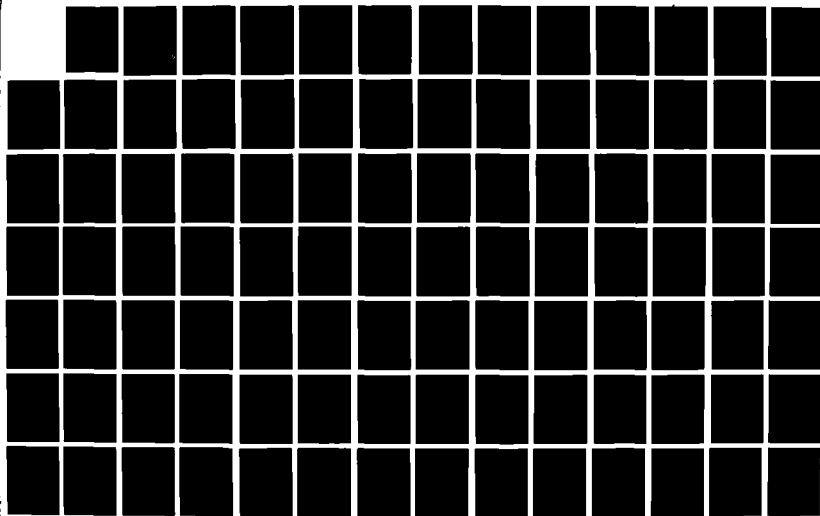
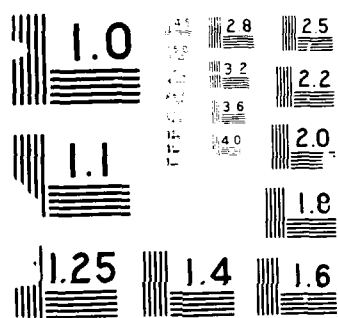


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SURRENDER - A SOLDIER'S LEGAL, ETHICAL, AND MORAL
OBLIGATIONS; WITH PHILIPPINE CASE STUDY

A thesis presented to the Faculty of the U. S. Army
Command and General Staff College in partial
fulfillment of the requirement for the
degree

MASTER OF MILITARY ART AND SCIENCE

by

MATTHEW S. KLIMOW, MAJ, USA
B.S., United States Military Academy, 1974
M.A., Webster University, 1982

Fort Leavenworth, Kansas
1989

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ABSTRACT

SURRENDER - A SOLDIER'S LEGAL, ETHICAL, AND MORAL OBLIGATIONS; WITH PHILIPPINE CASE STUDY, by Major Matthew S. Klimow, USA, 186 pages.

This thesis examines what a soldier's legal, ethical, and moral obligations are when he is ordered to surrender but still has the will and means to resist. The question pits two of the military's highest values against one another. The first is the imperative to obey orders of legally constituted commanders. The second is the military virtue of fighting the enemy as long as a soldier is able.

Legal obligations are addressed at two levels beginning with International Law regarding capitulation agreements, followed by United States military law concerning discipline and obedience. The American military ethic is examined with emphasis on the Code of Conduct and its strong injunction against surrender. Finally, law and the military ethic are linked to personal moral values and the difficult decisions a soldier has to make when forced to choose between surrender and disobedience.

A case study of the American surrender of the Philippines in 1942 is used to illustrate this complex dilemma. Diaries, letters, and other historical material were examined to weigh the actions of American soldiers in a legal, ethical and moral context. Additionally, a written questionnaire and personal interviews were conducted to solicit first person accounts of the decisions made regarding surrender.

The study finds that the law, the military ethic, and personal moral values are likely to conflict when soldiers are ordered to surrender while they still have the means to resist. While no definitive solution is provided to this complex moral dilemma, the author provides several key factors that should be considered before a soldier chooses a course of action in this difficult situation.

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The opinions and conclusions expressed herein are those of the student author and do not necessarily represent the views of the U. S. Army Command and General Staff College or any other governmental agency. (References to this study should include the foregoing statement.)



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CHAPTER 1

INTRODUCTION

Surrender presupposes defeat, and because of this disparaging implication, it is easily ignored as a subject in the military. Any instruction or training regarding surrender or capitulation is likely to encompass only the actions American service members must take when capturing enemy combatants. The prospect of American surrender, particularly of whole units, is all but unthinkable.

American soldiers are hardened against surrender through discipline and training which fosters a military ethic of fighting the enemy as long as there is a means to resist. Even after the physical means to resist are exhausted - ammunition is depleted and the enemy has surrounded friendly forces - service men are expected to attempt escape and evasion rather than capitulation. The United States military ethic recognizes surrender as a viable option only when further resistance would be suicidal. Revulsion to the act of surrender is perhaps

superseded only by American society's desire to preserve¹
the lives of its sons and daughters in uniform.

At the heart of the American military system is discipline. In a very real sense, discipline holds an army together, compels its soldiers to hurl their bodies into withering fire, and enables a unit to stand and fight when the natural tendency is to run away or surrender to an advancing enemy. Obedience to orders is an indispensable element if discipline is to be maintained. Behavioral scientist Stanley Milgram called obedience "the dispositional cement that binds men to systems of² authority." When disobedience becomes widespread, it is likely that discipline is irrevocably damaged and the very core of the army threatened. It was this belief that compelled the respected author, Samuel P. Huntington, to³ proclaim obedience as the supreme military virtue.

The focus of this study is a clash between the two highly revered American military values described above. It concerns the ideal of never surrendering to the enemy and the imperative to obey the lawful orders of legally constituted commanders. Specifically, this paper asks the

question: What are a soldier's legal, ethical, and moral obligations when ordered to surrender while he still has the means to resist? By posing this question for peacetime study it is hoped soldiers, particularly leaders, will be better prepared to cope with the difficult decision to surrender a unit during war.

The question is a difficult one for a profession that eschews ambiguity, seeks unequivocal guidance, and promulgates definitive regulations on what its members can and cannot do. In the end, there is no "neat and tidy" answer to this question. Nonetheless, there is much to learn and it is worth asking. The largest capitulation of United States military units came not during the American Revolution or the Civil War, but during the Twentieth Century in World War Two. American soldiers, sailors, marines, and airmen, whose moral values and military ethic were not altogether different from the ones that exist today, were ordered to surrender in the Philippines in the summer of 1942. Many of these Americans still possessed the will and the means to fight the Japanese when the surrender order was given. As a result, the officer corps

was deeply divided and uncertain as to what to do. Many dutifully obeyed the surrender order while their comrades defied authority and slipped away into the Philippine jungle. The indecision and rancor that resulted from the capitulation created a bitterness that some of the Philippine veterans carry today.

More importantly, units will almost certainly confront surrender in the future. Current United States Army doctrine for mid- and high-intensity conflict, envisions a battlefield that "will rarely maintain a linear character. The speed with which today's forces can concentrate and the high volumes of supporting fires they can bring to bear will make intermingling of opposing forces nearly inevitable."⁴ This implies that some American forces may be by-passed, encircled, and left deep behind enemy lines. It is a situation that can lead to the surrender of entire units.

To fully inform today's soldier about the obligations he has when ordered to surrender, it is necessary to examine the law, the military ethic, and to explore the nature of personal moral values. Chapter Two of this paper addresses legal obligations concerning

surrender and obedience. Once the violence of war is unleashed, it is difficult to reign in its terrible destructiveness. The Law of Land Warfare has evolved through widely recognized international agreements in order to temper combat with specific humanitarian rules. The international conventions concerning capitulation and surrender are detailed in this chapter.

Obedience in the United States armed forces is enforced by a military justice system so strong that the American public is willing to extend into civilian life the penalties soldiers incurred while in service.⁵ Chapter Two examines the Uniform Code of Military Justice as it pertains to surrender and obedience to orders. Finally, this chapter addresses the Code of Conduct and the strong proscription it carries regarding surrender.

Chapter Three confronts issues of military ethics and personal morality. It begins by distinguishing between the two and recognizing that the law, ethics, and morality may conflict with each other in given situations. The concept of utilitarianism is also explored in this chapter, along with the ethics of not surrendering in order to fight to the death.

Finally, this study attempts to put the legal, ethical, and moral conflicts inherent to a surrender order into the context of a real situation. To do this, a case study of the Philippine surrender of 1942 is presented (Chapter Four). Disobedience, threats of courts-martial, confused command lines, a hostage threat, and a brutal enemy were all part of this American tragedy. Since then, some steps have been taken by the United States and at the international level to prevent a recurrence of the Philippine situation. Most notably, the Geneva Convention of 1949 has expanded and clarified the Law of War article concerning the status of surrendering soldiers. Also, the United States has formulated a Code of Conduct to provide a guide to its service members when faced with surrender or captivity.

Nonetheless, it is difficult to study the fall of the Philippines without concluding that not enough has been done to preclude American commanders and their soldiers from repeating the calamitous actions that were taken by the Philippine defenders almost fifty years ago. This study is intended to address the most critical issues that are likely to arise when surrender is imminent. It is written for the leaders who must decide between

surrender or the possible annihilation of their unit. It is also written for their subordinate leaders and soldiers who must ultimately decide whether or not to obey the order to surrender.

ENDNOTES

- 1 Gerald F. Linderman, Embattled Courage; The Experience of Combat in the American Civil War. (New York, NY: The Free Press, 1987), p. 35.
- 2 Stanley Milgram, Obedience to Authority; An Experimental View. (New York, NY: Harper and Row, 1974), p. 7.
- 3 Samuel P. Huntington, The Soldier and the State; The Theory and Politics of Civil-Military Relations. (Cambridge, MA: The Belknap Press of Harvard University Press, 1957), p. 74.
- 4 U.S. Department of the Army Field Manual 100-5, Operations. (Washington, D.C.: Headquarters, Department of the Army, 1986), p. 2.
- 5 Linderman, Embattled Courage, pp. 35-36.

CHAPTER 2

LEGAL OBLIGATIONS

Introduction

Throughout history, societies have attempted to develop a law of arms to govern discipline within their armies and to regulate hostilities. Even primitive forces required rules to guide the conduct of soldiers and to recognize basic humanitarian principles. As new weapons increased the lethality of the battlefield and limited objectives gave way to total war, a body of international law began to develop in Europe. These early attempts at multilateral agreements codified customary principles and form the basis for many of the codes and regulations that are in effect in the United States armed forces today. The protocol for surrender and the legal basis for obedience are both well grounded in early concepts of how¹ armies and soldiers should conduct themselves.

This chapter addresses the legal obligations a soldier has when ordered to surrender by a superior officer. By its very nature, this question presents a soldier with a conflict between two general laws or

principles: the imperative to fight the enemy while there is the means to resist and the duty to obey the lawful orders of those in authority. Both international law and domestic law are reviewed to provide soldiers with information needed to contend with this dilemma.

First, international treaties concerning surrender and obedience are traced from their historical roots to put the Law of Land Warfare into context. Second, the laws governing capitulation are reviewed according to international convention and the Uniform Code of Military Justice (UCMJ). The Code of Conduct and its legal standing regarding surrender are also scrutinized. Third, a soldier's legal duty to obey orders is examined. Finally, some legal guidelines are provided for the soldier who has the will and means to fight the enemy, but who has been ordered to surrender.

Historical Perspective on the Law of Land Warfare

In many ways, regulating or restricting the conduct of battle is inconsistent with the demand placed on armies to inflict maximum death and destruction on the enemy. The violence and weapons of mass destruction employed to bring the enemy to favorable terms suggest an

absence of restraint and suspension of rules societies establish to govern interaction among people. However, the military is characterized by organized use of violence on behalf of the state, in order to protect and preserve² its existence.

The word "organized" implies not only discipline but also rules of engagement or conventions for conducting battle. In western culture, Twelfth Century armies were composed of noblemen or knights who carefully observed the code of chivalry. Courts of chivalry were formed to hear cases where knights failed to comply with the rules of battle. These chivalric codes are not all dead. Many of the customs and principles were incorporated into current military law and concepts of duty and honor are instilled into cadets and midshipman today. The principles of surrender can be directly traced to the medieval ideals of³ bravery, courtesy, and honesty.

Societal norms and humanitarianism have also greatly influenced the development of the Law of Land Warfare. Geoffrey Best, a British scholar who has written extensively on the conduct of war, made the following observation:

The body of law and regulations which defines the purposes and methods of organized military power ultimately is one with, and indivisible from, the moral and legal constitution of the society which supports it. 4

The beginnings of modern warfare, as revealed in the Thirty Years War (1618-1648), shocked western society by its ruthlessness and ferocity. In addition to society's moral revulsion, many Europeans recognized that new forms of combat devoured so much in human and material resources, that unless war was curbed it would negate the political ends it sought to achieve. This conviction led to a series of international agreements designed to limit the effects of war. 5

The enlightenment of the Eighteenth Century reinforced humanitarian ideals in the application of warfare and ushered in the first modern attempts to formulate laws to limit bloodshed on the battlefield. However, it was not until the Geneva Convention of 1864, that international codes gained wide acceptance. The principle that guided early international conventions and underpins current international law is that "belligerents shall not inflict on their adversaries harm out of proportion to the legitimate goals of warfare". 6

The attempt to limit the economic destruction of modern war and the carnage created by new weapons gave birth to the Law of Land Warfare. But it was difficult to achieve agreement limiting specific weapons or actions. The de Martens clause, used as a preamble to many international agreements, speaks in vague terms of the "laws of humanity" and "the public conscience". These sweeping terms and broad phrases are in reality a reliance on moral law and shifting public opinion. Thus, society's ethical norms have formed and molded agreements governing capitulation and treatment of surrendering soldiers as⁷ incorporated in the Law of Land Warfare.

The Roots of the Uniform Code of Military Justice

The concept of obedience is central to the question of a soldier's obligations when ordered to surrender while he still has the means to resist. Military law regarding obedience to orders has a history not unlike international agreements for surrender. As the feudal system began to decay, and weaponry became more destructive, peasants and mercenaries bore the brunt of the fighting. Laws were enacted of necessity, to insure

order, morale, and discipline among poorly trained and
unmotivated soldiers.⁸

In this context, discipline implies a state of mind in the service member, so that he instantly obeys a lawful order, no matter how unpleasant or dangerous the task. The basic role of military law, as it evolved and as it stands today, is to provide a framework for encouraging self-discipline among soldiers, particularly in the setting of mortal combat. Throughout history, leaders have used military law to support accomplishment⁹ of their military objectives.

The legal system that evolved in the United State is called the Uniform Code of Military Justice. Unlike international law, it is a penal system that dictates certain conduct deemed harmful or undesirable and provides penalties for the commission of such offenses. Despite its European heritage, the authoritative structure and basic source of United States military justice lies first in the constitution, the supreme law of the land. It is from the Constitution that Congress is granted authority¹⁰ to pass regulations for the armed forces.

The American military justice system reflects both needs of the military and the society that supports it. Accordingly, the UCMJ provides strong injunctions against disobedience of lawful orders and against surrendering to the enemy. Both are inimical to the military's vital charter to defend the nation from its enemies. It is because of these strong injunctions that a soldier faces a terrible dilemma when ordered to surrender while he still has the capability to resist. What is the lawful course of action in this predicament and what action best serves the state?

International law and United States Law Regarding Surrender

On 16 August 1812, Brigadier General William Hull, the American commander of Fort Detroit, surrendered the Michigan Territory and all U. S. forces under his command to the British Army in Canada. Two years later, Hull was court-martialed and convicted by the United States for dishonorably surrendering his command. In the legal specifications, Hull was cited for actions in which he:

"...shamefully and cowardly surrendered a fine Army, in high spirits, well supplied...by a disgraceful capitulation with the enemy,... a brave and patriotic Army wantonly sacrificed to the personal fear of the commander, and the

services of the United States suffered a great and afflicting loss." ¹¹

Hull was sentenced to be shot to death but President ¹² Monroe later reduced the sentence to dismissal.

Equally infamous historical examples of surrender can be found with different twists and endings. Unarmed soldiers attempting to surrender under a flag of truce have been mercilessly gunned down. Civilians and prisoners of war have been punished in reprisal for others who violated capitulation agreements. In many cases Americans were the victims, most notably in Korea where surrendering GIs were sometimes executed. In other instances, American soldiers have been perpetrators. Examples include the Pacific Theater in World War Two, where Japanese soldiers often feigned surrender only to attack unsuspecting American captors. After several such experiences, United States soldiers and Marines began to shoot any Japanese who indicated the desire to ¹³ surrender.

In fact, it is probably rare when surrender is not controversial. It is no wonder that international law as well as United States Codes both prescribe the actions soldiers and commanders must take when surrendering or

accepting the surrender of the enemy. Still, some argue that surrender, particularly by a commander of a unit, is so contrary to military tradition that it should never be considered or condoned.

Why does the United States, or any other country, recognize and provide for its soldiers, sailors, and airmen a legal context in which to surrender to the enemy? Frederick R. Struckmeyer, a contemporary American philosopher, notes that "...the United States, like most other nations, has traditionally regarded surrender, whether by an individual soldier or by the nation, as ignominious and unthinkable."¹⁴ He goes on to cite the case of the U.S.S. Pueblo, in which the U. S. commander surrendered to the North Koreans in January 1968. There was a great clamor for a court-martial of the skipper despite the fact the ship was a lightly armed intelligence vessel completely outgunned by a small flotilla of North Korean gun boats.¹⁵ As Struckmeyer concludes, the American attitude toward surrender is generally that to "go down fighting"¹⁶ is part of a soldier's duty."

Despite this conviction, there have been instances in recent American history when surrender has been viewed

as permissible and presumably would be acceptable in future wars. A case in point is the U. S. surrender of the Philippines, which will be examined in later chapters. Unlike General Hull or Commander Lloyd Bucher of the Pueblo, Lieutenant General Jonathan Wainwright, U.S. commander of the ill-fated forces on the Philippines, became a hero. After his return from a Japanese prison camp, he was awarded the Congressional Medal of Honor and promoted to four star general. Surrender decisions must be judged in the context of the situation. Obviously, in the Wainwright case the military as well as the American people did not judge the Philippine capitulation harshly.

Despite this and other exceptions, an indomitable will to fight is the antithesis of surrender. As a 1974 Naval War College study notes, "If fighting forces are to be effective, strong traditions and sanctions against surrender must be fostered."¹⁷ Balanced against this is the great value American society places on the lives of her sons and daughters in uniform. As noted earlier, the underlying fundamental principle of humanitarianism in military codes is the attempt to prevent death and destruction out of proportion to military/political gain. In his landmark book, The Soldier and the State, Samuel

Huntington notes that "The costs of military action are¹⁸
balanced against the ends to be achieved."

This logic, then, is the reason the United States provides its servicemen and women with a legal means to surrender. In a very real sense, the nation is telling those who serve her that their lives are valued second only to the safety and security of America. When nothing further is to be gained tactically or operationally and when the means to fight the enemy are exhausted, society as a whole prefers that "unnecessary" death be avoided, even if that means capitulation.

This view is shared by other western nations and is reflected in various international conventions that comprise the Law of Land Warfare. By prescribing the protocol for surrender, international law provides a "way out" for soldiers or armies that face complete defeat or annihilation. Through international law, vanquished forces are given some expectation of the treatment they will be furnished and victors given some guarantee of their gain. By recognizing and keeping faith with internationally agreed rules for surrender, a victorious army may induce other units to surrender. Likewise,

soldiers may be motivated to surrender if favorable terms are offered to those who cease fighting.

International Protocol for Surrender

For American service members, one of the most accessible sources of the international provisions regarding surrender is Department of the Army Field Manual 27-10, The Law of Land Warfare. In it, a full definition is provided as shown below:

A capitulation is an agreement entered into between commanders of belligerent forces for the surrender of a body of troops, a fortress, or other defended locality, or of a district of the theater of operations. A surrender may be effected without resort to a capitulation. 19

In the following paragraph, the field manual adds an important stipulation.

Capitulations agreed upon between the contracting parties must take into account the rules of military honour. Once settled, they 20 must be scrupulously observed by both parties.

