? The coastal region was unpopulated and he would probably have to walk for hours before finding anyone.

3. Parts of the shore were mined. How would he know which part of the shore he had reached?

B's first decision, after his initial evaluation of the problem, was to remain with the others. It was not to refuse to carry out the order. Disobedience was of course the immediate result of his decision, but this was already dismissed by him as an irrelevant issue. The process he had gone through in order to reach his decision, had quite simply led him to a conclusion that was the reverse of the one reached by L. In brief: the "order" that he had given to himself was to remain.

Neither those who have experienced the military situation at firsthand, nor anyone examining it from an academically detached vantage point, can miss the fact that what has taken place here apparently contradicts our customary concept of obedience and discipline. Disobedience of the sort described in this case, might in fact be in a sense, even worse than straightforward disobedience, resulting of merely selfish motives. Here we have a soldier, who puts himself in his commanding officer's shoes, assessing the situation in his own terms and, arriving at a decision opposite to that of his superior, chooses to disregard his orders..

Strangely enough, however, for the officer who was actually faced by this supposed threat to his authority, there was nothing out of the ordinary in what was taking place. He too, were he in B's place, would have probably behaved in exactly the same manner. L's response to B's decision to remain, did not take the form of a demand for his orders to be carried out. It was a communication whose purpose is to add an item of information to B's considerations. L tried to convince B that he will be able to take care of R on his own until morning, and B's presence was not necessary. In doing this, L hoped to persuade B that by swimming for shore the latter would not be abandoning his comrades. On the contrary, he would actually be doing the only thing that could speed their rescue, and that this was the one act by which B could do any good.

L's motives may have been somewhat more complex. Very likely he wished to get B away from the area for the same reasons that had occurred to the latter when he was trying to work out the problem for himself. Namely, to save the life of at least one of the crew. This, however, remains in the realm of speculation.

Whatever the case, B's justifications for staying had become much less tenable in the face of L's claim that he could hold out until morning. B had now to decide between his urge to act in order to speed up the rescue, and his fear that L may be mistaken or purposely deceiving him. In any case he could no longer doubt that there would be little use in his remaining on the scene, whether or not L could hold out until morning.

These, then, were the considerations that finally persuaded B to swim for shore, just as he had been ordered to by L in the first place. And it is at this juncture that B obeyed the order, even if he did so with considerable misgiving.

As was mentioned before, the process I have described is patently at variance with the conventional view held within the armed forces as well as outside them, concerning the nature of military discipline. On the other hand, we have stated that for

those involved in the actual event, and as a matter of fact for many others, there was nothing out of the ordinary in B's position. And if this really is the case, then it certainly needs an explanation.

If soldiers are assumed to evaluate the orders they are given in such manner, then we have added something completely new to the military domain. Something that has to be accounted for, and explained.

For evidently there is no trace of this new element apparent in the Boot Camps. Nor is there any mention of it in the military law, as far as I know. Judged from a purely legal perspective, B disobeyed a legal order, and there is nothing more to it.

Yet I'm going to argue that a basically similar process takes place, indeed must take place, at all levels and ranks in the military every time an order is given and received. Thus if indeed it is a threat to the discipline's hierarchy, it is one which we have no way but to live with in modern armies.

* * *

THE OBJECTIONS AND B'S POSSIBLE ANSWER

Perhaps we should better put forward at this point what seems to be the more elaborate objections that B's case and particularly the above assertion concerning orders are raising:

(1) First there is the professional argument. Absolute obedience is indispensable on the battlefield, where rapid and efficient action is of the essence. Here unquestioning obedience is vital in getting the job done and saving lives. It is commonly claimed that obedience of this sort can only be obtained by being rigorously instilled in soldiers during their training, and that this type of obedience is the essence of the military profession.³ In this view, the mere fact that B has taken it on himself to assess the situation, is in outright violation of principles vital to an army's survival in a combat situation. Therefore it challenges the professional foundations upon whose basis alone an army is capable of carrying out its objectives.