This is taken verbatim from Article 35 of the Hague Regulations which form the Annex to the Hague Convention Number IV of 1907. The old and intangible military concept of "honor" still finds a place in the current United States Army manual.

Department of the Army Pamphlet (DA PAM) 27-161-2, International Law, elaborates on these two provisions.

There is a difference between capitulation and surrender in the parlance of international law. Surrender is to relinquish control to the enemy. It is the act of giving up. Capitulation, on the other hand, is an exchange of promises to establish the conditions of surrender. Thus, FM 27-10 notes that "a surrender may be effected without resort to a capitulation."²²

Three elements must be present before a commander does agree to a capitulation. A capitulation assumes first of all, that there is an exchange of promises. As the DA Pam points out, "It is not a one-sided or unilateral undertaking." Secondly, the agreement involves the commanders of the opposing belligerent forces. Finally, the agreement is for the purpose of surrendering troops or a physical location (e.g. a fort).²³

FM 27-10 further notes that, "[A] commanding officer's powers do not extend beyond the forces and territories under his command."²⁴ The commander may only surrender those troops or locations within his or her command. Also, violations of the terms of a capitulation

are punishable as war crimes. If a violation was ordered by the commander who capitulated or by a higher authority, "the other belligerent may denounce the capitulation and resume hostilities."²⁵

One additional stipulation included in the field manual has direct bearing on the central question of this paper, i.e., what are a soldier's obligations when ordered to surrender. As in the case of General Hull, units and even entire armies have been shamefully surrendered by their leaders. This occurred despite the fact that individual soldiers and whole units may have possessed the will and means to resist. The United States Army manual on this point is clear: "The fact that any commander surrenders in violation of orders or the law of his own State does not impair the validity of the surrender."²⁶

This provision, coupled with the stipulation that capitulation agreements be "scrupulously observed," implies that soldiers must follow the order to surrender, even if the commander made "a bad deal". This assumes capitulation had been entered upon by the commander. A more complete discussion follows the next section, which addresses when a commander in the armed forces of the

United States may legally surrender or capitulate to the enemy.

United States Law and the Code of Conduct

The United States military Code of Conduct goes beyond the UCMJ in proscribing the action of U.S. commanders and soldiers regarding surrender. The Code of Conduct was established on 17 August 1955, and is largely credited to a World War II hero, President Dwight D. Eisenhower. However, the Code is very much a product of the Korean War in which surrendering GIs were gunned down and American POWs tortured and brainwashed. The Code was designed to give U. S. service members behavioral guidance if faced with capture or upon becoming a prisoner. Presidential Executive Order 10631, which established the Code states that "each member of the Armed Forces liable to capture shall be provided specific training... to counter and withstand all enemy efforts against him, and shall be fully instructed as to the behavior and obligations expected of him during combat or captivity."²⁷

For the past thirty-four years, American service members have received instruction in the intent and meaning of the Code. The complete Code of Conduct as

promulgated in 1955, along with its recent 1988 revision, is reprinted in Appendix A. Article II, which addresses surrender, was revised in 1988 in order to render it gender free. It currently states:

"I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist."²⁸

Two phrases in Article II are discretionary:

"...of my own free will" and "...while they still have the means to resist." Of the former, contemporary moralist Michael Walzer noted that, "[I]f it were possible for soldiers to surrender in another way, the act might...have no moral consequences."²⁹ All human actions are based on will of the individual. Soldiers may fight to their death or surrender. The choice to obey or disobey, to fight or surrender is a personal one. As the Naval War College study points out: "'I will never surrender of my own free will' is a contradiction of terms and should be corrected."³⁰ Likewise, determining when a unit has lost the "means to resist" is a question of resolution.

Recognizing this and other ambiguities, a Department of Defense Review Committee was established in 1976, "to reaffirm the validity of the Code of Conduct..."³¹

The committee determined that "Article II is stated clearly enough that no need exists to alter this article."³² In clarifying Article II, the committee noted that the intent of the Code is one of "reasonableness". Hence, it recommended that "All members of the Armed Forces should understand that resistance to capture or surrender need not be carried to suicidal lengths."³³ To clarify this point, the Committee's final report included the following guidance regarding surrender (the full text can be found in Appendix B):

a. Only when evasion by an individual is impossible and further fighting would lead only to his own death with no significant loss to the enemy might the means to resist be considered exhausted.

b. The ...authority of a commander never extends to the surrender of his command, even if isolated, cut off, or surrounded, while the unit has the power to resist, break out or evade....³⁴

Despite the proscriptive nature of the Code of Conduct and its promulgation by executive order, the Code is not a penal code. Further, the armed services have all agreed that the Code should remain as a standard of behavior outside of statutory law. The 1976 DoD committee concluded that "...the Code was intended as a standard of conduct applicable when normal processes of command and

discipline are inhibited due to lack of communications or
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conditions of confinement."

While the Code of Conduct is not legally enforceable, its substance regarding Article II and surrender is subsumed in the punitive articles of the UCMJ. Three UCMJ articles in particular could potentially be used to enforce the spirit and intent of Article II of the Code of Conduct: Article 85, Desertion; Article 99, Misbehavior Before the Enemy; and Article 100, Subordinate Compelling Surrender. A short summary of these articles is
36
provided below.

In brief, Article 85 UCMJ states that "any member of the armed forces who, without authority goes or remains absent from his unit, organization, or place of duty with intent to remain away therefrom permanently; [or] quits his unit... to avoid hazardous duty...is guilty of
37
desertion.

While Article 85 UCMJ addresses itself to individual conduct, Article 99 UCMJ concerns the actions of those in command. Specifically, Article 99 provides that "Any [member of the armed forces] who before or in the presence of the enemy runs away, shamefully abandons,

surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend...shall be punished by death or such other punishment as a court-martial may direct." ³⁸ "Shameful" is defined as ³⁹ "surrender or abandonment without justification."

Article 100 UCMJ states that any person "who compels or attempts to compel the commander of any place, vessel, aircraft, or other military property, or of any body or members of the armed forces to give up to an enemy or to abandon it, or who strikes the color or flag to an enemy without proper authority, shall be punished..." ⁴⁰

While the Code of Conduct does not enjoy the stature of law, it is clearly supported by the punitive articles of the UCMJ. Members of the armed forces that fail to live up to the spirit of the Code are subject to punishments up to and including death.

What then of the individual service member or subunit commander who possesses the will and means to resist but has been ordered to surrender? As noted earlier, FM 27-10 clearly states that if the capitulation is unnecessary or in violation of orders from higher

authority, the commander may be held accountable under the UCMJ, but the surrender is still considered valid.⁴¹

On the other hand, the Secretary of Defense Advisory Committee that authored the Code of Conduct in 1955 stated, "The responsibility and authority of a commander never extends to the surrender of his command to the enemy while it has the power to resist or evade."⁴² This leads to the question of obedience. Does the legal system of the American military allow soldiers in any circumstance to disobey the orders of their superior officers?

Limits to Obedience

The short answer to the question is yes, there are instances under United States military law where transgression of a legal norm can be justified or excused. However, soldiers who disobey are essentially presumed guilty of disobedience, a punishable crime under the provisions of the UCMJ, unless a valid reason for disregarding orders can be established. The service member who does not comply because he believes an order is unlawful acts at his own risk. The precedent for this rule is well established and was stated plainly and simply

by the United States Court of Military Appeals (USCMA) in
U.S. v. Trani (1952):

It is a familiar and long-standing principle of military law that the command of a superior officer is clothed with a presumption of legality, and that the burden of establishing the converse devolves upon the defense.... Certainly the presumption of legality of orders ...must be, a strong one, requiring for an adverse determination a clear showing of unlawfulness.⁴³

What then, are the limitations to a soldier's duty that may be offered as a defense to the laws of obedience, particularly in the case of a surrender order? Nico Keijzer, a North Atlantic Treaty Organization (NATO) Research Fellow, did an exhaustive study in the area of obedience. His general conclusion was that the "praesumptio iuris" of legality of superior orders makes it seem that a subordinate's argument to the contrary would seldom be found reasonable. His advice is that when in doubt as to whether a superior has or has not exceeded the limits of his authorization, it would be wise to comply⁴⁴ and "complain later."

Complaining later may sound unreasonable to a soldier who faces an uncertain future at the hands of enemy captors. Nor does Keijzer address the moral and

ethical implications of this course of action. However, the strength of the clause in FM 27-10, calling for compliance to surrender orders, weakens any rebuttal a soldier may attempt to use in a military court. Nonetheless, service members may look to the following arguments to legally justify disobedience: an order to commit an illegal act, the superior lacks functional competence, necessity, change in circumstances, and contradictory orders.

Illegal Acts

Articles 90(2), 91(2), and 92 of the Uniform Code address disobedience to orders. In all three articles, service members are required to only obey lawful orders. The manual for Courts-Martial (MCM) specifies that an order is "lawful unless it is contrary to the Constitution, the laws of the United States, or lawful superior orders, or for some other reason is beyond the authority of the official issuing it." ⁴⁵ Further, the Manual states that "the order requiring the performance of a military duty or act may be inferred to be lawful and it is disobeyed at the peril of the subordinate. This

inference does not apply to a blatantly illegal order,⁴⁶
such as one that directs the commission of a crime."

Capitulation or surrender are not crimes and, in fact, are explicitly provided for in international law. United States military law (and the Code of Conduct), reflecting the norms of American society, recognize honorable surrender as acceptable and legal. In short, an order to surrender is not "blatantly illegal".

However, if a subordinate could show that the superior officer ordering surrender had misbehaved before the enemy (Article 99, UCMJ) by "shamefully" delivering up the command, there is the possibility the order could be viewed as unlawful. It cannot be stressed enough that the burden of proof lies with those who disobey. Because misbehavior before the enemy is an offense punishable by death, it can be assumed that only the most extreme cases would be recognized as "shameful" surrender.

Superior Lacks Competence

In his book Military Obedience, Kiejzer uses the example of the ship's paymaster issuing the order to weigh anchor. As the author notes, that is a matter of the

ship's commanding officer and the paymaster's order would not be binding. One can paint similar hypothetical examples for a surrender scenario. A group of soldiers, cut off by enemy penetrations, is ordered to surrender by a young Signal Corps lieutenant with no combat experience. Senior NCO's who have campaign experience as infantrymen recognize that escape and evasion offer a very real prospect for a link up with friendly units.⁴⁷

One could argue that the lieutenant's competence was less than the senior NCO's who were combat veterans. Did the lieutenant, therefore, lack competence to issue such an order? Could the senior NCO's disobey the order? There is no set answer to give, just as there is no end to hypothetical situations that can be imagined. In general, however, U. S. law states that an order is not binding if it "concerns a matter beyond the superior's scope of business, and...interferes in other person's field of responsibility."⁴⁸ Again, the legal presumption of orders must be considered.

Necessity

The English legal theorist, William Blackstone (1723-80) said that "when a man has the choice of two

evils set before him, and being under a necessity of choosing one, he chooses the less pernicious of the two."⁴⁹ The legal defense of necessity is recognized in virtually all western nations and has precedence in American military law. In U.S. v. Ashton (1834), sailors charged with mutiny justified disobeying their captain's orders on the grounds that their ship was unseaworthy and presented an imminent danger of death."⁵⁰

To justify action "out of necessity" a service member would have to show that the act was done "to avoid an evil both serious and irreparable, that there was no other means of escape, and that the remedy was not disproportionate to the evil avoided."⁵¹ It is difficult to construct a scenario where necessity would justify disobeying a surrender order. However, a commander may feel compelled out of necessity to surrender his or her unit even though it possessed the will and means to resist. A hostage situation comes to mind, where the enemy threatens to kill POW's or other defenseless combatants/noncombatants, unless the opposing commander surrenders the entire force. This scenario will be further examined in later chapters concerning the surrender of the Philippines.

Change in Circumstances

What is the subordinate's duty when, at the point of executing orders from a superior, there is a fundamental change in the circumstances under which the orders were issued? Perhaps a surrounded unit finds a weak point in the enemy's encirclement allowing escape and evasion. An unexpected cache of ammunition may enable a unit to restore its means to resist. Other situations may arise which, had the circumstances been known to the commander, a capitulation may have been avoided.

The United States does accept the legal defense of "changed circumstances" for much the same reasons as the doctrine of necessity. A unit may be ordered to defend a bridge "to the last man." If the bridge is destroyed by an air strike, the purpose of the order has also been lost⁵² and surrender may be justified.

In obscure situations, subordinates may have to judge what action is in the best interest of the service. It may not always be to fight. As pointed out earlier, if a capitulation agreement is violated by a subunit, the entire agreement becomes void. Thus, a small unit

commander who fails to surrender as ordered may endanger the lives of a much greater number of fellow soldiers.

Contradictory Orders

Although unity of command stands as a principle of war in the American Army, today's communication equipment opens commanders to various levels of command. If two levels of command issue contradictory orders to a subordinate, disobedience is unavoidable. The commander with superior rank will normally hold sway. However, being farther removed, a more senior officer may lack vital information or be unaware of changed circumstances. In this difficult situation, a subordinate could only use common sense and follow the order that appears to better serve the interests of the country. The doctrine of necessity could be used as a legal defense if the contradictory orders could not be resolved.

Conclusions: Disobedience and Surrender

If faced with the dilemma to obey a surrender order or stay in the fight, it appears the law is weighted more heavily toward obedience. This is evidenced by two key factors. First, international law, fully recognized

by the United States and cited in FM 27-10, dictates that surrender agreements be meticulously honored. Second, disobedience of lawful orders can be justified only in rare circumstances.

The logic for these overriding principles are well grounded in military history. By keeping sacred the agreement made between enemy commanders, total carnage and war without rules or compassion may be avoided. Likewise, the insistence on obedience has served to preserve some order and reason in battle. In the chaos of the fight, soldiers look to their leaders for stability and direction. If insubordination is tolerated, the vital thread holding an army together - discipline - comes unraveled.

When a subordinate does disobey a surrender order, and the results are ruinous, no legal precedent is likely to save him from punishment. If, on the other hand, the decision brings favorable results, a court-martial is unlikely. As Keijzer points out, there is no better
54
"justification" for disobedience than success.

However, the threat of court-martial may not be of concern to a soldier wrestling with issues of

disobedience. In the case of surrender, there are often higher values at stake than penal codes. Moral obligations, ethical codes, loyalty to shipmates or even the security of the nation may outweigh legal considerations. Laws are disobeyed when they conflict with deeply rooted personal values. In the next chapter, a soldier's moral and ethical duty in regard to surrender will be evaluated.

ENDNOTES

- 1 Adam Roberts and Richard Guelff, ed., Documents on the Laws of War (Oxford: Clarendon Press, 1982), p. 2.
- 2 Nico Keijzer, Military Obedience (Alphen aan den Rijn, The Netherlands: Sijthoff and Noordhoff, 1978), p. xxiii.
- 3 Edward M. Byrne, Military Law, 3rd ed. (Annapolis: Naval Institute Press, 1981), p. 6.
- 4 Geoffrey Best, Humanity in Warfare (New York: Columbia University Press, 1980), p. 23.
- 5 Richard A. Preston and Sydney F. Wise, Men in Arms, 4th ed. (New York: Holt, Rinehart, and Winston, 1979), pp. 110 and 133.
- 6 James Turner Johnson, Just War Tradition and the Restraint of War; A Moral and Historical Inquiry (Princeton: Princeton University Press, 1981), p. 60; Frits Kalshoven, The Law of Warfare (Geneva: Henry Dunant Institute, 1973), p. 27.
- 7 Leon Friedman, ed., The Law of Land Warfare; A Documentary History (New York: Random House, 1972), vols. I and II, p. 309; U.S. Department of the Army Pamphlet 27-161-2, International Law (Washington: Headquarters, Department of the Army, 1962), p. 15 (hereafter cited as DA PAM 27-161-2).
- 8 Preston and Wise Men in Arms.

9

Byrne Military Law, pp. 1 and 5.

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Robert C. Oaks, et. al., Evaluation of the Code of Conduct for Members of the Armed Forces of the United States, Advanced Research Program (Newport, RI: The United States Naval War College, 1974), p. 76; Byrne Military Law, p. 10; Not surprisingly, the roots of the Uniform Code of Military Justice (UCMJ) are intertwined with the developments of war in Europe. Just as England contributed to much of the development of international law of war, the British Articles of War (1765) were the model for the American Army's code of law. The Continental Congress revised and approved the American Articles of War in 1776. Through a series of revisions, they remained in effect through World War I. The impact of global war, with hundreds of thousands of Americans under arms, brought significant revision to the Articles in 1920. This version remained in effect through World War II. United States Naval law took different routes, but with the advent of a unified Department of Defense, action was taken to establish one military justice law for all the services. To accomplish this, in April 1950, Congress passed the Uniform Code of Military Justice based largely on the Army's Articles of War. See Byrne Military Law, pp. 8-9. For an understanding of the Articles of War circa 1940s, see Lee S. Tillotson's The Articles of War Annotated (Harrisburg, PA: The Military Publishing Company, 1949).

11

DA Pam 27-161-2, p. 195.

12

Ibid.

13

Jeremy Isaacs, producer, The World at War, 26 vol. video series (New York: Thames Television, 1982), vol. 23: Pacific - The Island to Island War, by David Wheeler.

14

Frederick R. Struckmeyer, "The 'Just War' and the Right of Self-Defense," in War, Morality, and the Military Profession, ed. Malham M. Wakin (Boulder, CO: Westview Press, 1979), p. 277.

15

Controversy over the legal status of the USS Pueblo surrender continues today. One American sailor was killed and others were wounded as North Korean warships attacked and captured the intelligence vessel. Despite this and the fact the crew was brutally treated during eleven months of captivity, the survivors have been denied the prisoner of war medal established by Congress in 1985. The Department of Defense has cited as reason for the denial the fact that the ship surrendered without a fight. See "POW Medal eludes crew of Pueblo," Kansas City Times, 21 February 1989, vol. 121, nr. 143, p. 1. For a detailed account of the Pueblo Affair, see Commander Lloyd Bucher's Bucher: My Story (Garden City, NJ: Doubleday Press, 1970).

16

Struckmeyer "The 'Just War'," p. 277.

17

Oaks, et. al., p. 127.

18

Samuel P. Huntington The Soldier and the State, p. 57; Kalshoven The Law of Warfare, p. 27.

19

U.S. Department of the Army Field Manual 27-10, The Law of Land Warfare (Washington D.C.: Headquarters, Department of the Army, 1956), p. 169 (hereafter cited as FM 27-10).

20

Ibid.

21

Dietrich Schindler and Jiri Toman, eds., The Laws of Armed Conflicts; A Collection of Conventions, Resolutions, and Other Documents (Geneva: Henry Dunant Institute, 1981), p. 80. See also United States Department of The Army Pamphlets 27-1-1, Protocols to the Geneva Conventions of 12 August, 1949 (September 1979) and 27-1, Treaties Governing Land Warfare (December 1956); also United States Department of the Army Circular 27-10-1, Selected Problems in the Law of War (June 1979).

22 DA Pam 27-161-2.

23 Ibid.

24 FM 27-10, p. 170.

25 Ibid., p. 172.

26 Ibid., p. 170.

27 President Dwight D. Eisenhower, Code of Conduct for Members of the Armed Forces of the United States, Executive Order Nr. 10631, 20 August 1955, 20 F.R. 6057. See also U.S. Department of Defense, Assistant Secretary of Defense for Manpower and Reserve Affairs, Report of Defense Review Committee for the Code of Conduct, 1976, John F. Ahearne, chairman, p. 1, (hereafter cited as DoD Review Committee.). President Jimmy Carter amended Article V of the Code of Conduct on 3 November 1977 by Executive Order Nr. 12017 (see Appendix A).

28 In August 1988, the Department of Defense released the latest version of the Code of Conduct. The revision was made to render the Code gender free and was not designed to alter the meaning of the text (see Appendix A). The previous version with an explanation of each article can be found in U.S. Department of the Army Field Manual 21-78, Prisoner of War Resistance, (December 1981). See also Department of the Army Regulation 350-30, Code of Conduct/Survival, Evasion, Resistance, and Escape (SERE) Training, 10 December 1985.