(2) Second there is the legal argument. A more specific argument that can be put forward in reference to the specific circumstances of this case. The very fact that a soldier allows himself to override a superior's decision is itself a sign that something has occurred to upset the order of military hierarchy, which has ceased functioning normally. In our case, L's injuries could be proposed as the grounds for his impaired authority. But though the fact of L's being wounded may oblige B to make an assessment of his superior's condition, L's authority remains entirely intact so long as he is conscious and his speech is reasonable. Since L is both conscious and mentally alert at this time, all that has been impaired is his ability to put his authority into effect. So B is either taking advantage of L's

limited capacity at present to act, and is giving no thought to the disciplinary action that might be taken against him in the future, or he is simply in a state of shock and so confused as not to know what to do.

Therefore, to summarize we can claim on the one hand that B has committed a fundamental error of principle. His attitude is one that strikes at the military domain as a whole, and has potentially disastrous implications for the conduct of military affairs.

While on the other hand we can call into question B's motives in undertaking his own assessment of the situation. In that event it could be argued that he acted as he did by force of circumstance, about which no sensible generalization can be made.

What could be B's answer to these charges? Does he have any way of defending his position apart from yet another, even more laconic response?

Obviously his rejoinder would be difficult to be based upon legal or professional arguments. Nor does he have recourse to circumventing the legal and professional arguments by claiming that he was in a state of mental confusion at the time. To the best of our knowledge of the event and the people involved, it can be said with reasonable certainty that immediately following the explosion there was a great deal of confusion among the crew (a condition that was entirely natural in the circumstances). But the confusion eventually subsided, leaving in its wake merely the

silence of dark water, pain and despair.

There is no doubt that B did think, and assessed the situation as best he could.

In his own words at the hospital, explaining his acts, the answer was quite simple: "It was my responsibility, that's all." Yet he was clearly referring to a specific type of responsibility, which could not be a legal or professional one. It could only mean an ethical responsibility, though he himself had never seemed to be comfortable with that term.

However, if B's answer to the legal and professional arguments is based upon the concept of ethical responsibility, it also implies that in his case at least, this responsibility is having an overriding status, over the two other types of responsibility.

The whole point is whether this applies to B's case only, or are we facing here an essential property of military responsibility in general. In trying to answer this, we have to put our specific case aside for a while, and go back to the cojoint notion of responsibility and the way it is related to authority in the military.

* * *

RESPONSIBILITY AND AUTHORITY

Responsibility is an essential condition for the existence of authority of any kind. Authority and responsibility in the military context, are inseparable, at least in the sense that they are so defined in military law. In the armed services the level of authority is contingent on the scope of responsibility.⁴

The authority of an officer is in direct relationship to the scope of his responsibility, from which the rational basis of his authority derives. The fulfillment of a given responsibility requires an authority of appropriate scope, so that an officer is first of all someone who has shouldered responsibility, and only in consequence of this is he in possession of authority.

In saying this I am not trying to idealize the armed forces. Unquestionably there are enough officers in any armed service, who are negligent in carrying out their responsibilities and still persist in maintaining that their conduct does not detract from their authority. Certainly in some cases the military itself being kept in barracks for so many years, seems to forget this principle which nevertheless still holds, as long as soldiers are to be put into fight.

Anyone who fails to see that military hierarchy is fundamentally built on a hierarchy of responsibility and not of authority, has misunderstood the essential nature of the armed services.⁵ A general does not need colonels to transmit his orders to his

captains, from whom they passed down until they have reached the ranks. Were this the case, all he would require is a staff of ADCs and heralds. What he does need is colonels who are responsible for the troops; and it is for this reason that he bestows the appropriate authority on these men.