29 Michael Walzer, Obligations; Essays on Disobedience, War, and Citizenship (Cambridge, MA: Harvard University Press, 1970), p. 150.

30 Oaks, et. al., p. 131.

- 31 DoD Review Committee, p. 4.
- 32 Ibid., p. 23.
- 33 Ibid.
- 34 Ibid., p. I-20.
- 35 Ibid., p. 18.
- 36 Oaks, et. al., p. 76; For full text of articles, elements of proof, and specifications, see Manual for Courts-Martial, United States, 1984 (Washington D.C.: U.S. Government Printing Office, 1984).
- 37 Manual for Courts-Martial, p. IV-10.
- 38 Ibid., p. IV-39.
- 39 Ibid., p. IV-41.
- 40 Ibid., p. IV-43.
- 41 FM 27-10, p. 170.
- 42 DoD Review Committee, p. I-20.
- 43 Keijzer Military Obedience, p. 114.
- 44 Ibid.

45

Manual for Courts-Martial, pp. IV-27.

46

Ibid., pp. IV-27 and IV-22; The text of the three articles reads as follows: Art 90(2) Assaulting or willfully disobeying superior commissioned officer: Any person subject to [the UCMJ] who willfully disobeys a lawful command of his superior commissioned officer, shall be punished if... committed in time of war, by death or other punishment as a court-martial may direct....; Art 91(2) Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer: Any warrant officer or enlisted member who willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer, shall be punished as a court-martial may direct; Art. 92 Failure to obey order or regulation: Any person subject to [the UCMJ] who (1) violates or fails to obey any lawful general order or regulation, (2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order, or (3) is derelict in the performance of his duties, shall be punished as a court-martial may direct. From Manual for Courts-Martial, 1984.

47

Keijzer Military Obedience, p. 93.

48

Ibid., p. xxvii.

49

Ibid., p. 230.

50

Jerome Hall, General Principles of Criminal Law (Indianapolis: Bobbs-Merrill, 1960), p. 425.

51

Keijzer Military Obedience, p. 233.

52

Ibid., p. 226.

53

Ibid., p. 249.

54 Ibid., p. 241.

CHAPTER 3

ETHICAL AND MORAL OBLIGATIONS

Introduction

On 19 February 1945, three United States Marine Corps divisions stormed ashore a small volcanic island in the Pacific. For five weeks, the veteran leathernecks fought a bloody battle to dislodge a smaller, well entrenched, Japanese force. For the sons of Nippon, it was almost literally a fight to the last man. Of 21,000 defenders, only one percent, approximately 200 Japanese soldiers, were taken prisoner. The remainder refused to surrender despite their impossible situation; instead they fought to their deaths.¹

The American Marines learned many bitter lessons on this island called Iwo Jima. Enemy soldiers would frequently feign surrender only to explode hidden grenades killing themselves and their captors. Through their grim determination, the Japanese garrison inflicted tremendous casualties on the Americans - 2,600 Marines killed or wounded. The United States advance across the Pacific was

slowed and Americans were forced to reexamine their
concept of surrender and the law of land warfare.²

Military regulations or penal codes cannot fully explain the Japanese warriors' unanimous choice of shunning surrender and accepting death. One must look beyond legal precepts to societal norms and personal values. Law, ethics, and morality each have something to say about a person's action in the dilemma set forth in this paper. As shown in the previous chapter, the law weighs in favor of obeying a surrender order. In this chapter, ethical and moral obligations will be similarly examined to provide American service members with other criteria on which to base the choice between obeying or disobeying an order to surrender.

The chapter begins with definitions of ethics and morality along with an examination of the differences and conflicts between law, ethics, and morals. Next, utilitarianism is explored, particularly in regard to surrender. There is also a discussion of fighting to the death rather than surrendering to the enemy. Finally, this chapter addresses the clash of two valued military ethical precepts: the imperative to obey orders and the

duty to fight the enemy as long as the will and means to do so exist.

Ethics, Morality, and the Law

In the United States, a legal system evolved (mostly written) that establishes a set of standards to govern human interaction. In a democratic society, these laws largely reflect the desires of the general population. However, law, ethics, and morality are not coextensive. Each provides a guide for individual behavior and often the three overlap. In other instances, the three diverge, creating dilemmas that defy easy
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answers.

For the purpose of this paper, an ethic is defined as a body of principles that establishes a standard of behavior based on a group or culture's concept of right or wrong. Most professions, such as the medical, legal, and military, have developed standards which apply to their members. Ethical behavior is therefore action in accordance with the accepted principles which govern the
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conduct of that group.

However, to fully examine the central question of this paper, it is important to look beyond what society deems legal and what the military profession calls right or wrong. Each individual in society has a sense of right or wrong, of goodness or badness, arising from conscience. This constitutes a person's moral values. Individual judgments of morality are not fully bound by the ethical structure of a group. In short, moral pertains to personal behavior and judgment. Ethical pertains to the practices of the profession, with more objectively defined, but essentially idealistic standards of right or wrong.⁵

Laws, particularly military laws, are sometime concerned with matters that have little to do with ethics or morality. For instance, speaking one's mind to a superior may be morally correct and, in some cases, an ethical imperative. However, under certain conditions, this behavior may be in violation of the UCMJ regarding disrespect to superior officers.

Conversely, ethical standards often apply to personal and professional interactions that the law does not address. A soldier may half-heartedly fulfill orders

and thus avoid punishment. But a lackluster performance of duty may harm service interests and violate ethical norms. Similarly, an officer may face thousands of moral decisions requiring judgments of right and wrong that are not matters of the law. Nations create laws for the sake of order, and the military creates laws to ensure discipline necessary for victory in battle. While this serves an essential purpose in society and within the military, legality is an insufficient test of the rightness or wrongness of an act. The law provides one set of criteria to steer human conduct while ethics and morality provide separate and often distinct criteria.⁶

One can think of dozens of examples when the law, ethical standards, and moral beliefs conflict as to what may be right or wrong. Ordering soldiers to surrender is certainly such a case. Therefore, the decision to obey an order to surrender must be analyzed and tested on its moral and ethical merit as well as to its legality. While the law may support the commander's order to surrender, the military ethic may or may not be in agreement. But military ethics embody a large institution. It is still the individual soldier who, under extreme pressure, makes decisions concerning life and death, obedience and

surrender. In the end, a judgment of what is morally⁷ correct must be made by each soldier.

Surrendering to the Enemy: Moral and Ethical Issues

There are few examples in the United States armed forces where one can find written formal precepts that frame the American military ethic. In most cases, each service develops its own ethical standards from unwritten customs and historical examples. One exception is the American military's Code of Conduct. The framers of the code designed it, not as a legal document, but as a "standard of behavior" for members of the armed forces. Thus, the Code provides an ethical guide concerning surrender and captivity by the enemy (as detailed in Chapter Two of this paper, and in Appendix B). The Code does provide for surrender under certain extreme conditions. In the words of the Department of Defense review committee, "the Code was never intended to exhort suicidal resistance as a means of avoiding capture or⁸ surrender."

If escape and evasion appear impossible and the means to resist the encircling enemy are exhausted, a

capitulation agreement would not violate the ethical standards of the United States Military. Additional evidence of this lies in Articles III through V of the Code of Conduct which address behavior as a prisoner of war. If the Code intended to prohibit surrender totally, the provisions for prisoners of war would be unnecessary. Again citing the findings of the Defense Department Committee, "capture does not constitute a dishonorable act if all reasonable means of avoiding it have been exhausted."⁹

The commander who can truthfully assess what means are left to resist the enemy and establishes that further fighting would lead only to the death of his troops without significant loss to the enemy or furtherance of his mission, may justify on moral grounds the capitulation of his unit. However, as in all matters of war, a commander's judgment may be questioned. One officer commanding a unit surrounded by the enemy may feel the means to resist are exhausted when all ammunition is expended. In his judgment, a surrender at that point would prevent a senseless massacre of defenseless Americans. By his standards the choice to surrender is morally correct.

In the same situation, however, another commander may feel morally obligated to mount a bayonet charge after using up all ammunition. In his judgment, the means to resist existed and the unit could still inflict damage on the enemy. Some might argue that the military ethic as captured by the phrase "duty, honor, country," was better served by the second commander. Indeed, a bayonet charge may do more than preserve a commander's honor. One need only look to the 20th Maine and Chamberlain's bayonet charge that successfully held the Union flank at Gettysburg. By most accounts, that bayonet charge proved to be a military necessity.

Military law, on the other hand, may not reinforce the military ethic in defining what constitutes the means to resist. A court-martial panel could conceivably find that upon running out of ammunition the commander who surrendered fulfilled his obligation to resist the enemy and that there was no violation of the UCMJ. Thus, the commander's moral judgment may have "fallen short" of the military ethic without having violated military law.

Contemporary military philosopher, R. M. Hare¹⁰ stated, "moral thinking must be a matter of judgment."

When morals, ethics, and the law collide, people use facts and logic to judge what constitutes the most suitable course of action. John Stuart Mill (1806-73) characterized the best or most moral course of action as the one with the most "utility."¹¹ Mill's philosophy required action that maximized good and minimized the bad in a given situation. This simple concept forms the basis for utilitarianism, one of today's widely accepted ethical theories. Under this concept, the worth of an action is gauged by its ends and consequences.¹²

There are other theories that can be used to judge behavior, but for the average soldier utility is a valid concept that be grasped and applied to a surrender situation. The principle of utility holds that in all circumstances the moral end to be sought is the greatest possible balance of good over evil.¹³ This implies that both the law and professional ethics are secondary to doing what produces the greater good. Professional moralists Tom Beauchamp and James Childress summarized utility as a thing where "duty and right conduct are subordinated to what is good."¹⁴

In most situations, the path leading to the greatest good is fairly obvious. However, complex dilemmas of the kind encountered on the battlefield require reflective moral thinking. Seeking utility is more a matter of judgment than of calculating and weighing individual facts. Legal codes specified in the UCMJ, and the ethical standards of the military profession should certainly be part of a soldier's "calculations." These legal and ethical codes were intended to serve as guides¹⁵ for soldiers seeking to do "the right thing."

However, when the law and ethical precepts do not agree or do not provide sufficient guidance, one is left to his own moral reasoning and judgment. More importantly, if an individual's moral standards point in one direction while the law and/or ethics point in another, a determination of the greatest good may serve as a guide.

For a commander facing the question of surrender, there may be more utility in fighting to the last man. In another situation, the same commander may determine that the greatest good lies in surrendering. By delineating what the law dictates, what ethical standards demand, and

what appears to be morally correct, a commander can at least choose a course of action with the satisfaction of knowing that he is (or isn't) breaking the law, he is (or isn't) fulfilling ethical standards, and is (or isn't) abiding by his own moral values. If the decision is approached strictly from a utilitarian philosophy, legal and ethical standards will serve only as guides. A final decision will be a moral one based on maximizing the good in a bad situation.

Ethics, Morality and the Fight to the Death

Having presented evidence that suggests American commanders may find circumstances where it is legal, ethical, and moral to surrender, it is logical to ask if it is ever correct to resist surrender and order men to fight to their death. This leads to a related question of whether subordinates are correct in refusing a surrender order because they perceive their duty as one of fighting to the death rather than capitulate.

In western societies, the sacredness of human life is taken for granted. Yet, people have risked their lives for family or squad mates, martyred themselves for religious or political convictions, and in the case of

soldiers, sacrificed their lives for those of complete strangers. As Michael Walzer points out in his book, Obligations, it has never been difficult to teach men to "die well, before their time," if there is an appropriate purpose. In Walzer's estimation, the most successful claimant of human life has been and continues to be the state.¹⁶

Obviously, the nation asserts a political obligation on members of the armed forces to risk their lives for the state if the state's foundation is threatened. In fact, in virtually all societies, limited risks for the purpose of securing the state and social life are expected of all citizens. The question is one of degree. It is generally accepted that soldiers, sailors, and airmen will risk their lives for the state. But what if it is virtually certain that unless a capitulation is agreed to, death at the hands of the enemy is all but assured? Walzer frames the question this way: "Can an individual citizen be obligated to make the safety of the state the motive of his voluntary death?"¹⁷

Thomas Hobbes (1588-1679) would answer that the basic rights of an individual cannot be subsumed by the

state. In his seminal philosophical text, Leviathan, he argues that citizens are obligated to defend society only as long as they are able. According to Hobbes, a fight to the death would be senseless because the ultimate purpose of the state is to protect its citizens. Demanding that a citizen die for the state is akin to ordering someone to die so he may protect himself; it is an oxymoron. Thus Hobbes contended that once the enemy gains victory, "every man [is] at liberty to protect himself," since the state can no longer do so. There is no higher value than the individual's life, to include the common good of the state.¹⁸

Many well known political philosophers are at odds with Hobbes. Rousseau, Hegel, Spinoza, Montesquieu, and others believe that a good society, where citizens view themselves as moral members of a moral body, provides its members with a motive for obeying.¹⁹ Georg W. R. Hegel (1770-1831) argued that men die willingly for the sake of the state, not because it protects their lives, but because it is their common life. So long as the state survives, something of the citizen lives on.²⁰

Jean Jacques Rousseau's (1712-78) sentiments were similar to Hegel's in justifying the sacrifice of human life to preserve the state. "If the citizen is alone, he is nothing; if he has no more country, he has no existence; and if he is not dead, he is worse than dead." In fact, Rousseau would probably define a good society as one worth dying for.²¹ The point is made that there are virtues (i.e., the state) that exceed the value of one individual's life. However, the question to be asked is whether sacrificing one's life or the lives of the soldiers in one's command will further the cause or the security of the nation.

The French philosopher, Montesquieu (1689-1755) wrote that "to be a good man, a good intention is necessary, and we should love our country not so much on our own account, as out of regard to the community."²² If one sacrifices his own life or that of his soldiers, what is the intention? If a commander refuses to surrender only to preserve his personal honor, the "good intention" is absent (i.e., protecting the state), and there appears to be no moral basis for justifying the annihilation of his command.

Likewise, individuals who disobey an order to surrender out of a sense of honor or out of the desire to gain personal glory, have placed their personal concern above those of the state. Those who accept death in the hope of gaining some sort of immortality do not die on behalf of the state but for themselves. To quote Walzer, "the state promises glory to its heroes whenever it can, but it must insist that citizens are equally obligated to die, if commanded to do so, in ignominious circumstances or... in total obscurity."²³

Paul Holbach, political philosopher and contemporary of Montesquieu and Rousseau, noted that to overcome the "instinct for self-preservation," the state must persuade its soldiers to risk their lives by "feeding the ardor" of its young men and promising glory to its heroes. But it cannot with justice force soldiers into battle. In short, the cause of glory generates no²⁴ obligation.

For the commander contemplating surrender, more so than the individual soldier, the motive or "good intention" of fighting to the death is paramount in making a moral choice. Contemporary philosopher Frederick

Struckmeyer writes "while I clearly have the prerogative of taking my own life, or of allowing someone else to take it, I do not have the prerogative where the lives of others are concerned."²⁵

In assessing military situations where soldiers refuse to surrender and go down fighting, Struckmeyer assumes that soldiers make the choice as individuals. According to him, the refusal to surrender is usually a utilitarian decision. The greater good appears to be "to take as many of the enemy with you as you can." The additional time it buys for friendly forces and the loss of enemy personnel may, in the long run, save friendly lives and thus shorten the war.²⁶

But Struckmeyer also warns that one must examine the motives for refusing to surrender carefully. He notes that:

...sometimes the insistence that the soldiers go down fighting is motivated more by pure vindictiveness than by utilitarian or strategic considerations. We are to kill ... as many of the enemy as we can because he is the enemy and thus wicked, and because he is determined to kill us. We may therefore feel, quite self-righteously, that the enemy deserves to be killed.²⁷

Struckmeyer concludes that every nation has a moral

obligation to defend itself. But this does not extend to punishing the sins or "mistaken" ideologies of another nation. Fighting to the death to preserve one's nation and fighting to kill as many of the enemy as possible may
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be two different things.

Surrender as well as the refusal to surrender in the face of near certain death, requires a moral decision. While it may appear on the surface that "going down with the ship" or fighting to the last man is the higher moral choice, the motives behind the decision must be examined. Just as importantly, the question of utility must be explored. Does the loss of life further the cause of the state? Or does the sacrifice of one or many soldiers rob the state of her precious sons, who, if surrendered, may return from POW camps after the war to again be productive citizens

Disobedience of a Surrender Order:

Moral and Ethical Considerations

In his book, The Soldier and the State, Samuel Huntington makes the following statement: "The supreme
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military virtue is obedience." Any soldier, particularly the professional officer or noncommissioned officer, who

believes that there is justification to disobey an order is expected to approach such a decision with the utmost gravity and reflection. By definition, soldiers, sailors, airmen, and marines, are service members: they serve the state. An act of disobedience, theoretically harms the state and threatens the well-being of the people the service member is sworn to protect.

In Huntington's view, the security of the state depends on the maintenance of strong military forces; forces under civilian control, with an ethic that is "pessimistic, collectivist, historically inclined, power oriented... [and] exalts obedience as the highest virtue of military men."³⁰ Nevertheless, Huntington recognizes that there are limits to obedience for the professional soldier. When basic morality conflicts with military obedience, Huntington declares that soldiers " ... are free individuals morally responsible for their actions."³¹

As noted earlier, surrender is not only a matter of law or ethics, it is a question of moral principle. Surrender is anathema to the bedrock military virtue of fighting and defeating the enemy. Soldiers who have seen their comrades killed by enemy fire may find it morally

repulsive to surrender to that same enemy. Others may feel it is worth the risk to attempt slipping through enemy lines to fight another day. If the enemy has earned a reputation for treating their prisoners brutally, soldiers may feel a surrender order equates to a death sentence.

In the final analysis, complex dilemmas require each soldier to search for the highest moral value or greatest utility, regardless of law or a professional ethic. Unfortunately, as Walzer points out, men do not agree as to the nature of the highest good. It should not be surprising then, that any act of disobedience in the military is likely to arouse condemnation on the part of those who hold a different moral standard. While this may be in the form of censure from one's peers, it does not hurt to stress again that refusal to carry out a lawful order is "prima facie" an illegal act. Even if a soldier carries the conviction of his moral principles, refusal to obey engages the military's legal conflict resolution structure - the court-martial.

Unlike almost any other walk of life where human failings, moral or legal, are rarely lethal, military

judgments involve the potential loss of life. In the case of the surrender of a large unit, the security of the nation may even suffer serious harm. When a soldier is ordered to surrender, the stakes are too high to obey purely to avoid court-martial.

With that caveat in mind, some of the basic considerations that are likely to enter into a surrender decision will be explored, first by considering some reasons to disobey, and then explaining some reasons to obey. This includes the possible consequences of violating a negotiated agreement between belligerents, the impact disobedience may have on morale and discipline, and the basic right each individual has to decide his own fate.³³

Before examining the factors that may influence soldiers to obey or disobey a surrender order, quick mention of the phrase "it depends on the situation" is in order. Colonel Malham M. Wakin, head of the Department of Philosophy and Fine Arts at the United States Air Force Academy, and respected author in the field of military ethics, makes the following observation:

The role that circumstances or "situations" play is an important one when

obligations conflict... [If] one is torn between obedience to an order and fulfillment of another moral obligation, he or she must judge which is the higher obligation in those circumstances.³⁴

While it is impossible to hypothesize all the possible surrender situations soldiers may face in the future, some constants are obvious (and addressed below). It is up to each soldier to find the delicate balance between military duty and moral principle.