This hierarchy of responsibility begins at the level of the Chief of Staff, who is responsible for the army as a whole, and ends with the private who is responsible for his rifle. Military activity is principally characterized not by its formal totalitarian organizational structure, but by an internal common denominator requiring everyone to be responsible for something.

A corollary principle is the retroactive imposition of responsibility on someone possessing authority or holding most senior rank. To illustrate, let us consider the case of a gun crew carrying out a routine check of equipment in the absence of the officer-in-charge, though on his instructions (an acceptable and not infrequent practice). Should a shell be accidentally discharged during the proceeding, it is the senior member of the gun crew who would be held responsible.⁶

A second-in-command is always a potential man-in-charge, and practically almost everybody in the military can be second-in-command, in a given situation. The implication is clear: every soldier may find himself in a position of responsibility.

As a matter of fact, in many armed forces bestowal of responsibility confers a privilege that in some cases can take precedence over that of rank.

For instance, a commander of a naval vessel is the highest authority on board in all matters that bear on the running of his ship, even if he happens to be carrying passengers who are senior to him in rank. It is he who is charged with responsibility both for his vessel and the welfare of his crew, and the supernumeraries on board.

But a much more fundamental aspect of the idea of retroactive responsibility emerges from the rulings of military tribunals held in the period following the Second World War. The significance of the Nuremberg Trials, as well as the trials connected with the incidents at Mai Lai and Kafar Kasem, can be summed up in the principle that in modern armies a soldier's responsibility is not confined merely to the sphere he himself is in charge of. He is also accountable to a degree, for areas that fall within the scope of responsibility of his superiors. Thus he may be asked to explain, why he had executed a particular order.

According to Telford Taylor, the earliest legal precedent for calling a soldier to account in this regard is found, strange to say, in Article 47 of the German Military Code of 1872.⁷

Today we can take the notion of illegal orders to be a well

established element of military law, and in fact this discussion was open by addressing this very issue. However, it seems that apart from dealing with the problem of what constitutes war crimes, what constitutes a sound defense or mitigating circumstances for alledged ones, and so on, not much thought was given to the change in the individual's scope of responsibilities, emerging from this notion.

If a soldier is accountable for obeying certain types of orders, if as Michael Walzer put it, "The trigger is always part of the gun, not part of the man,"⁸ then whenever a soldier is being given an order, he must evaluate it on the same plain as his superior does.

If he is always responsible for what he is doing, he will always have to "give the order to himself."⁹

Getting back to our case now, this seems to be the essence of B's defense. He simply responded to the enhanced scope of responsibilities laid on today's servicemen. In his particular case, even more so, as he was the only able-bodied man left among the crew. Therefore he could not obey L's order automatically.

The responsibility that had been conferred on him at that very time also put him under a clear obligation to assume the role of someone in a responsible position, and to consider what action had to be taken. And this was the reason that his commanding

officer's response took the form that it did. For L recognized the responsibility as well as the obligation, now borne by B, and he therefore conferred with him about the means whereby those two could best be fulfilled.

Yet once again, this responsibility is not a legal one. Nor does the obligation stem from professional considerations, even if the military is one of the rare cases in which a moral "ought" is constantly derived from a factual "is."¹⁰

They are both ethical ones. Though B would have never thought about it in these terms, he nevertheless acted as a moral agent to the limits of human capacity. And it makes no difference that reality is much more complex. That many years later B would still seem to be convinced that he erred in his final choice, and when all was said and done he should have remained with his comrades.

It only suggests, that sometimes the "ought" might be more factual than the rational "is."

* * *

THE PRIMACY OF THE ETHICAL NOTIONS

If what was said up to this point, seems sufficient to conclude that the overriding of the legal and professional responsibilities by the ethical one in B's case, was not a unique

phenomenon. If indeed the same process of dealing with order is to be considered as a constant pattern in modern armies, then clearly we are facing a problem with which we should deal in more detail. For what it means is that military discipline, commonly taken to be the most crucial trait of armies, ought to be overridden in certain cases by a commitment which takes precedence over any other one.