Reasons to Disobey

Talking to American officers today in a peacetime environment, it is difficult to find those who believe surrender is acceptable in even the most extreme situations. True to the motto, "duty, honor, country," professional soldiers express ideals of loyalty that transcend concern for self. In the words of George C. Marshall, an officer's "ultimate commanding loyalty at all times is to his country, and not to his service or his superior."³⁵

It is understandable that an American soldier could use this logic to justify disobeying a superior's lawful order to surrender. If the subordinate felt that his particular situation was such that he could continue

to fight the enemy or escape and evade in order to fight another day, the cause of the United States would demand top consideration. Such a situation could arise when a large unit, spread over great distances capitulates to the enemy. Smaller sub units may retain the wherewithal to resist or evade the encircling enemy. As Walzer points out:

Sometimes it is obedience to the state, when one has a duty to disobey, that must be justified. First explanations are owed to one's brethren, colleagues, or comrades. Their usual form is an argument that ... public health or some such necessity of the common life ... is being threatened ...³⁶

Disobeying a surrender order based on the higher calling of the nation may be one possible scenario. On the opposite extreme, small units may refuse to honor the capitulation of their higher headquarters based on loyalty to the small group. Elmar Dinter made a study of how soldiers react under the pressures of war. Of the many conclusions in his book, Hero or Coward, Dinter notes that "a soldier is not easily separated from his friends and comrades."³⁷ If the members of a small unit perceive the order to surrender as incorrect, loyalty to comrades who have shared the deprivations of war may be stronger than loyalty to a higher level of command. This may be

especially true if a combat unit believes that a commander far to the rear surrendered without a true appreciation for the situation at the front.

It could also be argued that surrender for Americans has become more unacceptable based on the POW experience of the recent past. While the lot of POW's has never been easy (one thinks of the American Civil War experience), many veterans are alive today who experienced the brutality of the Japanese in the 1940's, the Koreans and Chinese in the 1950's, and the Vietnamese in the 1960's and 70's. Younger Americans may equate the trauma of the hostages in Iran (1980) and Lebanon today to the POW experience.

Japanese soldiers in World War II, who did not tolerate surrender in their own ranks, became infamous for mistreatment of American and Allied captives. In Korea, only 4,428 of 7,190 captured Americans returned home.³⁸ The remainder died of disease, abuse, mistreatment, and some were murdered. Torture and years of solitary confinement faced American POWs in the Hanoi Hilton. In many Third World countries today, Americans are targets of

terrorists who have held innocent citizens for years without promise of release.

Faced with these grim facts, today's Americans may find little incentive to obey a surrender order. Again citing Dinter's study, more soldiers expressed a greater fear of mutilation or torture than of death. If captivity holds the real possibility of barbarous treatment, it would seem reasonable to expect soldiers to risk escape and evasion or to continue fighting by whatever means possible. Likewise, if soldiers believe they are likely to die while in captivity, it may be preferable to "go
³⁹
down fighting."

This leads to the question of fear and how much a leader can expect from any individual in the stress of combat. William N. Miller, a psychologist at the Center for Prisoner of War Studies in San Diego, California, describes the shock of capture as "... about the most overwhelming, stupendous experience that can happen. No one who has not been totally at the mercy of other human
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beings can understand it." At the same time, soldiers who receive a surrender order and contemplate captivity, do so within a military ethic that Wakin describes as

"fundamentally anti-individualistic." Obedience is
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expected.

This leads back to the great philosophers and
their views of morality. Hobbes made it clear that in
life threatening situations, which surrender may well be,
"a man is free to do whatever he is driven to do by his
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fear." Quoting from Leviathan:

When armies fight, there is on one side,
or both, a running away, yet when they do it,
not out of treachery, but fear, they are not
esteemed to do it unjustly, but dishonorably." 43

Walzer characterizes Hobbes "special allowance"
for fear as a justification for allowing soldiers to
surrender rather than be killed. However, as history has
shown, surrender may bring more promise of death or
torture than continued resistance. Under these
circumstances, Hobbes "special allowance" would seem to
apply to surrender. Thus disobedience would have some
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moral basis.

Primary focus in this paper has been given to the
utilitarian philosophy which recognizes the sacrifice of
some individuals for the greater good of all. However, it
should be mentioned that other moral theories do not share

this view. Contemporary philosophers John Rawles, Alan Gerwirth, and Henry Shue, among others, express the conviction that each person can claim a minimum amount of freedom and well-being and no person can override that claim in order that others have more than this minimum. Many moralists echo the idea that the interests of the individual should never be sacrificed for the benefit of all.⁴⁵

It is hard to imagine a soldier holding fast to the latter view of life. However, the point is that surrender and resulting captivity do not necessarily provide soldiers an escape from death, and even if it did, the ordeal and length of captivity may be equally dreaded. As a result, soldiers may disobey the order to surrender out of fear for their well-being. When viewed from the military ethic of obedience and sacrifice, the refusal to surrender may not appear heroic, but rather selfish or even cowardly.⁴⁶ Regardless of the military's position, soldiers who choose disobedience to captivity could claim a moral basis for their decision if they felt captivity would bring torture or death.

A final reason for resisting is worth mention. That is the military ethic itself. The ethic is designed primarily to mold a fighting force that will successfully serve the state. In so doing, this ethic serves a second purpose. The lofty ideals of the American military ethic help to sustain those who must face the horrors of combat. If a soldier places the ethic aside, he weakens a well established moral support base. Retired Admiral James B. Stockdale, who was held in a North Vietnamese POW camp for seven years, makes an eloquent plea for clinging to the military ethic when fear or personal well-being seem to demand action to the contrary. In Stockdale's words:

... a properly educated leader, especially when harassed and under pressure, will know from his study of history and the classics that circumstances very much like those he is encountering have occurred from time to time on this earth since the beginning of history. He will avoid the self-indulgent error of seeing in a predicament so unprecedented, so unique, as to justify his making an exception to law, custom, or morality in favor of himself. The making of such exceptions has been the theme of public life throughout much of our lifetime. For 20 years, we've been surrounded by gamesmen unable to cope with the wisdom of the ages. They make exceptions to law and custom in favor of themselves because they choose to view ordinary dilemmas as unprecedented crisis. ⁴⁷

Admiral Stockdale tells of his motto while a POW at the Hanoi Hilton: "No deals." To survive, he and his fellow prisoners kept faith with their common traditions, rituals, and shared dreams. He states, "leaders under pressure must keep themselves absolutely clean morally ... They must ... be able to implant high mindedness in their followers, have competence beyond status, and must have earned their follower's respect by demonstrating integrity."⁴⁸

A parallel can be found in the situation where a soldier is ordered to surrender but feels he still has the means to resist. The custom and tradition Stockdale refers to are clearly the American military ethic. The ethic's overriding directive, to quote the highly regarded Morris Janowitz, is that "the professional soldier always fights. To refuse combat ... is to commit the most serious offense against one's military honor and to break faith with one's peers."⁴⁹

Although the law calls for obedience, the military ethic's strongest claim is to resist the enemy as long as there is a means to do so. To borrow Stockdale's phrase, make no deals with the enemy! By keeping faith with the

military ethic, notwithstanding the weight of law (which calls for obedience) a soldier maintains his integrity. It was integrity that sustained Admiral Stockdale for years of torture and confinement. It is integrity that may best sustain soldiers who, surrounded by the enemy and with their leadership surrendering, seek the strength to survive a difficult situation.

Reasons to Obey

There is no tally sheet to show which argument holds sway: obedience or disobedience. Certainly for every ethical reason given to disobey an order to surrender, an equally cogent reason can be found to obey such an order. One of the most convincing reasons to follow orders during capitulation rests with the logic behind the Law of Land Warfare. While the roots of these international agreements go back to the 1800's, the highly respected contemporary scholar, Geoffrey Best, feels the need to respect and follow international law is valid today.

Best hints at a moral imperative to honor commitments made to the enemy. In his words "... however intense the temptation to hate your enemy, to the point of

non-communication with him, and despite the delicacy of distinguishing between 'ruses de guerre' and perfidy, some fundamental minimum of mutual confidence must be retained."⁵⁰

The importance of this concept and its moral implications are detailed by two American philosophy professors, Nicholas Fotion and Gerald Elfstrom. In their book, Military Ethics, the authors describe surrender as a unilateral act that puts the moral burden on those taking prisoners. It is widely accepted that captors cannot morally, ethically, or legally refuse to accept a legitimate offer of surrender. At the same time, surrender is a convention with stated rules and obligations. If certain rules are violated by those submitting to the enemy, the act of surrender is void. As noted in Chapter Two of this paper, the same holds true for a capitulation agreement. If the rules are not adhered to, the agreement does not have to be accepted by the victors.⁵¹

When a large unit commander determines that the unit as a whole has lost the means to resist and surrender is in order, he probably recognizes that isolated units or

individual soldiers may still have the ability and the will to continue fighting. However, if the commander agrees to surrender all of his command in the capitulation, a handful of soldiers who refuse to surrender may threaten to void the agreement. As a result, the majority of soldiers who have little or no means left to defend themselves may be placed at risk.

Fotion and Elfstrom point out that the inability of an army to guarantee that capitulation agreements will be honored may have difficulty negotiating a surrender. The behavior of those who disobey a surrender order undermines the surrender convention "making it far more difficult for those who, at other times and at other places, have every reason for surrendering to do so."⁵²

Fotion and Elfstrom go as far as to suggest that the enemy commander who refuses to accept a surrender based on bad faith agreements of the past, would have a moral basis for his decision.⁵³ It should be clear that the utility or greatest good to be gained by disobeying a surrender order must consider those comrades who do choose to surrender, as well as those who may need to in the future. This is all the more acute if the capturing enemy

is immoral and threatens to kill those held as POWs. Furthermore, the violation of one international agreement invites "exceptions" to be taken in other areas, thus weakening the force of the Law of Land Warfare. The short term gain of disobeying a surrender order, which in turn violates international law, may not outweigh the long term consequences of scrupulously honoring agreements between belligerents.

Another argument in favor of obeying a surrender order is best captured in a piece of fiction, The Caine Mutiny, by Herman Wouk. While people debate which characters are the heroes or villains in this popular 1951 novel, some maintain the real hero is not an individual but the United States Navy. A court-martial vindicates a junior officer who wrested control of a ship from a captain of questionable competence. Some readers feel the junior officers of the U.S.S. Caine should have served in silence under the infamous Captain Queeg. Queeg's flaws and weaknesses along with his strengths represent "the system." Many believe that disruption of the system does more harm than the suffering of individual injustice.

Everyone agrees that controlling behavior of soldiers under combat conditions is tremendously difficult. Discipline and obedience are the fragile tools required to maintain control. Discipline and obedience are put in jeopardy when exceptions to orders are made. As the saying goes, one exception inevitably leads to another. As authority crumbles, soldiers lose faith with superiors who may have issued a surrender order. At the same time, tremendous friction could develop between those soldiers who followed orders to surrender, and those who did not.

In measuring utility, some might argue that this is a moot point since a surrendered unit is no longer part of the fighting army. Walzer makes this point by stating that it is not morally necessary for a man to reflect upon the theoretical possibility that his action might be "universalized" with all men breaking the law to follow suit. If a man acts on moral principle, he cannot be responsible if others choose to imitate him.

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But the Army is a "closed system" perhaps more so in a theater of war than in a peacetime environment. Rumors spread quickly and it is not an exaggerated

hypothetical exercise to imagine the impact acts of disobedience would have on other units and soldiers. In searching for the greatest good, these are matters of utility that should be considered.

Conclusions: Ethics, Morality
and Surrender

Difficult wartime decisions often arise when the law, the military ethic, and personal moral values conflict. It is clear that an order to surrender falls within the bounds of ethically acceptable behavior for the United States Military when certain conditions are met. What is not clear is at what point a commander can be morally satisfied that all means to resist have been exhausted.

For those receiving a surrender order, equally difficult questions must be asked. Ethically and morally, the United States does not expect its service members to fight to the death, except in times of exceptional necessity. But soldiers who possess the physical means and mental tenacity to continue resisting the enemy may find cause to challenge the order to surrender. Soldiers seeking to maximize the good and minimize the negative

effect of their decision will find no easy formula. This paper cannot supply a ready answer, nor can any philosopher or field manual. The final decision remains one of individual reasoning and personal moral judgment.

Perhaps this thought is best captured in the final paragraph of Michael O. Wheeler's essay, "Loyalty, Honor, and the Modern Military."

What a man ought to do, when he is confronted with a serious conflict that is fraught with responsibility, is this: to decide according to his best conscience; that is according to his own living sense of the relative height of the respective values, and to take upon himself the consequences, external as well as inward, ultimately the guilt involved in the violation of the one value. He ought to carry the guilt and in so doing become stronger, so that he can carry it with pride.⁵⁶

ENDNOTES

1 Allan R. Millett, and Peter Maslowski, For the Common Defense; A Military History of the United States of America, (New York, NY: The Free Press, 1984), p. 462.

2 Ibid.

3 John Hospers, Human Conduct; Problems of Ethics, shorter edition, (New York, NY: Harcourt Brace Jovanovich Inc., 1972), pp. 26-27.

4 The American Heritage Dictionary of the English Language (1970), s.v. "ethical."

5 Ibid., s.v. "moral."

6 Hospers Human Conduct, p. 26; For a deeper investigation into the difference between law, ethics, and morality, one might turn to Immanuel Kant (1724-1804). Kant suggested that ethical duties were carried out only from "pure" motives, based on personal moral values. On the other hand, legal duties were executed for any variety of empirical motives, such as fear of punishment or hope of reward. See The Metaphysical Elements of Justice, translated by J. Ladd (New York, NY: Bobbs-Merrill, 1965). See also Onora Nell's Acting on Principle; An Essay on Kantian Ethics (New York, NY: Columbia University Press, 1975), p. 45.

7 Nicholas Fotion, and Gerard I. Elfstrom, Guidelines for Peace and War (Boston, MA: Routledge, and Kegan Paul, 1986), p. 4.

8

DoD Review Committee, pp. 18, and 22; For a published bibliography on military ethics and the Code of Conduct, see Military Professional Ethics, Code of Conduct, and Military Academies' Honor Codes, Special Bibliography Series, Nr. 70 (Colorado Spring, CO: United States Air Force Academy, 1985); Another written source of the military ethic can be found in Field Manual 100-1, The Army, which provides a brief outline of values expected of soldiers in the United States Army.

9

DoD Review Committee, p. I-20; Oaks, et. al., p. 129.

10

R. M. Hare, quoted in Richard B. Brandt, A Theory of the Good and the Right (Oxford: Clarendon Press, 1979), p. 138.

11

John Stuart Mill, On Liberty, edited by Currin V. Shields (New York, NY: The Bobbs-Merrill Co., Inc., 1956), p. 14.

12

Tom L. Beauchamp and James F. Childress, Principles of Biomedical Ethics, 2nd ed. (New York, NY: Oxford University Press, 1983), p. 19.

13

William K. Frankena, Ethics, 2nd ed. (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1973), p. 34.

14

Beauchamp and Childress Biomedical Ethics, p. 19.

15

Fotion and Elfstrom Guidelines for Peace and War, p. 19.

16

Walzer Obligations, p. 77.

17

Ibid., pp. 77 and 80.

18 Robert Maynard Hutchins, gen. ed. Great Books of the Western World, 54 vols. (Chicago, IL: Encyclopaedia Britannica, Inc., 1952), vol. 23: Leviathan; Or, Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil, by Thomas Hobbes, Chapter 29, pp. 152-153.

19 Walzer Obligations, p. 92.

20 G.W.F. Hegel, quoted in Walzer Obligations, p. 92.

21 Jean Jacques Rousseau, quoted in Walzer Obligations, pp. 93, and 90.

22 Montesquieu, quoted in Walzer Obligations, p. 79.

23 Walzer Obligations, p. 79.

24 Ibid., p. 93.

25 Struckmeyer, "The 'Just War'," p. 278.

26 Ibid., p. 279.

27 Ibid.

28 Ibid.

29 Huntington, The Soldier and the State, p. 74.

30 Ibid., p. 79.

31 Ibid., p. 78. In this context, Huntington was

referring to orders that constitute violations of the Law of Land Warfare.

32

Walzer Obligations, p. 20; Richard A. Gabriel, "Legitimate Avenues of Military Protest in a Democratic Society," in Military Ethics; Reflections on Principles - The Profession of Arms, Military Leadership, Ethical Practices War and Morality, Educating the Citizen-Soldier, ed. by Col. Malham Wakin, Col. Kenneth Wenker, and Capt. James Kempf (Washington D.C.: National Defense University Press, 1987), p. 109 (The Wakin, Wenker, and Kempf book hereafter cited as Military Ethics).

33

Philip M. Flammer, "Conflicting Loyalties and the American Military Ethic," in Wakin, ed. War, Morality, and the Military Profession, p. 176.

34

Col. Malham M. Wakin, ed., "Ethics of Leadership," in War, Morality, and the Military Profession, p. 214.

35

Gen. George C. Marshall, quoted in "Duty, Honor, Country: Practice and Precept," in Wakin, ed. War, Morality, and the Military Profession, p. 145.

36

Walzer Obligations, pp. 16-17.

37

Elmar Dinter, Hero or Coward; Pressures Facing the Soldier in Battle (Totowa, NJ: Frank Cass and Co., 1985), p. 7.

38

Howard S. Levi, "Maltreatment of Prisoners of War in Vietnam," in Boston University Law Review (Summer, 1968), p. 327.

39

Dinter Hero or Coward, p. 25.

40

William N. Miller quoted in Lt. Col. Michael P.

Murray, USMC, Historical Analysis and Critical Appraisal of the Code of Conduct for Members of the Armed Forces of the United States, Naval War College Study (Newport, RI.: The United States Naval War College, 1973), p. 265.

41 Wakin "Ethics of Leadership," p. 200.

42 Thomas Hobbes cited in Walzer Obligations, p. 83.

43 Hobbes Leviathan, Chapter 21, p. 115.

44 Walzer Obligations, p. 83.

45 Fotion and Elfstrom Military Ethics, pp. 10-11.

46 To illustrate this point, the question is asked if it is morally or ethically correct to disobey the lawful order to surrender purely out of fear of captivity and not out of the intention to further resist the enemy. This subject is addressed again in the Philippine case study (Chapter 4). Upon the American defeat in the Philippines, many soldiers refused to obey the order to surrender. Some went on to fight the Japanese as guerrillas. However, others simply hid among friendly Filipinos. It is easy for many to point to the guerrilla fighters as courageous patriots. It is more difficult to characterize the actions of those who disobeyed the surrender order only to sit out the remainder of the war in a friendly native village.

47 Vice Adm. James B. Stockdale, "Machiavelli, Management, and Moral Leadership," in Military Ethics, edited by Wakin, Wenker, and Kempf, p.38.

48 Ibid., pp. 41 and 44.

49 Morris Janowitz quoted in Wakin "Ethics of Military Leadership," p. 202.

- 50 Best Humanity in Warfare, p. 124.
- 51 Fotion and Elfstrom Military Ethics, p. 139.
- 52 Ibid., p. 138.
- 53 Ibid., p. 147.
- 54 Huntington The Soldier and the State, p. 463.
- 55 Fotion and Elfstrom Military Ethics, p. 142;
Walzer Obligations, p. 17.
- 56 Michael O. Wheeler, "Loyalty, Honor, and the Modern
Military," in War, Morality, and the Military Profession,
edited by Wakin, p. 195.

CHAPTER 4

CASE STUDY: THE AMERICAN SURRENDER OF THE PHILIPPINES

Introduction

The American surrender of the Philippines to Japanese forces in 1942, marks one of the most disgraceful chapters in American history and at the same time, one of the American military's most gallant efforts. It was deplorable in that the demise of the archipelago was the result of years of American political and military neglect, tactical errors, and the surrender of whole units that were fully equipped, manned, and eager to fight. It was heroic in that the defenders of Bataan, Corregidor, and the lesser known islands fought against great odds and forestalled the Japanese Army for months. Many American and Filipino soldiers, riddled with disease and fighting with dilapidated World War One equipment, ignored their commander's orders to surrender and established guerrilla operations in jungle hideaways. For this reason, the Philippine Campaign of 1941-1942 is an excellent case study for examining the American experience of surrender

to include the obligations of the commanders and their subordinates.

This chapter begins with a factual review of the capitulation, to include command relationships critical to the understanding of the surrender decisions that were made. It is followed by an analysis of the surrender orders issued by the key commanders in the chain of command. Finally, the decisions regarding surrender are analyzed from the individual soldier's point of view. There were no ready answers for those trapped on the Philippine Islands in 1942. Both surrender and the decision to keep fighting brought untold hardship to all American soldiers and death to many.

Prelude to Surrender

In 1935, General Douglas MacArthur followed in his father's footsteps as he became military advisor to the Philippine Commonwealth. His task was to build an army and adequate defenses to coincide with the country's announced independence from the United States in 1946. This proved to be a ponderous undertaking. The archipelago comprises

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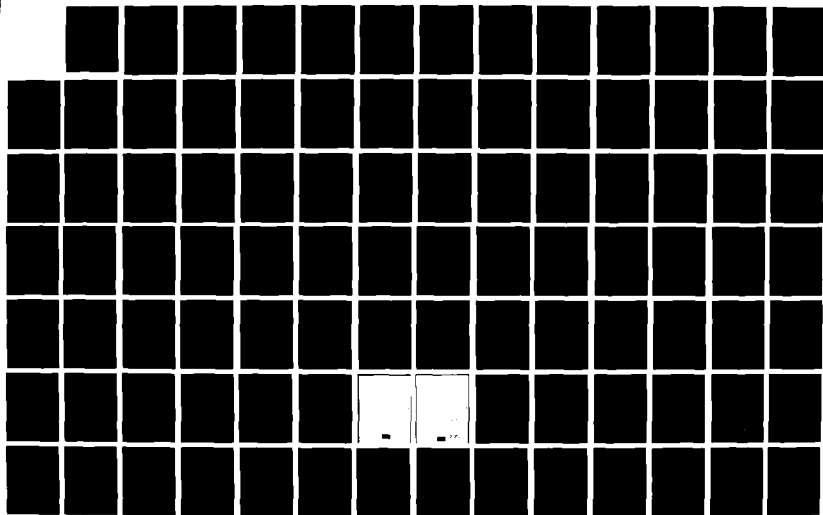
SURRENDER - A SOLDIER'S LEGAL ETHICAL AND MORAL
OBLIGATIONS; WITH PHILIPPINE CASE STUDY(U) ARMY COMMAND
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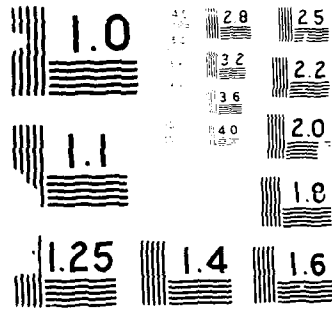
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some 7,000 islands, much of it remote jungle. More¹ importantly, U.S. aid was inadequate and slow in coming.

Much of the Philippine Army was led by an American cadre of officers and NCO's, with ground and air forces consolidated into the United States Army Forces Far East (USAFFE). As Japanese forces advanced across the Pacific during the summer of 1941, an alarmed Washington allocated increased funds for the Philippine defense and recalled General MacArthur to active duty on 26 July. MacArthur brought new vigor and optimism to Filipino and American soldiers alike. But in late 1941, it was impossible to surmount years of American neglect. As Japanese bombers brought the war to the Philippines on 8 December 1941, USAFFE was woefully trained, pitifully equipped, and short² of critical supplies.

The early days of the Philippine campaign were marked by shock, defeat, and controversy. Over half of the far Eastern Air Force was destroyed on the ground at Clark Field, MacArthur failed to deploy his forces forward to meet the enemy at the beaches, and many green Filipino troops broke and ran before the enemy. Dispatches from General George C. Marshall, Army Chief of Staff, to

MacArthur were candid about the impossibility of resupplying the beleaguered Philippine defenders. By 7 January 1942, MacArthur realized he would have to fight with what he had.³ Despite this knowledge, he decided to portray a hopeful situation. On 15 January, as USAFFE troops began their fateful retreat within the Bataan Peninsula, General MacArthur issued the following message to his soldiers:

Help is on the way from the United States. Thousands of troops and hundreds of planes are being dispatched. The exact time of arrival is unknown as they will have to fight their way through...⁴

Buoyed by this hope, the half starved Filipino and American soldiers fought gallantly and they continually frustrated the plans and timetables established for the Japanese Army under command of Lieutenant General Masaharu Homma. As the crush of the Japanese onslaught, lack of food, and malaria weakened USAFFE resistance, soldiers still clung to the belief that "MacArthur would pull the rabbit out of the hat."⁵ However, this expectation was to change in a sudden and dramatic way.

Planners in Washington began to wrestle with General MacArthur's personal fate in February. For political and military reasons, it was deemed critical to keep him out of the hands of Japanese captors and employ his talents in future war efforts. After careful consideration, President Roosevelt personally ordered General MacArthur to Australia. In an escape of high drama, the General, his family, and a small entourage departed Corregidor on 12 March 1942. For some on the islands, it was proof that they had been abandoned and their fate held either death or capture. Others put their faith in MacArthur's new promises of help, broadcast over the "Voice of Freedom" radio waves. The General's first statement from Australia was that the relief of the Philippines was his primary purpose. His pledge, to be repeated so many times from 1942 to 1945, was "I came⁶ through and I shall return."

Command Structure

MacArthur's departure weakened morale and triggered a series of decisions concerning command relationships that ultimately shaped the course of American surrender. Just prior to his evacuation from the

archipelago, General MacArthur split the USAFFE command into four elements. Major General Jonathan M. Wainwright, his senior subordinate, was given command of the Philippine's largest and most significant island, Luzon, which included the Bataan peninsula. Major General George T. Moore commanded Manila's harbor defense. Brigadier General Bradford G. Chynoweth was given command of the Visayas, a series of medium size islands south of Luzon. Finally, Brigadier General William F. Sharp was instructed to remain on Mindanao as commander of local USAFFE forces.

Mindanao held significance for three reasons. First, it was the country's second largest island. Second, a significant Japanese force had landed there. Finally, early in the war MacArthur designated Mindanao as the base from which guerrilla operations would be launched if Luzon fell into enemy hands.⁷

Changes announced by MacArthur on 11 March made no mention of a new USAFFE commander. Clearly, the former Army Chief of Staff planned to direct operations from Australia. However, General MacArthur failed to inform Washington of his command arrangements and, therefore,

General Marshall assumed General Wainwright took command of USAFFE. In an 18 March radiogram, Marshall informed Wainwright that, as Supreme Commander in the Pacific, General MacArthur retained supervisory control over the USAFFE commander, but "as a consequence of your isolation, you [Wainwright] are directed to communicate directly with the War Department...."⁸

Command confusion ended on 20 March 1942, when the War Department sent two messages to the Philippines. The first notified Wainwright of his promotion to lieutenant general. The second, addressed to General Wainwright from General Marshall, stated, "[u]pon the departure of General MacArthur, you became commander of US Forces in the Philippines."⁹ Wainwright's new command was designated US Forces in the Philippines (USFIP) and included all Army and Navy units in the area.

Although command lines were clear, the controversy continued. On 21 March, General MacArthur finally explained his concept of separate commands to General Marshall. In a prophetic message to the Chief of Staff, MacArthur appears to have anticipated the problem of surrender, stating that "the intangibles of the situation

in the Philippines," deemed separate commands with control from Australia as "most advantageous."¹⁰ Marshall brought the matter before President Roosevelt who followed the Army chief's recommendation; Wainwright would command all forces in the Philippines. On 22 March, Marshall notified MacArthur of the President's decision and MacArthur acquiesced, praising Wainwright's promotion and expressing his agreement with the arrangement.

Although command relationships were not clear as MacArthur departed in March 1942, the issue of surrender was relatively unambiguous. President Roosevelt's message to MacArthur on 9 February 1942, authorized the surrender of Filipino troops if necessary but forbade the surrender of American troops, "so long as there remains any possibility of resistance."¹¹ MacArthur replied to the President that he had no intention of "surrendering or capitulating" either the Filipino element or the U.S. troops in USFIP. Along with the burden of the President's order, Lieutenant General Wainwright assumed command with the knowledge that General MacArthur was unyielding in this regard. Surrender was not discussed as MacArthur and Wainwright made their good-byes on Corregidor. MacArthur promised Wainwright to "come back as soon as I can with as

much as I can." Wainwright's vow, which he came to regret, was, "I'll be here on Bataan if I'm alive."¹²

Surrender of Bataan

Jonathan M. Wainwright had over thirty-five years of service when he assumed command in 1942. A hard drinking man and well liked by his soldiers, Wainwright was the last of the horse cavalrymen and one of the few who addressed MacArthur as Douglas. "Skinny," as he had been called since West Point days, was often seen in the midst of the fight and seemed to relish the role of combat commander. In one of the first messages to the new Philippine commander, General Marshall sent a copy of the "no surrender" statement President Roosevelt had previously issued to MacArthur. Marshall inserted that the "instructions from the President remain unchanged."¹³ Wainwright replied to the President through Marshall, pledging to "keep our flag flying in the Philippines as long as an American soldier, or an ounce of food and a round of ammunition remains."¹⁴

With the establishment of a new command, General Wainwright was free to establish his headquarters where he pleased. Following the lead of his predecessor, he chose

to oversee the campaign from the Malinta Tunnel complex on the island of Corregidor. Wainwright also relinquished direct control over the Bataan defense and designated Major General Edward P. King as commander of Luzon Force. King was a highly regarded artilleryman with a law degree and a long military career. Numerous accounts described him as a soft spoken, modest intellectual.

Neither King nor Wainwright had illusions about the extreme situation the 78,000 Bataan defenders faced. Without resupply from the United States, soldiers were starving. Malnutrition produced outbreaks of scurvy, beriberi, and amoebic dysentery. Malaria was rampant and by the end of March, it was estimated that 75 to 80 percent of the front line soldiers had the disease (see Appendix C). Wainwright, who was well acquainted with the hardships these soldiers faced, sent food and medicine from Corregidor's meager stocks. However, he appeared to have envisioned the eventual loss of Luzon. Wainwright biographer, Duane Schultz, writes that Wainwright felt bound to Marshall and Roosevelt to hold Corregidor, not Bataan, until help arrived.

MacArthur also realized the Bataan force was doomed and on 4 April instructed General Wainwright that "when the supply situation becomes impossible, there must be no thought of surrender. You must attack."¹⁶ General MacArthur added that if the attack failed, "...many of the men would be able to escape from Bataan, and continue to fight as guerrillas."¹⁷ Wainwright replied that, "before allowing a capitulation, the operation you suggest will be adopted."¹⁸ By 7 April, the enemy had routed General King's exhausted forces and the command was in chaos. King sent his chief of staff to Corregidor to inform General Wainwright that they were near the point of surrender or annihilation. Under orders from the President not to surrender, General Wainwright reluctantly gave King's staff officer the following message: "You go back and tell General King that he will not surrender. Tell him, he will attack. Those are my order."¹⁹

General King was contemplating surrender before he received Wainwright's stark order. After considering the tactical situation, he determined the Japanese would gain control of Bataan within hours regardless of any counter-attack he could mount. Without means to delay the

enemy, he announced to his subordinates the decision to negotiate a surrender. At 0330 hours 9 April, King dispatched staff officers to contact the Japanese commander. Understanding the limits placed upon his command, General King told his staff, "I have not communicated with General Wainwright because I do not want him to assume any part of the responsibility.... We have no further means of organized resistance."²⁰

When Wainwright learned of King's intentions, he blurted out to his assistant operations officer, "Go back and tell him not to [surrender]." By that time, General King was already behind enemy lines, seeking to negotiate a capitulation. Still, General Wainwright was sympathetic to King, as shown in his dispatch to General MacArthur:

At 6 o'clock this morning, General King... without my knowledge or approval, sent a flag of truce to the Japanese commander. The minute I heard of it, I disapproved of his action, and directed that there be no surrender.... Physical exhaustion and sickness due to a long period of insufficient food is the real cause of this terrible disaster.²¹

General King's humiliation and frustration grew when the Japanese refused to negotiate with anyone but the USFIP commander. By April, the Japanese were aware of MacArthur's departure and that General Wainwright had

assumed command. The Japanese also told King his troops would not be treated as prisoners of war unless the entire Philippine command surrendered. The best the Bataan soldiers could do was unconditionally surrender as individuals, not as an organized military force. Japan never ratified the Geneva Convention but by February 1942, had notified the Swiss government that they would adhere to provisions relating to prisoners of war (POW). The 65 mile march to prison camps would reveal Japanese attitudes toward international conventions and POWs.²²

Ironically, the final American command decisions concerning Bataan came after General King had sealed the fate of his troops. Just prior to official notification of Bataan's surrender, President Roosevelt sent the following message to MacArthur which was simultaneously intercepted by Wainwright at USFIP Headquarters. The President asked Macarthur to officially relay the message to General Wainwright, "...if you [MacArthur] concur both as to the substance and timing." The message read, in part:

Because of the state [over] which your forces have no control, I am modifying my order to you as contained in my telegram to General MacArthur, February nine, and repeated to you March twenty-three. My purpose is to leave to

your best judgment any decisions affecting the future of the Bataan garrison. I have nothing but admiration for your soldierly conduct and performance of your most difficult mission, and have every confidence that whatever decision you may sooner or later be forced to make will be dictated only by the best interests of the country and of your magnificent troops.... I feel it proper and necessary that you should be assured of complete freedom of action, and of my full confidence in the wisdom of whatever decision you may be forced to make. ²³

When news of King's actions reached Roosevelt later that day, he radioed Wainwright directly, saying, in part:

I am hopeful that you will be able to hold Corregidor. However, you are assured of complete freedom of action and my full confidence in your wisdom in whatever decisions you make. ²⁴

The Wainwright Surrender

Having captured the most significant land mass in the archipelago, the Japanese Army turned attention to Corregidor in clear hopes of forcing the USFIP commander to surrender all American and Filipino Forces in the Philippines. The island consists of only 1,735 acres, roughly two square miles. Food and medicine were in short supply and the small bastion was running low on critical types of ammunition. At the heart of the island was Malinta Tunnel, a sprawling bomb proof complex that, in addition to USFIP Headquarters, housed several hundred

wounded soldiers. In April 1942, General Wainwright estimated Corregidor had a force of 11,000 including a contingent of U.S. Army nurses. Just two miles off shore, over two hundred thousand Japanese soldiers were available²⁵ for an attack. Predictably, the battle was short.

The size of Corregidor left its defenders with little options when the expected overwhelming invasion of Japanese troops came. There was no navy to take them from the island through the shark infested waters. Therefore, after the King surrender, General Wainwright understood a similar fate might await him. President Roosevelt had clearly given the old cavalryman freedom of action. However, General MacArthur, Wainwright's immediate superior and a man he admired, never officially relayed the President's message of 9 April. Since Roosevelt asked MacArthur to pass the modification of the "no surrender" policy on to Wainwright only if he (MacArthur) concurred, General Wainwright concluded that MacArthur did not approve of the President's instructions. General Wainwright finally queried General MacArthur on the subject on 13 April. MacArthur's reply was immediate. From Australia, he told his subordinate commander that the President's later message "came directly to you... and

now gives you complete authority to use your judgment." ²⁶

If it was not an enthusiastic endorsement, it at least left Wainwright with no doubt of his authority to surrender. It was an option he would exercise 23 days later.

At 1030 hours, 6 May 1942, after a valiant defense against great odds, General Wainwright instructed his chief of staff to read a surrender message over the Voice of Freedom American radio network. The message, directed to General Homma, said, in part:

For military reasons which General Wainwright considers sufficient, and to put a stop to further sacrifice of human life, the commanding general will surrender to Your Excellency today the four fortified islands at the entrance to Manila Bay, together with all military and naval personnel and all existing stores and equipment... ²⁷

At the same time, General Wainwright radioed General Sharp who was now in command of both Mindanao and General Chynoweth's Visayan Force. Wainwright released to General Sharp's command all forces in the Philippines except Corregidor and the Harbor Defenses. He further instructed Sharp to report directly to General MacArthur for orders. Obviously, Wainwright intended to surrender only the 11,000 or so soldiers on Corregidor and the

Manila Harbor islands. General Sharp would be free to continue the fight (see Appendix D).

When Skinny Wainwright met the burly Japanese General Homma on the afternoon of 6 May, the capitulation plan began to unravel. General Homma refused to accept any partial surrender on Wainwright's part. After repeatedly explaining that he no longer commanded General Sharp's forces, Wainwright added that, "even if I did command General Sharp's troops, I have no means left for communicating with them." Homma retorted that he would supply a plane for Wainwright to dispatch a staff officer to Mindanao. The Japanese commander then abruptly ended the meeting by stating that, "hostilities against the fortified islands [Corregidor] will be continued unless²⁸ the Japanese surrender terms are accepted."

Wainwright had great cause for concern for earlier in the day, as GI's raised white flags to signal the intended surrender, he had instructed the soldiers to destroy weapons of greater than .45 caliber. The American-Filipino force was all but defenseless. In his autobiography, General Wainwright recalled the predicament he faced:

MacArthur, I remembered, had envisioned the breaking up of Sharp's force into well-organized guerrilla bands to continue the fighting on Mindanao until aid could be sent from the south. But each time I thought of continued organized resistance on Mindanao, I thought, too, of the perilous position of close to 11,000 men and the wounded and nurses and civilians on Corregidor.²⁹

On the night of 6 May 1942, Wainwright made his decision and signed the Japanese capitulation document. Under the terms set down by General Homma, Wainwright agreed to direct troops operating in other parts of the Philippine Islands to surrender. The document also stipulated that the "Japanese Army and Navy will not cease their operations until they recognize faithfulness in
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executing the above mentioned orders."

Having hours before released General Sharp from his command, General Wainwright now sought to have the Mindanao commander comply with his surrender instructions (see message, Appendix D). Forces on the southern islands did not face the privations and murderous attacks the Bataan and Corregidor defenders had endured. Because the Visayan-Mindanao Force was tailored for guerrilla warfare, soldiers were dispersed in mountain hide-outs and provisioned with adequate supplies. This put General Sharp in a difficult position. Without question, Sharp's

legally designated higher commander was Douglas MacArthur, not Jonathan Wainwright. MacArthur radioed Sharp on 9 May, and directed him to separate his force into small elements, and initiate guerrilla operations." Then MacArthur left the troubled commander a loophole. "You, of course, have full authority to make any decision that³¹ immediate emergency may demand."

In the meantime, General Wainwright was convinced that the Japanese would execute those soldiers captured on Corregidor if Sharp and two independent commanders in North Luzon did not quickly show signs of surrendering. Accordingly, the USFIP commander, a captive himself, was allowed to send his staff officers to the various commands to ensure the reason for the surrender was understood. Wainwright's emissary reached Sharp on 10 May and convinced the general that thousands of Americans and Filipinos were being held hostage under a threat of death. Using the discretion granted him by General MacArthur, General Sharp sent messages to his subordinates and ordered them to surrender (see Appendix D).

Sharp's message stunned his various unit commanders. While they knew the situation was grim on

Luzon and Corregidor, they were prepared to fight. General Chynoweth, on the island of Cebu, believed Sharp's message was either a ruse or had been coerced. Therefore, he ignored the order. Sharp's other subordinates argued and even pleaded to be allowed to continue resisting the enemy. Sharp, however, remained adamant. One by one, Sharp's subordinates fell in line and ordered the white flag raised. General Chynoweth, knowing General Sharp had communicated with Australia, eventually decided that MacArthur must have given his blessing to the surrender. After repeated attempts to contact MacArthur himself, Chynoweth notified General Sharp that he, too, would surrender. The most vocal of Sharp's subordinates was Colonel Albert F. Christie, who told Sharp that the order to surrender "tends toward treason."³² (See Appendix D). General Sharp resorted to using personal visits by his staff officers to convince Colonel Christie that he must surrender. It was not until 18 May that Christie agreed to comply.³³

Although General Sharp's subordinate commanders eventually fell in line with the surrender order, the same was not true for their soldiers. Hundreds of Filipino and American soldiers took to the hills, either to wait for

arrival of MacArthur's promised relief force, or to actively conduct guerrilla operations against the Japanese. To General Wainwright's relief, General Homma was satisfied that the American-Filipino force had sufficiently complied with the capitulation agreement by 9 June 1942. On that day, Wainwright was informed that "[Y]our high command ceases, and you are now a prisoner of war."³⁴

Command Decisions: Legal, Ethical, Moral

General King's Decision

Several weeks after the surrender of Bataan and the infamous death march, LTC Harold W. Glattly, General King's chief medical officer, wrote his after-action report from a Japanese prisoner of war camp. In it, the doctor described the capitulation of the Luzon Force as a³⁵ "true medical defeat." (See Appendix C). According to Glattly, over 75 percent of the soldiers suffered from disease that made further fighting impossible. In his words, "Esprit could not compensate for nor neutralize the ravages of malnutrition." Today, many Philippine veterans, as well as impartial observers, believe the physical condition of the Bataan fighting force plus the

overwhelming military advantage of the Japanese justified General King's surrender.