That the nature of this particular commitment is contradictory to the legal aspects of military discipline seem to be self-evident in our case. In fact, had B swum for shore immediately on being ordered to do so, I have no doubt that we would ask him why he had been in such a hurry. Why hadn't he waited to ascertain if this was the right thing to do.

Yet no one can deny the absolute indispensability of discipline to the military organization. Hence, on the other hand, until investigation had proved differently, we had all assumed it to be a near certainty that someone, either B or one of the other three crewmen, had been negligent in obeying instructions concerning ammunition maintenance.

The nub of the matter, however, is that these two seemingly contradictory traits of the military domain are not necessarily contradicting.

In order to examine this point, let us assume that military

discipline is simply the military law, while the responsibility B was taking on himself is part of the intuitive body of military ethics. The military law or discipline then, would be a set of rules designed to regulate armies in their functioning, either in combat or in peacetime. And as we said it is absolutely crucial for the military organization, that this set of rules will be binding on everyone within its domain.

In that case, the relationship between military law and military ethics is essentially not different than the relations between civil law and its ethic premises in general. Now these, of course, are the subject matter of one of the oldest disputes in philosophy of law and we can hardly expect to gain anything by taking sides in it. Nevertheless, I would argue that in our case, since military law is indisputably a positive law that deals with regulating a limited and sharply defined manmade social framework, we can rightly apply here the basic concepts of some versions of the positivist school. So in that sense concepts like Kelsen's "Basic norme"¹¹ or H. L. A. Hart's "Internal aspect of rules"¹² can serve as a model for our purpose.

That is to say that ethical root notions constitute the basis on which positive laws can be promulgated, and that at least some form of general consent to these root notions by individuals, is a necessary condition for these laws to be binding.

From this persepctive it seems that B's self-appointed

responsibility is not only anything but a threat to the military organization and its disciplinary set of rules, but that in fact it is an inherent property of these rules, and a necessary condition for their existence.

None of the meritorious achievements so frequently observed in the field of battle is a result of a promulgated rule of regulation. Nor are they an order driven achievements, although they might be initiated by one. That is precisely the reason for the commonly held formula in armies, for awarding those deeds by soldiers: ". . . above and beyond the call of duty." Which in my mind simply means: ". . . above and beyond the scope of military discipline."

Indeed there shouldn't be any wonder that L sensed the situation much like B did, and in fact was granting him the authority to decide what to do. They were floating way beyond any boundaries of military discipline. What they were left with was nothing but the fundamental obligation of a soldier to his comrades. Obligation that B called "my responsibility" and of which, within its narrow boundaries, the military discipline or if we wish military laws, are derived.

There is no contradiction between responsibility and discipline here. There is only a difference in their realm of validity.

One of the main properties of military-ethical responsibility is the commitment to military discipline. The ethical responsible soldiers are the ones who comply with the rules out of intuitive understanding of their vitality. This commitment is often the only thing that stands between them and disaster. An Unloaded rifle magazine contrary to order, a machine gun not maintained, failure to properly pack an explosive charge according to instructions--any of these can seal the doom of a body of men in the hour of battle.

But just the same they will be the first ones to wonder whether those rules can be applied in a given situation, and whether or not they are committed now to a different realm of validity.

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AN ORDER IS STILL ORDER

Nevertheless we have gone quite far away from any conventional interpretation of the military organization's nature. It seems that one can rightfully argue at this point, that under such an extreme "democratic" precept there will be no way to distinguish between responsibility and a simple disobedience.

I tend to agree. Put as the only ethical base for military discipline, responsibility can lead us to a complete chaos in the armed forces. What is missing here is another root notion which I

regard as the second ethical base of military discipline. Namely, loyalty. But to address it here will require another full discussion which I prefer to do elsewhere.