In February 1947, Dr. Louis Morton, then a historian in the Office of the Chief of Military History for the United States Army, sought a definitive opinion as to the legality of General King's surrender. The Army's Office of the Judge Advocate General issued a legal opinion which can be found in Department of the Army Pamphlet 27-161-2, International Law, Volume II. The finding concludes, in part:

...General King was reasonably well informed concerning the provisions of the Rules of Land Warfare, and that he was deeply concerned about the order which he received from General Wainwright on 7 April not to surrender, but to counterattack. He complied with this order, and launched a counterattack on the 8th, but after this counterattack failed and no further resistance was possible, he opened negotiations with the Japanese.... General King was completely justified in taking this action after having complied with General Wainwright's orders to counterattack. The failure of the counterattack so materially affected his forces, that the order of the 7th, not to surrender, no longer had validity ... 36

While it is not surprising that General King's decision to surrender was vindicated, this legal opinion raises serious questions. Dr. Morton ultimately authored the definitive historical text on the subject, The Fall of

the Philippines, as part of the historical series, The U.S. Army in World War II. Morton and other historians agree that King made the decision not to counterattack on 8 April 1942, despite Wainwright's specific order. It appears that the Judge Advocate General's finding is incorrect in its basic assumption - that King obeyed orders and counterattacked.

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This raises the question of whether or not the legality of King's surrender is based solely on the alleged counterattack. It would seem that by 7 April, with upwards of 80 percent of his soldiers suffering from intestinal disease and malnutrition, General King had ample grounds, morally and ethically, to capitulate. It was clear to King that absolutely no tactical advantage could be gained by launching an offensive. A counterattack held the promise of additional casualties without hope of military gain. Yet, it can be implied from the legal finding in DA Pamphlet 27-161-2 that a final "last gasp" attack is needed to legally justify a surrender. Of course, the American Army of 1942 had no guide comparable to the present day Code of Conduct. For today's soldiers, the implication that a suicidal charge

is a prerequisite to surrender is inconsistent with the
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Code.

General Wainwright's Decision

The situation on Corregidor was quite different but no less desperate than the one faced by General King's forces. Disease was not widespread on the island and food stocks, while inadequate, far surpassed anything found on Bataan. However, as noted earlier, the tiny island offered no escape as the Japanese launched their final assault. In his autobiography, General Wainwright emphasized his special concern for the 1,000 plus wounded soldiers hospitalized in Malinta Tunnel and for the Army nurses who numbered over 100. The American commander had heard of the bloody "Rape of Nanking," and was well aware of atrocities committed by Japanese soldiers on innocent Filipinos and his own troops. Apparently, Jonathan Wainwright reasoned that an orderly surrender would cause less bloodshed than allowing Japanese combat troops to come rampaging into the tunnel complex. With the enemy infantry fast closing in, it can be persuasively argued that General Wainwright's surrender of Corregidor was morally and ethically correct.

Wainwright's measure of utility was virtually the same as General King's. Either general could have refused to surrender and have had his soldiers either fight to the last or attempt to negotiate their own fate with the overwhelming enemy. The Filipino-American Force delayed the Japanese war effort by months, and one or two days of resistance would have made no difference to the country's war effort. If measured by the American Code of Conduct that has since been established, both General King in regard to Bataan and General Wainwright in regard to the island of Corregidor, had exhausted all means of resistance. Even the staunch MacArthur was relatively subdued upon hearing of Corregidor's fall, saying only, "I didn't think it would come so soon." ³⁹ MacArthur's wrath was quick to follow as he learned that in the capitulation agreement, Jonathan Wainwright had surrendered much more than the "rock" called Corregidor.

There is no doubt that Wainwright viewed his captured soldiers on Corregidor as hostages to the Japanese. However, Homma's threats appear to have been more implicit than explicit. After the war, General Homma was tried by the United States for war crimes. During the proceedings, Homma denied issuing threats or insinuating

he would continue the attack on Corregidor.⁴⁰ However, Wainwright testified that he was told the Americans were being, "held to insure the success of the negotiations in the south...." Wainwright then stated his concern was that the Japanese would "slaughter all those people in the fortified islands unless the troops all over the archipelago surrendered."⁴¹

Wainwright's personal values and sense of morality dictated his path. Author John Beck contrasted Wainwright with his boss, Douglas MacArthur. In his view, if MacArthur had remained in the Philippines, there would have been no surrender. The "bigger than life" general would have preferred death, taking Corregidor into the annals of history with Thermopylae and the Alamo. Wainwright, on the other hand, had a "modest sense of his own importance," and held a profound sense of the sufferings and sacrifice of his hostage soldiers. Accordingly, Skinny Wainwright chose complete and unconditional surrender of all forces rather than risk the murder of his men.⁴²

It would appear that Wainwright's difficult decision falls short of the accepted American military

ethic of 1942, as well as today's. The Visayan-Mindanao Force was not only capable of further resistance, its guerrilla organization gave it a real chance of succeeding in its struggle against the Japanese. As a Japanese general commented, "...a well planned guerrilla defense should have prolonged the warfare after the conquest and should have made [MacArthur's] comeback much easier."⁴³ Calling Homma's bluff and refusing to order the complete surrender of all USFIP forces might have cost Wainwright his life as well as those of thousands of defenseless men and women. As in all hostage situations, there is no way to second guess. In the end, General Wainwright came home a hero and with some justification. The American public recognised that the Philippine defenders were abandoned in 1942, and then faced untold horrors at the hands of brutal captors. Nevertheless, according to the military ethic, Wainwright's demand that all units surrender, even those capable of further resistance, was arguably incorrect.

The next difficult decision was passed on to General William F. Sharp on Mindanao. Only after General Wainwright's personal emissary, Colonel Jesse Traywick, reached Sharp in person and conveyed the perceived threat to the hostages, did Sharp agree to surrender.

Unfortunately, after the war General Sharp died just days before a scheduled interview with historians from the Office of the Chief of Military History. Therefore, it is not clear if Sharp's motivation was based solely on fear that American prisoners would be executed or if he recognized that according to international law, it was his duty to comply with a capitulation agreement signed by his superior commanding officer.

By virtue of Wainwright's own orders, Sharp could have considered himself out of the USFIP chain of command and a direct subordinate of MacArthur. The Law of Land Warfare stipulates that a commander can only surrender forces under his control. Because Sharp did follow Wainwright's surrender order, it would seem he was also vulnerable to the hostage threat. General Sharp then passed the surrender decision on to his subordinate commanders spread among various islands. Among them was General Bradford Chynoweth on Cebu.

The terrible dilemma Chynoweth faced is revealed in his detailed journal entries. Upon first hearing of Wainwright's radio demand that all forces fighting throughout the islands surrender, General Chynoweth

decided the broadcast was, "issued under duress; and was not legally binding. We would ignore it. We informed our troops of this."⁴⁴ Later, when General Sharp broadcast his own order to surrender, General Chynoweth wrote that, "if authentic, and not under duress, it seemed to constitute a legal order."⁴⁵ In the meantime, as General Chynoweth mulled over General Sharp's order, the Japanese commander on Cebu sent a message to his American counterpart. In it, he complimented Chynoweth on his fine defense, and then noted that, "you have been ordered to surrender [by General Wainwright]."⁴⁶ He promised the American general safe passage if he were to do so. Chynoweth replied in the negative, and received a subsequent message from the enemy commander stating that, "[if] you do not comply by May 14th, we will launch a fierce attack, and will take no more prisoners."⁴⁷ On 12 May 1942, General Chynoweth sent the following message to the Japanese commander:

General Wainwright's order was issued under duress, and is not legally binding on me.... We do not feel that we can honorably surrender.⁴⁸

Chynoweth sent a copy of the Japanese letter and his reply to all of his groups. Then, in a strange twist, the general authorized anyone in his command to surrender

individually if they wished to. Chynoweth wrote that, "I⁴⁹ didn't want to destroy them just by my own stubbornness." The general went on to report, "The surrender talk had⁵⁰ demoralized the troops." General Chynoweth was not the only one of Sharp's subordinates agonizing over the decision. Colonel Christie reported to Chynoweth that his division, "was intact, well organized, and raring to⁵¹ go." He did not want to surrender. Another Sharp subordinate, Colonel Hilsman, commander of the Negro Force, felt otherwise. In a message to Colonel Christie, Hilsman expressed his opinion that, "We must surrender or be classed as deserters by our own country, and as outlaws⁵² by international law." Technically, Colonel Hilsman was correct in asserting that The Law of Land Warfare demanded they comply with a capitulation agreement. However, Hilsman might have realized that politically the American people and government would not view those who kept⁵³ fighting the hated Japanese as deserters.

General Chynoweth's papers go on to detail his eventual decision to obey General Sharp's orders. Surprisingly, he wrote little about his concern for the hostages but focuses on issues of loyalty and fighting the Japanese. He even went as far as to write that perhaps

MacArthur would rather have them surrender. He mused that, "If we hung on, it might make him [MacArthur] rush things, to try to relieve us before he was really ready."⁵⁴ On the 13th of May, Chynoweth spent the night alone, trying to decide what course to take. In his words, "I thought of everything from predestination to free will! It was hell!"⁵⁵ The next day, he surrendered his unit, apparently out of loyalty to his commander and in belief it was his duty to obey. It was a painful decision. General Chynoweth described himself as a⁵⁶ "disgraced man."

General Sharp used Chynoweth's surrender to pressure Colonel Christie to comply (see Appendix D). Christie queried his key subordinates as to what they viewed as the legal course of action. Again, law, loyalty, and duty appear to be the compelling reasons that led to Christie's decision to surrender. However, while Colonel Christie presented himself to the enemy, up to 90 percent of his men took off to the hills. Colonel Hilsman faced the same problem, and on 23 May 1942, issued a written order that stated, "FAILURE to surrender classifies you as a DESERTER by the Philippine and United States Armies. PENALTY DEATH" (original emphasis).⁵⁷

Hilsman was not alone. In a bizarre reversal, some American officers who dedicated themselves to defeating the Japanese Army on one day, worked with almost equal fervor to bring in those Americans and Filipinos who refused to surrender on the next. On the other hand, many other American leaders turned a blind eye to those who refused to surrender. However, very few field grade officers joined those who sought to hide among friendly Filipinos or conduct guerrilla operations.

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The Soldier's Decision: Legal, Ethical, Moral

As General Wainwright's unit commanders attempted to execute an orderly surrender to the enemy, junior officers and their soldiers made their own decisions. To gain an understanding of the individual soldier's view of surrender, interviews and a questionnaire were used in conjunction with this study in November and December 1988. Two interviews were conducted with retired officers who fought on Bataan. One hundred questionnaires were sent to members of the veterans' group, The American Guerrillas of Mindanao. (A copy of the questionnaire and a demographic break out is found in Appendix E). While it was assumed that virtually all the guerrilla fighters had refused to

surrender and took to the hills, the returned questionnaires revealed that a number of the guerrillas had first surrendered to the Japanese and then escaped from POW camps.

Not surprisingly, the factors that influenced these men in their surrender decision varied widely. However, most expressed the same three concerns regarding survival: the state of their health, the ability to find food, and the treatment they expected from the Japanese. Rumors or first hand accounts of Japanese brutality reached every soldier in the days prior to King and Wainwright's surrender. It is clear that many feared torture, mistreatment, or execution if they became captive. A soldier's time and experience in the Philippines also influenced the decision. As one respondent to the questionnaire wrote, "I knew the land, the language, the people, and knew I could survive for years." ⁵⁹ Many of these veterans also underlined their belief that MacArthur would hold true to his word and return, perhaps by the end of 1942. A combination of factors created what can only be described as a "wait and see" attitude among many. These soldiers refused to surrender, not so much to continue active resistance, but

to avoid capture and hope for a quick American return in force. Some men began guerrilla operations immediately. Others reported hiding among friendly Filipinos for as long as thirteen months before joining established guerrilla outfits. Some simply hid and waited for a full scale American invasion.

There is an obvious distinction between those who refused to surrender but went on to actively engage the enemy as guerrillas, and those who passively remained in hiding. If a soldier merely hides away, is he resisting the enemy by virtue of the fact the enemy must devote time and people to track him down? Is it ethical to disobey a surrender order only to evade the enemy without overtly attempting to fight? Today's Code of Conduct implies that soldiers must actively resist the enemy if possible. Sitting out the remainder of the war does not fit the spirit of the Code. However, the Philippine experience shows how difficult it can be to live up to that high standard.

There are no reports of whole units refusing to surrender. Therefore, small bands of men were forced to contend with both the Japanese and the jungle without

adequate arms, food, or medicine. Fierce Moro warriors hunted down Americans as eagerly as the Japanese. Filipino collaborators were often responsible for the capture and execution of American soldiers. Those lucky enough to find sympathetic Filipinos to care for them were likely to be quite satisfied at just staying alive in hopes of joining the fight when MacArthur returned. One American, who had been content hiding in a remote village, said he only resumed active resistance after being approached by Philippine guerrillas seeking his help. "How could I let them down?" he wrote. "At least they remained
60
Pro-American."

Other trends are evident in reviewing the completed questionnaires. Despite the extreme situation faced by the defenders of Bataan, Corregidor, and other islands, little forethought or planning was given to the possibility of surrender. Many accounts characterize the chain of command as unsure of what to do. As a result, some officers encouraged their soldiers to avoid surrender or capture, while others threatened court-martial if they did not comply with the surrender order. Also, while no firm numbers are available, one is left with the impression that soldiers usually sought permission before

disregarding the surrender order, and "taking off for the hills." Many officers were willing to allow their soldiers to "disappear" before the unit was formally surrendered. However, these same officers felt duty bound to obey the surrender order themselves. When individual soldiers approached their commanders for permission not to surrender, the reply was often, "I won't take roll call for another hour. The supply room is open; good luck." While their soldiers went into hiding, the officers⁶¹ carried out their orders and surrendered.

The motivation behind the officers' surrender is key to assessing their decision in a moral and ethical light. Was their action a noble sacrifice, reluctantly surrendering only to prevent a slaughter of innocent soldiers held hostage? Were more selfish reasons involved? If the phenomenon were true and officers were more likely to comply with a surrender order, it may have been they simply felt a stronger duty to obey superior orders than did their enlisted counterparts.

Many expressed the view that the orders of a surrendered officer were not legal. However, some agonized over the fear they would be classified as

deserters by American authorities because they did not surrender with their units. Others made a distinction in their minds between desertion and simple disobedience of orders. These soldiers were confident they were not guilty of the more serious desertion charge, but would possibly be cited for disobedience if and when they again fell under American control. Colonel John P. Horan emphasized to his soldiers that since he had not yet turned himself over to the Japanese, he was not a surrendered officer. He then ordered his men to surrender and threatened them with court-martial if they did not do
62
so.

Other soldiers felt no twinge of guilt or held any doubts as to the legality of their decision. When asked if he considered the order to surrender to be a lawful order, one veteran responded, "Emphatically not; Not then; Not now; Not ever!"
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Another veteran, asked if he thought U.S. authorities would take action against him for disobedience or desertion wrote, "After fighting for 5 months without any support whatsoever (except lip service) from our U.S. Govt, I felt our govt. had deserted me; not
64
the other way around." Predictably, many who became guerrilla fighters cited their desire for revenge as their

primary motivation. "I disliked the Japs, they killed lot of my friends, at Clark Field, Bataan, and Mindanao. I wanted to take as many as I could with me and I did just that."⁶⁵

Undoubtedly, the most common response among those who refused to surrender was that they would rather, "go down fighting." The complete loss of control over one's destiny and the inability to strike back was simply unacceptable to those soldiers who were healthy enough to evade the enemy if not fight them. As one Mindanao guerrilla said, "I felt we had a 50-50 chance of survival either way, and would prefer doing it by not⁶⁶ surrendering...." The odds were indeed steep. Disease claimed the lives of many Americans who held out, while the Japanese executed those who were caught. Meanwhile, those who did surrender faced their own hardships.

Most veterans questioned for this study who had surrendered were survivors of the battles on Bataan or Corregidor. A former technical sergeant on Bataan explained, "It was not practical to continue to fight. We all knew why. General MacArthur had left the Philippines; we had exhausted all ammo, food and medical supplies; most

troops were desperately sick with malaria, dysentery and malnutrition, and there was no hope of reinforcement or resupply."⁶⁷

Colonel Jack Hawkins, a retired Marine Corps officer, summed up the situation on Corregidor by saying, "To continue fighting... would have achieved nothing of consequence, and undoubtedly would have resulted in a blood bath, possibly a massacre."⁶⁸ Despite the fact that a handful of Americans defied the surrender order on Bataan and Corregidor, it seems beyond question that the soldiers fought until all means of resistance were exhausted.

In most cases, soldiers in the Visayas and on Mindanao still had the means to resist. Their surrender was premature and was apparently based primarily on the belief that orders should be obeyed. Concern for the hostages was also a consideration. Soldiers on Mindanao and the Visayas often had commanders who threatened courts-martial for disobedience or desertion. In some cases, guards were placed on arms and supplies to prevent pilfering by soldiers who desired to hold out as guerrillas. Legally, soldiers did the correct thing by

obeying the order to surrender. Because the military ethic seemingly holds both obedience and fighting with equal weight, the soldiers on Mindanao had no clear path to take. In the end, their own moral values guided their actions.

Forty-six years after the surrender of the Philippines, there remains an uneasiness between those who surrendered and those who did not. Some of those who survived the Bataan Death March and the squalid prisoner of war camps feel they were betrayed by comrades who left their units and took off to the jungle. When orders violate the deeply ingrained moral values of soldiers, there is bound to be those who will follow their conscience rather than following orders. When this happens, the fabric of military cohesiveness is damaged.

Conclusions: Surrender of the Philippines

The tremendous valor of the individual fighting men on the Philippine Islands in 1942 brightens what is, in other aspects, a dismal American failure. In hindsight, MacArthur's plan for separate units commanded by him in Australia might have prevented the untimely surrender of the Visayas-Mindanao Force. President

Roosevelt and General Marshall appear to have waited too long before granting General Wainwright permission to use his discretion in matters of surrender. Those in Washington knew relief was impossible and it was unlikely that a "last stand" would have accomplished much militarily or politically. As a result, Wainwright was forced to issue an attack order to General King which he knew could not be carried out. King was then compelled to surrender with the belief he did so in disgrace. MacArthur's promise of "help is on the way" worked to raise the spirits of the beleaguered Filipino and American troops. However, when the General departed and it was realized he had lied, morale plummeted. Still, many soldiers refused to surrender under the misplaced belief that Douglas MacArthur would return within a matter of months, not years.

Legally, ethically, and morally, both Generals Wainwright and King appear to have been justified in their respective surrenders of Corregidor and Bataan. Essentially, the means to resist were exhausted. However, Wainwright succumbed to the threats of the brutal Japanese and demanded all of his USFIP command surrender as ordered. While his actions had merit by some moral

standards (he was acting to protect human life), it can be argued that he failed to meet the military ethic of fighting until all means to resist were exhausted.