In any case, a few more words should still be said about the meaning of orders in general, and specifically in our case. Obviously this fundamental tool of military organizations looks as if it had been emptied of its coercive properties, by this precept of military responsibility. Indeed it seems that we reduced it from a binding command to a mere suggestion. But then again this impression is very far from being accurate.

We established earlier the relationship between authority and responsibility. We stated that military authority is a derivative of military responsibility, and that the scope of authority is conditioned by the scope of responsibility. An officer derives his authority to issue an order from the responsibility he has assumed and as long as he is shouldering that responsibility, his authority is valid, both legally and ethically. And so are his orders provided that they don't fall into Keijzer's categories of unlawful orders.

The nub of the matter, however, is that by giving an order the officer is in effect making an apportionment of his responsibility, part of which he is now transferring to his soldiers. And by receiving his order the soldiers assume this part to be in their charge, by all three categories of

responsibility, the legal, the professional and the ethical. That is the most profound lesson that the post-World War II armies should have learned in recent years.

But by this, we did not nullify the coercive power of orders. I would argue on the contrary that as a matter of fact we enhanced it. We have made it a matter of shared responsibilities without derogating its legal content. We committed the responsible soldier to obey orders out of his responsibility not only out of his compliance to laws. Shouldn't we then grant him a proportional part of authority? Well, in a sense, yes. We granted him a potential one, which is the authority to oppose unlawful orders, and the authority to assume command in extreme situations such as this one. And by this we made it once again a fact, that a soldier will always have to "give the order to himself" as B had put it. And consequently on the other hand, he will always be held accountable.¹³

But what about legally binding orders which are stupid, unnecessarily risky, hysterical, based on visibly unsound data, and so on? If the soldier should always "give the order to himself", why should he obey such orders?

To answer this question we shall have to inject the notion of loyalty to mission into our discussion, and as I mentioned earlier, it requires a different framework. I would argue, however, that in most cases the combination of responsibility and

loyalty constitutes a sound ethical base for a disciplined and efficient armed forces, provided that it exists in all its levels. And that in those cases in which the dilemma of obedience does occur, this combination also provides the guidelines to solve it.

* * *

SUMMARY

Perhaps we should end this inquiry by giving B the place for a closing remark.

"I had two options," he concluded his verbal ordeal in the hospital. "To do what L said or to stick with them and do whatever I could. He lied to me. He wanted me out of there. Well, I had to believe him, he was my commander you see. But he was lying and I should have stayed with them because I knew he lied."

Which brings us back to what we said at the opening about authentic stories containing a great deal more than immediately meets the eye. A property that may also serve us as a reminder that we are dealing here with human beings, and their desperate effort to remain committed to their deepest beliefs and obligations, in the predicaments of soldiership. Military ethics, like any other ethics perhaps, deals with attitudes and tendencies not

with strictly defined rules.

Needless to say B was not brought into trial or punished in any other way for disobeying orders. Although technically he explicitly refused to obey one, and made no attempt whatsoever to conceal this fact. And, I'm inclined to say that it did not have much to do with the fact that he did eventually, what he was told to do in the first place. Perhaps it was simply taken that the whole event was far beyond any scope of common disciplinary matters.

The whole point I'm afraid, that is what lies beyond this scope, was ignored.

In any case, what sets B's case apart, even in that realm-of-no-rules, is it's utter tragedy. For not only does it mark out the limits of military discipline for us to reach shore, B's hopeless effort to save his already dead comrades, marks out, in some way, the limits of military responsibility as well.

* * *

CONCLUSION

This case is undoubtedly very unique and in a sense defies

any generalization. Still it appears to me as one that reflects the real nature of the military domain.

The ethical basis lying underneath the military organization's superstructure of discipline, which B's case made transparent, is in my mind the most important property of armed forces in democracies.