On the surface, General Sharp had no legal alternative but to comply with the capitulation agreement transacted by his commanding officer. However, Sharp could have legally claimed Wainwright was no longer his commander and thereby ignore the order. The risk was great. Thousands of Americans and Filipino soldiers were vulnerable to the ruthless Japanese. Therefore, Sharp's decision to surrender had a moral basis (protect the hostages' lives). However, he failed to meet the military ethic to fight while there is a means to resist. While much "lip service" is given today to never negotiating with those holding hostages, in practice it is a difficult rule to abide by.

The soldiers on Bataan and Corregidor certainly had a legal, ethical, and moral basis to surrender. Even those on other islands could claim some basis for surrender based on the realities of surviving disease, malnutrition, and unfriendly natives in an unforgiving jungle setting. Many of those who refused to surrender

found the military ethic of fighting the enemy to be more compelling than the ethic that calls for obeying orders of commanders. For others, not surrendering may have appeared to be an easier way out. For them, surrendering to the brutal Japanese was more unacceptable than trying to survive in the jungle. It is a disturbing phenomena that officers appeared to have been more likely than enlisted soldiers to obey a surrender order. If true, it probably reflected the overriding importance attached to obedience in the officer corps at that time.

Many soldiers who disobeyed the surrender order carried nagging doubts as they struggled to survive. In the forward to their recently released book, Behind Japanese Lines; An American Guerrilla in the Philippines, Ray Hunt and Bernard Norling rhetorically ask:

If a guerrilla managed to survive the war, what then? If the Japanese won, he would surely be killed, most likely in some lingering, painful way. If the Americans won, would he be welcomed back into their ranks as a hero? treated as a traitor? court-martialed for desertion? tried in a military or civil court for murder or other crimes committed in the course of his guerrilla activities?69

No matter what decision the Americans in the Philippines made, hardship and often death awaited them. It is a shame that after four and a half decades there may still be lingering resentment between those courageous soldiers who spurned surrender and those equally courageous soldiers who dutifully obeyed that difficult order.

ENDNOTES

1

General Arthur MacArthur presided over the military government in the Philippines in 1900, following the Spanish American War. He was credited with establishing an effective counter-guerrilla program as Philippine-American relations reached their low point. When his son arrived 35 years later, rapport between the two states was generally good, due in large part to the plan for Philippine independence. For further details, a widely recognized source for the prelude and conduct of the Philippine campaign of 1941-42 is Louis Morton's The Fall of the Philippines. The United States Army in World War II (Washington D.C.: U.S. Government Printing Office, 1953). For a Filipino view of the campaign, see Gen. Rigoberto J. Atienza's A Time for War; 105 Days in Bataan (Manila: Eugenia S. vda. de Atienza, 1985), and Carlos P. Romulo's I Saw the Fall of the Philippines (New York, NY: Doubleday, Duran, & Co., 1943).

2

As of 30 November 1941, there were 2,473 United States Army officers in the Philippine Islands, and 16,643 enlisted soldiers. Additionally, 11,957 Philippine scouts were organized in units led by American Cadre. Thus, the total U.S. Army garrison in the Philippines on the eve of World War Two numbered 31,095 (including 31 Filipino officers). The Philippine Army which was commanded by Filipino officers (with American advisors) reached over 100,000 after the Japanese attack on 8 December. From Morton The Fall of the Philippines, pp. 49-50.

3

Vincent J. Esposito, ed. The West Point Atlas of American Wars, vol. II (New York, NY: Praeger Publishers, 1959), p. 122.

4

Morton The Fall of the Philippines, p. 387.

- 5 Ibid., p. 388, citing Manonee's Bataan Diary.
- 6 Ibid., p. 389.
- 7 Ibid., pp. 356 and 361.
- 8 General George C. Marshall to Lt. Gen. Jonathan Wainwright, signed by Brig. Gen. Dwight D. Eisenhower, Radiogram Nr. 740, 18 March 1942, Dwight D. Eisenhower Library, Abilene, KS.
- 9 Gen. George C. Marshall to Lt. Gen. Jonathan Wainwright, signed by Brig. Gen. Dwight D. Eisenhower, Radiogram Nr. 1203, "Far Eastern Situation," 20 March 1942, Dwight D. Eisenhower Library, Abilene, KS.
- 10 Gen. Douglas MacArthur to Gen. George C. Marshall, Cablegram Adjutant General Nr. 381, 0243 hours, 21 March 1942, Dwight D. Eisenhower Library, Abilene, KS.
- 11 Morton The Fall of the Philippines, p. 355.
- 12 Duane Schultz, Hero of Bataan: The Story of General Jonathan M. Wainwright (New York, NY: St. Martin's Press, 1981), p. 200.
- 13 Morton The Fall of the Philippines, p. 456.
- 14 Ibid.
- 15 Schultz, Hero of Bataan, p. 222.

- 16 Jonathan M. Wainwright, General Wainwright's Story, edited by Robert Considine (Westport, CT: Greenwood Press, 1945), p. 79.
- 17 Morton The Fall of the Philippines, p. 452.
- 18 John Jacob Beck, MacArthur and Wainwright: Sacrifice of the Philippines (Albuquerque, NM: University of New Mexico Press, 1974), p. 187.
- 19 Wainwright General Wainwright's Story, p. 79.
- 20 Morton The Fall of the Philippines, p. 458.
- 21 Ibid., p. 463.
- 22 The refusal to accept the unconditional surrender of belligerents was in 1942, as it is today, a violation of the international Law of War. There was no basis in international law for the withholding of POW status of surrendered soldiers. This was outlined in the Hague Conventions of Land Warfare of 1907. The Japanese signed this convention "with reservation." See Hague Convention of 1907, Sec. II, Chapt. 1, Art. 23. See also Schindler and Toman The Laws of Armed Conflicts, pp. 76-77 and 90-91. The Japanese signed the Geneva Convention of 1929, "Convention Relative to the Treatment of Prisoners of War," but did not ratify it or provide the international body with a Notification of Continuity. Post World War Two protocols for the Law of War concerning the granting of POW status are more clearly articulated. See "Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)," Part III, Sec. II, Art. 44. See also Roberts and Guelff, eds., Documents in the Laws of War, p. 411; Morton The Fall of the Philippines, p. 569.
- 23 Wainwright General Wainwright's Story, p. 84.

- 24 Ibid.
- 25 Morton The Fall of the Philippines, pp. 471-497;
See also Eric Morris' Corregidor: The End of the Line
(New York, NY: Stein and Day, 1981).
- 26 Morton The Fall of the Philippines, p. 564.
- 27 Wainwright General Wainwright's Story, p. 121.
- 28 Ibid., pp. 130-132.
- 29 Ibid., p. 133.
- 30 Ibid., p. 136.
- 31 Gen. Douglas MacArthur to Brig. Gen. William Sharp,
Radiogram Adjutant General Nr. 676, 0445 hours, 9 May 1942,
National Archives, Washington D.C.
- 32 Col. Albert F. Christie to Brig. Gen. William Sharp,
Radiogram 12 May 1942, National Archives, Washington D.C.
- 33 Brig. Gen. Bradford G. Chynoweth, "History of the
Visayan Force," undated, Record Group 319, Box 271, National
Archives, Washington D.C., hereafter cited as Chynoweth
Papers.
- 34 Morton The Fall of the Philippines, p. 582.
- 35 Harold M. Glattly, "Medical Aspects of the Surrender
of Luzon Force" (Tarlac Prisoner of War Camp, The
Philippines: After Action Report, 30 June 1942).

- 36 DA PAM 27-161-2, p. 189.
- 37 Morton The Fall of the Philippines, pp. 447 and
453.
- 38 Col. Rolfe L. Hillman, letter to the author, 26
January 1989, Arlington, VA.
- 39 Schultz Hero of Bataan, p. 306.
- 40 U.S. v. Homma, vol. XXVI, p. 3232, Group 319, Box
270, National Archives, Washington D.C.
- 41 Morton The Fall of the Philippines, p. 576.
- 42 Beck MacArthur and Wainwright, p. 240.
- 43 Ibid., p. 239.
- 44 Chynoweth Papers.
- 45 Ibid.
- 46 Ibid.
- 47 Ibid.
- 48 Ibid.

49

Ibid.

50

Ibid.

51

Col. Albert Christie quoted in Chynoweth Papers.

52

Col. Roger Hilsman quoted in Morton Fall of the Philippines, p. 580.

53

Chynoweth Papers.

54

Ibid.

55

Ibid.

56

Ibid.

57

Col. Roger Hilsman, Memorandum, dated 23 May 1942, Negros, Philippines (Washington, DC: National Archives, Record Group 407, Box 3). Colonel Hilsman apparently based his threat on the charge of desertion which, during war, is punishable by death.

58

Morton, The Fall of the Philippines, p. 581; An excellent account of the extreme turnabout some officers underwent is the report of LTC Everett Warner. Written while a POW, Warner told of his determination not to surrender after he heard about Wainwright's capitulation.

However, Warner later talked with LTC Theodore Kalakuka, who was Lt. Gen. Wainwright's personal emissary. Kalakuka convinced Warner to turn himself in to the local Japanese commander. Warner then began a systematic effort (with Japanese assistance) to bring in Americans who had refused to surrender. In his closing statement, Warner explained that after listening to LTC Kalakuka, "I then put aside all personal selfish desire not to surrender, solely and entirely, to prevent, in so far as I could, undue suffering of my fellow soldiers who were thru [sic] no fault of their own already captives." Everett Warner, After Action Report (20 June 1942), National Archives, Record Group 407, Box 2.

59

Joseph S. McCarthy, Survey of the American Guerrillas of Mindanao, 1988, unpublished raw data.

60

Peter Schur, Survey of the American Guerrillas of Mindanao, 1988, unpublished raw data.

61

One of the few published accounts of guerrilla operations in the Philippines is Col. Russell W. Volckmann's We Remained (New York, NY: W.W. Norton, and Co., 1954). Volckmann describes his attempt to get his commander, Brig. Gen. William E. Brougher, to allow him to ignore the surrender order and escape into the jungle with a few other officers. Brougher did not explicitly endorse the plan, but implied Volckmann and the others would not be missed. See Brig. Gen. W. E. Brougher's South to Bataan North to Mukden edited by D. Clayton James (Athens, GA: University of Georgia Press, 1971). The National Archives also contains many diaries and letters that illustrate the confusion of the officer corps and the decision of officers to comply with surrender orders. One example is this account by a former mess sergeant: "We held a short conference... Major Saye (commanding officer) and Lieutenant Baggett thought it better for them to surrender. All of us [enlisted men] were instructed to make our own decision. Twenty-three of us managed to escape." From letter (undated), Carl E. Cameaux to War Department, Record Group 407, Box 17.

- 62 Interview with Brig. Gen. Donald Blackburn, December 1988, McLean, Virginia (hereafter cited as Blackburn interview).
- 63 Clayton A. Manners, Survey of the American Guerrillas of Mindanao, 1988, unpublished raw data.
- 64 Erling H. Jonassen, Survey of the American Guerrillas of Mindanao, 1988, unpublished raw data.
- 65 Leonard L. Merchant, Survey of the American Guerrillas of Mindanao, 1988, unpublished raw data.
- 66 Lewis C. Roybal, Survey of the American Guerrillas of Mindanao, 1988, unpublished raw data.
- 67 Col. Joseph P. Coe, Jr., Survey of the American Guerrillas of Mindanao, 1988, unpublished raw data.
- 68 Col. Jack Hawkins, Survey of the American Guerrillas of Mindanao, 1988, unpublished raw data.
- 69 Ray C. Hunt and Bernard Norling, Behind Japanese Lines; An American Guerrilla in the Philippines (Lexington, KY: The University of Kentucky Press, 1986), p. viii.

CHAPTER 5

CONCLUSION

At the conclusion of World War Two, Brigadier General Chynoweth, who commanded the Visayan Force in the Philippines, wrote of the agony he experienced after receiving the order to surrender. For Chynoweth, deciding whether or not to obey the order became a nightmare. He recalled that the following story influenced his final decision:

In 1925, I remembered a discussion with a staff officer whom I admired. It was on loyalty. He said, "Well, one thing is certain. You've got to obey every order!" That seemed clear. "But," I replied, "What if you are ordered to surrender?" We discussed that at some length. Then we both read a book, "Hira Singh." Was it Harold Lamb? I don't remember who wrote it. But the gist of it was, "If ordered to surrender, obey!!"

Why hadn't our school system prepared me for this awful decision? The answer is, I suppose, that no school ever can reconstruct [sic] the future. [Emphasis throughout is from original text]¹

No finer case can be made for studying history and wrestling with the question of surrender than General Chynoweth's lament. While current unit and institutional training are conducted on the Code of Conduct and the Law

of Land Warfare, little focus is provided on what a soldier's obligations are when he is ordered to surrender but still possesses the means to resist. Code of Conduct training stresses resistance or escape and evasion, ignoring the complex dilemma that results when a surrender order is issued. Law of Land Warfare classes tend to emphasize the capture and treatment of enemy prisoners. The obligations of United States soldiers in units that have been capitulated by their commanding officer is rarely, if ever, discussed.

This study has attempted to add to the factual base current and future leaders can draw from in the event they are faced with a decision similar to General Chynoweth's. Complex dilemmas can be contemplated in peacetime to arm leaders with the information they may need to arrive at an answer in the heat of battle. It is unlikely soldiers will have a clear choice in the case of orders to surrender while there is still the means to resist. As evidenced in the Philippine experience, American soldiers may take extreme opposite views on what course of action to take; from Colonel Hilsman's belief that disobedience equated to desertion to Colonel Christie's view that surrender bordered on treason. The

Philippine case also suggests that officers believed their obligation was to follow what they considered a legal order to surrender while enlisted soldiers were more likely to ignore the order.

If surrender situations were predictable, it might be possible to promulgate an unambiguous policy or regulation to ameliorate the kind of confusion created during General Wainwright's capitulation. Unfortunately, desperate situations produced in war create perplexing dilemmas that defy preordained solutions. When the lives of thousands of men or even the safety of the nation are held in the balance, it is probably wise to leave the commander enough discretion with which to formulate his own solution. Accordingly, this study offers no sure formula for deriving the proper course of action in a surrender scenario.

A soldier's only recourse is to understand his obligations according to the law, the military ethic, and to have come to grips with his own moral values. It is the soldier's burden to live with ambiguity and risk during battle. It is also a professional soldier's duty to ponder and study difficult situations in order to build

a foundation of knowledge for decision making in war. If the issues examined in this study give a soldier pause for thought and reflective thinking, the author will have fulfilled his purpose.

Legal obligations spring from centuries old attempts to limit the destruction and carnage of war. International conventions, rooted in humanitarian principles and chivalric codes, have had some success in providing soldiers with guidelines in the conduct of battle. Not unexpectedly, agreements between belligerents are fragile and marked by a natural distrust. For this reason, it is critical that the Law of Land Warfare be scrupulously adhered to. A breach of faith or violation of international law invites future transgressions in other areas, retribution by the enemy, and an unravelling of the few restraints incorporated in the Law of Land Warfare.

Michael Walzer persuasively argues that a soldier cannot justify his violation of the international laws of war by referring to the necessities of the situation because customary and conventional laws of war were developed and framed with consideration of the concept of

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military necessity. As a signatory of the Hague and Geneva accords, the United States of America has agreed to abide by the various provisions. In regard to surrender, the Law of Land Warfare is clear. Subordinates must comply with the capitulation agreement signed by their lawfully constituted commander. Violation of the terms of a capitulation is punishable as a war crime.³

The Uniform Code of Military Justice adds further strength to the obligation to obey a surrender order. Under the UCMJ, a superior's orders are "clothed in the presumption of legality." Therefore, violation of a lawful order is "prima facie" an illegal act and the offender subject to court-martial by U.S. authorities once repatriated or possibly by the capturing force. While there are mitigating circumstances that may be offered as a defense to the laws of obedience, the burden of proof lies with the violator. Because the act of surrender is not inherently unlawful, soldiers have a duty to obey a surrender order.

If international law and the UCMJ were the only sources a soldier could turn to, he could only conclude that despite the ability fight, obedience to a surrender

order takes precedence. However, the American fighting man has been provided a behavioral guide if faced with the possibility of capture or upon becoming a prisoner. The Code of Conduct is not a legal code but a reflection of the American military ethic. It provides a strong injunction against surrender and demands that a soldier never surrender of his own free will and commanders never surrender their units while there is a means to resist.

Unfortunately, the Code of Conduct leaves soldiers in a quandary on at least three counts. First, how else can a soldier surrender but of his own free will? This confusing phrase demands clarification and should be rewritten. One solution offered by the Naval War College study is to reword Article II to read, "I will never surrender myself or my men while I still have effective means to resist."⁴ This phrasing is not so lofty as to imply suicidal resistance is mandated. However, it does recognize that the commander or soldier has a choice and must take it upon himself to determine when effective resistance has been exhausted.

Second, what constitutes the "means to resist?" The phrase is discretionary (as it should be) and provides

no substantive guidance for commanders. Fortunately, in the United States the military culture is not separate and distinct from American society as a whole. The American military ethic is ideally in consonance with the values of the society from which it derives. Therefore, orders issued in war must be framed by the larger values of American society. Gauging when resistance is futile, issuing the order to surrender, and obedience or disobedience to that order must ultimately be judged by what American society deems appropriate.⁵

Finally, the code does not address the central question of this study. What does a soldier do if ordered to surrender, but he still has the means to resist? The framers of the Code of Conduct and a recent Department of Defense review panel agreed that the Code was not intended to spur soldiers to fight to the death. However, the Code of Conduct does offer the American soldier with a counter to the legal injunctions that weigh heavily toward obeying a surrender order. While the military ethic holds obedience as one of its highest virtues, continued resistance against the enemy is equally, if not more highly, regarded.

The clash of the two fundamental military precepts, obedience and resisting the enemy, leaves the soldier very much on his own when forced to decide if a surrender order will be obeyed. If one desires to do what is legally correct, following lawful orders is the obvious choice. However, if a soldier is searching for the greatest utility, to maximize the good and minimize the evil in a situation, he must turn inward and examine his own moral values. Almost certainly, the lives of American soldiers may be at stake. But, a soldier's highest duty lies in doing what is best for his country. It may well appear that in serving the country first, one must turn his back on his commander or fellow soldiers. This was illustrated by the decision several Americans made in the Philippines, where General Wainwright's surrender order was disobeyed despite the threat hanging over the heads of captured GI's on Corregidor.

Even when the path seems clear a soldier must examine the intent behind his decision. Does obedience or disobedience of the surrender order truly serve the nation or is it a way of preserving one's honor, seeking revenge on the enemy, or buying one's own safety at the expense of hundreds of other Americans? Twentieth Century American

prisoner of war experience also colors the perception of surrender. The willingness to obey a surrender order is greatly reduced if a soldier expects torture or death as a prisoner. As evidenced in the Philippines, the will to survive will often override the military imperative to obey orders.

The Philippine capitulation raised other issues inherent in the dilemma of whether or not to obey surrender orders. Most notably, commanders as well as individual soldiers were forced to wrestle with a large scale hostage situation. Unfortunately, the United States has recently experienced a great deal of hypocrisy regarding hostages in an international setting. Official proclamations of never caving in to the demands of hostage takers have proven to be a sham. Hostage deals have been made despite the government's public posturing (witness⁶ the Iran-Contra scandal). Platitudes and a hard line stance crumble quickly when there is a gun pointed at the head of innocent people. As Jonathan Wainwright discovered, this is not a problem limited to diplomats and politicians. Today's military leaders must also be prepared for this eventuality. The ethics of hostage negotiations is a topic that ought to be part of the

service school curriculum, if not at the staff college level, then certainly at the respective war colleges.

The fall of the Philippines raised another critical question. Should combat leaders discuss and plan for surrender? Much of the divisiveness and indecision concerning the order to surrender might have been avoided if commanders at all levels had prepared for that possibility. Yet, leaders from President Roosevelt down never used the word surrender in any of their official communications. Everyone recognized capitulation was likely, as evidence by the President granting General Wainwright "freedom of action" in his decisions. Likewise, General MacArthur hinted that his intention to exercise command of USAFFE from Australia was to avoid total surrender of the archipelago. But MacArthur never directly discussed that possibility. The "S word" (surrender) was only used after General King raised the white flag on Bataan.