This is not to say that these ethical bases are exclusively pertained to armies of democracies. Soldiership is a universal human phenomenon. Responsibility and loyalty are an inherent property of the right soldiership and to some extent are independent of its political realm. And of these two it is responsibility which tends to be the more universal and the more commonly inherent, irrespective of political circumstances. The vital difference between armies of democracies and other armies lies in the different apprehensions of loyalty.

However, what appears to be crucial for armed forces of democracies is the reformulation of the individual's commitments and their sources. We must be able to bring about a reconciliation of the totalitarian framework of military law and discipline, with the individual's personal moral root notions. In democracies, the proverbial horse must also want to drink.

The more democratic and pluralistic our society becomes, the more difficult the transition from citizen to soldier tends to be. If we in the armed forces of democracies, after Vietnam and

Lebanon, cannot read the writing on the wall, we might come to a point in which the term, "citizen-soldier" will become a case of either-or.

And the only way we can avoid such outcomes is by developing this type of discipline by responsibility. It is my conviction that it is there all the time anyway, we just have to recognize it, and educate our soldiers and officers by it.

NOTES

1. For some related, though not direct reasoning of this attitude, see: Samuel P. Huntington, The Soldier and the State (Cambridge, MA: Harvard University Press, 1957), pp. 17-18.
2. Nico Keijzer, Military Obedience (Alphen aan den Rijn: Sijtholf & Nordhoff, 1978), pp. 68-276.
3. Some traced this attitude back to Aristotle, see: Michael O. Wheeler, "Loyalty, Honor, and the Modern Military," in Malham M. Wakin (ed) War, Morality and the Military Profession (Boulder, CO: Westview Press, 1979), p. 181.
4. So for example, according to IDF Supreme Command Order, 30221, the receipt of rank is contingent upon appointment. An officer rises in rank only after having been appointed to a defined function. A rank unconnected with an appointment is a "personal rank," and bestowed as an exception.
5. For an opposing view, see Huntington, op. cit., pp. 16-17. I tend to disagree with Huntington when he says: "The officer corps is both a bureaucratic profession and a bureaucratic organization. Within the profession, levels of competence are distinguished by hierarchy of ranks; within the organization, duties are distinguished by hierarchy of office." Were this the case, many NCOs should have been Generals and Admirals. It is the competence in bearing higher levels of responsibilities that forms the hierarchy of ranks. The hierarchy of office is nothing but a manifestation of these levels of responsibility.
6. See, IDF Military Legal Code, Article 91.
7. T. Taylor, "Superior Orders and Reprisals," in War, Morality and the Military Profession, p. 434.
8. Michael Walzer, Just and Unjust Wars (New York: Basic Books, 1977), p. 311.
9. Compare Huntington, op. cit., p. 73. His views are once again in stark contradiction with mine.
10. The issue deserves, of course, much greater and more careful attention than this paper can possibly offer. However, in brief, my point is that at least with the military, Hume's famous distinction between "is" and "ought" propositions is at best external altogether.

The "is" proposition: "These are my comrades," seems to constitute the ground for the "ought" proposition: "Therefore I'm obliged to do whatever I can to save their lives" without going through any transition in form or relations. The meaning of the term "comrades" implies the "ought" to be inherent in the factual

"is."

This type of "is" proposition is extended to the relation between citizen-soldier and the state by the theories of "social contract," which otherwise could not escape, in my mind, Hume's criticism. See, Michael Walzer, "The Obligation to Die for the State," in his Obligations: Essays on Disobedience, War, and Citizenship (Cambridge, MA: Harvard University Press, 1970), pp. 77-99.

11. H. Kelsen, "Pure Theory of Law," Israel Law Review, I (1966), 6-7. Compare his Pure Theory of Law (Berkeley: University of California Press, 1967), pp. 193-195.

12. H. L. A. Hart, The Concept of Law (New York: Oxford University Press, 1961), pp. 56-57.

13. See A. Kaplan, "Moral Responsibility and Political Realities," Policy Science, XIV (1981), p. 205-223.