Not having discussed the possibility of surrender, junior and field grade leaders on the various Philippine Islands were at a loss when soldiers asked if they could disobey the surrender order. Lacking a Code of Conduct

and unsure of legal obligations, leaders across the Philippines left their men on their own. If these soldiers had received training in peacetime or if the chain of command had disseminated instructions just prior to capitulation, some of the confusion may have been avoided.

Obviously, premature reference to surrender can only raise doubts and fears among the soldiers and sap the will to fight. Whether or not surrender should be discussed and planned for in a combat setting is a question that exceeds the scope of this paper but merits further study.

Perhaps the final consideration is whether or not soldiers should spend time contemplating and debating surrender at all. Armies do not plan for defeat. In peacetime it is difficult for many officers to comprehend why any commander would order the surrender of units still capable of fighting, and why any soldier would obey such an order. If for no other reason, surrender should be a topic of study and discussion so that soldiers know what is expected of them if their superior does sign a capitulation agreement that guarantees their surrender.

The tragic events in the Philippines in 1942, offer a strong argument for delving into the complexities of capitulating American units. The torment so eloquently expressed by General Chynoweth reflects the need for soldiers to consider their legal, ethical, and moral obligations when faced with the unexpected reality of a surrender order. Indeed, it is difficult to come to grips with a question that holds no definitive answer. However, it is in peacetime that leaders and their soldiers must become acquainted with the laws governing their profession and develop an appreciation of the ethical codes that are designed to guide them through difficult combat situations. If the military or soldiering is truly a profession, ethical debate and an introspective look at one's own moral values are essential elements in maintaining the profession's standards.

Surrender is a part of the American military experience and there is no reason to believe the future will bring immunity from defeat. The legal, ethical, and moral debate must continue if today's soldiers are to be more prepared than General Wainwright's were for the tragic order to surrender. It is hoped this study has

stimulated and furthered discussion on this seldom contemplated subject.

ENDNOTES

1 Chynoweth Papers.

2 Michael Walzer, Just and Unjust Wars; A Moral Argument with Historical Illustrations (New York: Basic Books, Inc., 1977), pp. 130-131.

3 FM 27-10, pp. 171.

4 Oaks, et. al., p. 131.

5 Lecture by Gerald F. Linderman, United States Army Command and General Staff College, Fort Leavenworth, Kansas, 4 October 1988.

6 Edward W. Said, "Irangate: A Many-Sided Crisis," Journal of Palestine Studies Vol. XVI, Nr. 4 (summer 1987): 42.

APPENDIX A

APPENDIX A

THE UNITED STATES CODE OF CONDUCT

Shown below is the original Code of Conduct as promulgated by President Eisenhower's Executive Order 10631. President Carter's Executive Order 12017, modifying Article V is also shown, followed by the current (1988) version of the Code of Conduct.

Executive Order 10631 August 20, 1955

CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES

By virtue of the authority vested in me as President of the United States, and as Commander in Chief of the armed forces of the United States, I hereby prescribe the Code of Conduct for Members of the Armed Forces of the United States which is attached to this order and hereby made a part thereof.

Every member of the armed forces of the United States is expected to measure up to the standards embodied in the Code of Conduct while he is in combat or in captivity. To ensure achievement of these standards, each member of the armed forces liable to capture shall be provided with specific training and instruction designed to better equip him to counter and withstand all enemy efforts against him, and shall be fully instructed as to the behavior and obligations expected of him during combat or captivity.

The Secretary of Defense (and the Secretary of the Treasury with respect to the Coast Guard except when it is serving as part of the Navy) shall take such action as is deemed necessary to implement this order and to disseminate and make the said Code known to all members of the armed forces of the United States.

Dwight D. Eisenhower

THE WHITE HOUSE
August 17, 1955

CODE OF CONDUCT FOR MEMBERS OF THE UNITED STATES
ARMED FORCES

I

I am an American fighting man. I serve in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command I will never surrender my men while they still have the means to resist.

III

If I am captured I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole no special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am bound to give only name, rank, service number, and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written

statements disloyal to my country and its allies or harmful to their cause.

VI

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.

Executive Order 12017 Nov. 3, 1977

AMENDING THE CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES

The Code of Conduct has been an established standard of behavior for all members of the Armed Forces of the United States for more than twenty years. It has helped individuals in captivity to sustain their moral and physical strength and to survive extreme torture and abuse. However, experience indicates that certain words of the Code have, on occasion, caused confusion resulting in training divergencies.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America, and as Commander-in-Chief of the Armed Forces of the United States, in order to clarify the meaning of certain words, Article V of the Code of Conduct for Members of the Armed Forces of the United States, attached to and made a part of Executive Order No. 10631 of August 17, 1955, is hereby amended to read as follows:

"When questioned, should I become a prisoner of war, I am required to give name, rank service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause."

Jimmy Carter

THE WHITE HOUSE NOVEMBER 3, 1977

In 1988, the Code of Conduct was revised in order to render it gender free. This latest revision was not intended to change or modify the intent of any of the articles.

CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES {1988}

I

I am an American, fighting in the forces which guard my country and our way of life. I am prepared to give my life in their defense.

II

I will never surrender of my own free will. If in command, I will never surrender the members of my command while they still have the means to resist.

III

If I am captured, I will continue to resist by all means available. I will make every effort to escape and aid others to escape. I will accept neither parole nor special favors from the enemy.

IV

If I become a prisoner of war, I will keep faith with my fellow prisoners. I will give no information or take part in any action which might be harmful to my comrades. If I am senior, I will take command. If not, I will obey the lawful orders of those appointed over me and will back them up in every way.

V

When questioned, should I become a prisoner of war, I am required to give name, rank, service number and date of birth. I will evade answering further questions to the utmost of my ability. I will make no oral or written statements disloyal to my country and its allies or harmful to their cause.

VI

I will never forget that I am an American, fighting for freedom, 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.

APPENDIX B

APPENDIX B

REPORT OF THE DEPARTMENT OF DEFENSE REVIEW COMMITTEE FOR THE CODE OF CONDUCT, 1976

The following is an extract of the final report of the Department of Defense Review Committee for the Code of Conduct, which was convened on 4 May 1976, and was chaired by Mr. John F. Ahearne, Acting Assistant Secretary of Defense for Manpower and Reserve Affairs. The findings form the foundation for Department of Defense Directive 1300.7, 19 December 1984, "Training and Education Measures Necessary to Support the Code of Conduct," which remains in effect today. Findings pertaining to surrender and Article II of the Code are shown below:

Article II: I WILL NEVER SURRENDER OF MY OWN FREE WILL.
IF IN COMMAND I WILL NEVER SURRENDER MY MEN
WHILE THEY STILL HAVE THE MEANS TO RESIST.

1. Explanation. As an individual, a member of the Armed Forces may never voluntarily surrender himself. Even when he is isolated and can no longer inflict casualties on the enemy or otherwise defend himself, it is his duty to evade capture and rejoin the nearest friendly force.

a. Only when evasion by an individual is impossible and further fighting would lead only to his own death with no significant loss to the enemy might the means to resist or evade be considered exhausted.

b. The responsibility and authority of a commander never extends to the surrender of his command, even if isolated, cut off, or surrounded, while the unit has the power to resist, break out, or evade to rejoin friendly forces.

2. Training Guidance.

a. [For all members of the Armed Forces particularly those whose military roles entail moderate or high risk of capture]. Training should assure that individuals are

familiar with wording and basic meaning of Article II as stated above.

b. [For those personnel whose military roles entail moderate or high risk of capture]. Training should be specifically oriented toward additional depth of knowledge on the following topic, first introduced [during initial entry training]--

(1) Understand that an individual who is cut off, shot down, or otherwise isolated in enemy-controlled territory must make every effort to avoid capture. The courses of action available to him include concealment until overrun by friendly forces or recovered by friendly rescue forces; evasive travel to a friendly or neutral territory; and evasive travel to other prebriefed areas.

(2) Understand that capture does not constitute a dishonorable act if all reasonable means of avoiding it have been exhausted and the only alternative is certain death.

c. [For those personnel whose roles entail a relatively high risk of capture]. Understand and have confidence in the procedures and techniques of rescue by search and recovery forces. Understand the procedures for properly utilizing specialized evasion destinations.

APPENDIX C

APPENDIX D

APPENDIX D

MESSAGES AND LETTERS TO AND FROM MAJOR GENERAL SHARP

This appendix includes some of the critical message traffic received and sent by Major General William F. Sharp while he served as commander of the Visayan-Mindanao Force during the Philippine capitulation. Most of the items in this appendix were sent in the form of radiograms. General Wainwright's letter of 7 May 1942, directing General Sharp to surrender his command is also included, as is General Sharp's message to the Japanese commander announcing the unconditional surrender of American forces on the Visayan and Mindanao. All of the messages and General Wainwright's letter can be found in the National Archives, Washington, D.C., Record Group 200 and Record Group 319.

RADIOGRAM

TO SHARP 3CF V 20 X MAY 6, 1942

ALL FORCES IN THE PHILIPPINES EXCEPT THOSE ON FORTIFIED ISLANDS AT ENTRANCE TO MANILA BAY ARE HEREBY RELEASED TO YOUR COMMAND. INFORM ALL CONCERNED. REPORT AT ONCE TO MACARTHUR FOR ORDERS. I BELIEVE YOU WILL UNDERSTAND THE MOTIVE BEHIND THIS ORDER.

WAINWRIGHT

RADIOGRAM

BNDL DE VNDN MAY 6, 1942

RADIO MALBOURNE CK 37

WAINWRIGHT HAS SURRENDERED. FROM NOW ON COMMUNICATE ON ALL MATTERS DIRECT WITH ME. HAVE YOU COMMUNICATION WITH CHYNOWETH?

MACARTHUR

BNDL DE VNDN NRI MOST IMMEDIATE GR 84 AG 675 9/5 AG 676
ORDERS EMANATING FROM GENERAL WAINWRIGHT HAVE NO VALIDITY. IF POSSIBLE SEPARATE[sic] YOUR FORCE INTO SMALL ELEMENTS AND INITIATE GUERILLA OPERATIONS. YOU?[sic] OF COURSE HAVE FULL, AUTHORITY TO MAKE ANY DECISION THAT IMMEDIATE EMERGENCY MAY DEMAND. KEEP IN COMMUNICATION WITH ME AS MUCH AS POSSIBLE. YOU ARE A GALLANT AND RESOURCEFUL COMMANDER AND I AM PROUD OF WHAT YOU HAVE DONE.

MACARTHUR.

UNCONDITIONAL SURRENDER

THE COMMANDING GENERAL OF THE FORCES OF THE UNITED STATES IN THE FAR EAST COMMANDING THE TROOPS IN THE WHOLE AREA OF THE VISAYAN AND MINDANAO ISLANDS HAS HEREBY PLEDGED THE UNCONDITIONAL SURRENDER OF HIS TROOPS TO THE NIPPONESE ARMY.

MAY 10, 1942 MAJOR GENERAL WILLIAM F. SHARP

THE COMMANDING GENERAL OF UNITED STATES ARMY FORCE IN FAR EAST, IN VISAYAN-MINDANAO.

TO H.E. MAJOR GENERAL KAWAMURA

THE COMMANDER-IN-CHIEF OF THE NIPPONESE ARMY IN MALAYBALAY.

TO H. E. LIEUT GENERAL HOMMA

THE COMMANDER-IN-CHIEF OF THE NIPPONESE ARMY.

HEADQUARTERS
United States Forces in the Philippines

Fort Mills, P. I.,
7 May, 1942.

Subject: Surrender.

To: Major General William F. Sharp, Jr., Commanding Visayan-Mindanao Force.

To put a stop to further useless sacrifice of human life on the Fortified Islands, yesterday I tendered to Lieutenant General Homma, the Commander-in-Chief of the Imperial Japanese Forces in the Philippines, the surrender of the four harbor forts of Manila Bay.

General Homma declined to accept my surrender unless it included the forces under your command. It became apparent that the garrisons of these forts would be eventually destroyed by aerial and artillery bombardment and by infantry supported by tanks, which have overwhelmed Corregidor.

After leaving General Homma with no agreement between us I decided to accept in the name of humanity his proposal and tendered at midnight, night 6-7 May, 1942, to the senior Japanese officer on Corregidor, the formal surrender of all American and Philippine Army troops in the Philippines. You will therefore be guided accordingly, and will repeat will surrender all troops under your command both in the Visayan Islands and Mindanao to the proper Japanese officer. This decision on my part, you will realize, was forced upon me by means entirely beyond my control.

Colonel Jesse T. Traywick, Jr., G.S.C., my Assistant Chief of Staff, G-3, who will deliver this to you is fully empowered to act for me. You are hereby ordered by me as the senior American Army officer in the Philippine Islands to scrupulously carry out the provisions of this letter, as well as such additional instructions as Colonel Traywick may give you in my name.

You will repeat the complete text of this letter and of such other instructions as Colonel Traywick may give you by radio to General MacArthur. Let me emphasize that there must be on your part no thought of disregarding these instructions. Failure to fully and honestly carry them out can have only the most disastrous results.


J. M. WAINWRIGHT,
Lieutenant General, U. S. Army.

RADIOGRAM

vdn V BNOL NR1 May 10/42

FOR MACARTHUR STOP I HAVE SEEN WAINWRIGHTS STAFF OFFICER AND
HAVE WITHDRAWN MY ORDER RELEASING COMMANDERS ON OTHER ISLANDS
AND DIRECTED COMPLETE SURRENDER DIRE NECESSITY ALONE HAS
PROMPTED THIS ACTION

SIGNED SHARP

SENT AT 7:15 PM

RADIOGRAM

MAY 10 1942

TON[sic] GENERAL[sic] CHYNOWETH CEBU COLONEL HILSMAN NEGROS
COLONEL CORNELL LEYTE-SAMAR COLONEL CHASTAINE VERUELA, AGUSAN
CAPTAIN BLANCAS BOHOL

AS I HAVE NOT YET SURRENDERED?[sic] THE INSTRUCTIONS GIVEN
YOU YESTERDAY RELEASING YOU FROM MY COMMAND ARE WITHDRAWN
STOP I RESUME COMMAND AND DIRECT THAT YOU CEASE ALL
OPERATIONS AGAINST THE JAPANESE ARMY AT ONCE STOP YOU WILL
RAISE A WHITE FLAG AND AWAIT THE ARRIVAL OF MY STAFF OFFICER
WHO WILL MAKE THE TERMS OF THE NEGOTIATIONS FOR SURRENDER OF
THE FORCES UNDER YOU STOP THIS IS IMPERATIVE AND MUST BE
CARRIED OUT IN ORDER TO SAVE FURTHER BLOODSHED STOP
ACKNOWLEDGE

SHARP COMMANDING

RADIOGRAM

TO GENERAL SHARP MAY 10, 1942

YOUR RADIO SURRENDER OF MY FORCES SOUNDS TOTALLY UNNECESSARY AND FOR ME TO COMPLY TENDS TO TREASON WITHOUT SCANCTION [sic] OF WD THRU MACARTHUR STOP CAN SURRENDERING OF ONE ISLAND AUTOMATICALLY DO SAME FOR OTHERS THAT ARE IN GOOD ORDER STOP DID DUTCH DO IT THAT WAY QUERY WILL THE JAPANESE DO IT WHEN OUR FORCE ADVANCE NOTRH QUERY MY FORCES ARE IN EXCELLENT SHAPE AND HAVE A REASONABLE CHANCE OF PULLING THROUGH ON OUR MISSION STOP SUCH ACTION WILL DEWTRY [sic] CIVILIAN AND MILITARY MORALE AND CANNOT BE UNDERSTOOD BY MY SIMPLE STOLID SOLDIERY WHO MIGHT TURN INTO BANDITS OF MORE HARM TO THE JAPANESE COMMA CIVILIAN FOREIGNERS AND WOMEN STOP COMMON SENSE DICTATES WE BE GIVEN A CHANCE STOP I STRONGLY URGE YOU TO HAVE THE APPROVAL OF THE WD THRU MACARTHUR EXPLAINING THAT EVEN IF EVERYTHING ELSE IS WRONG MY FORCES ARE INTACT AND CAPABLE STOP I HAVE TOO NO REASON TO QUESTION YOUR AUTHORITY OR REASONS BUT BELIEVE THEY SHOULD BE EXPLAINED STOP I CERTAINLY INTEND TO CONSULT WITH CHYNOWETH MY IMMEDIATE COMMANDER BEFORE ANY ACTION STOP TIME IS NOT OF ANY ESSENCE IN MY CASE FOR ANY HASTY ACTION STOP IN THIS DELICATE SITUATION PLEASE DO NOT ISSUE ME ANY PEREMTORY ORDERS THAT WILL EMBARRASS OR GET US INTO A MUTUAL CONFLICT STOP RATHER DO I WANT A FREE HAND IN CARRYING OUT MY MISSION AND INFLUENCE BY ANY HYSTERIA INHERENT IN LOCAL ACTION STOP NO ARMY SURRENDERS PORTIONS STILL FREE INTACT AND HAVING A GOOD CHANCE OF HELPING THE GENERAL MISSION STOP MAKE ME INDEPENDENT DO NOT PUT ME ON THE SACRIFICE BLOCK END

CHRISTIE

RADIOGRAM

TO COL CHRISTIE MAY 11, 1942

YOUR MESSAGE IN REPLY TO MY CLEAR MESSAGE CANNOT BE ACCEPTED
STOP I AM USING CLEAR TEXT BECAUSE ALL MY CODES WERE
DESTROYED STOP I AGAIN DIRECT REPEAT DIRECT YOU HOIST A WHITE
FLAG [sic] AND CEASE ALL OPERATIONS AT ONCE AGAINST THE
JAPANESE ARMY STOP YOUR FAILURE TO COMPLY WILL PRODUCE
DISASTROUS RESULTS STOP NEITHER WAINWRIGHTS NOR MY SURRENDER
HAS BEEN ACCEPTED AS YET AND UNLESS YOU AND ALL OTHER
COMMANDERS COMPLY WITH MY ORDERS AT ONCE ACTIVE OPERATIONS
WILL BE RESUMED STOP I AM SENDING LT COL THAYER BY PLANE TO
YOU WITH WRITTEN INSTRUCTIONS AND HE WILL EXPLAIN THE
SITUATION IN DETAIL STOP I AM IN COMMUNICATION WITH MACARTHUR
AND IS ADVISED OF MY ACTIONS WHICH HAVE BEEN ORDERED BY
WAINWRIGHT STOP YOU WILL REPLY IMMEDIATELY TO THIS MESSAGE
INDICATING YOUR COMPLIANCE AND ACTIONS STOP EXPEDITE

SHARP COMMANDING

RADIOGRAM

TO COLONEL CHRISTIE MAY 18, 1942

YOU ARE UNDER MY COMMAND AND ACCORDINGLY WILL SURRENDER
YOURSELF AND TROOPS AS I HAVE PREVIOUSLY [sic] DIRECTED STOP
CHYNOWETH HAS ALREADY COMPLIED STOP ACKNOWLEDGE THIS MESSAGE
AND STATE ACTIONS TAKEN AT ONCE REPEAT AT ONCE

SHARP COMMANDING

APPENDIX E

APPENDIX E

SURVEY OF PHILIPPINE VETERANS

In conjunction with this study, 109 questionnaires were sent by U.S. mail in October 1988, to members of the veterans' organization, The American Guerrillas of Mindanao. The survey was not intended to be, nor should it be construed as, a scientific sampling. Rather, the questionnaire was designed to solicit first person accounts from some of those who were present on the Philippine Islands during the American capitulation. A copy of the questionnaire is found in this appendix. To give the reader a flavor of the responses, a summary by category is shown below:

- 13 - Returned to sender, no forwarding address.
- 4 - Surveys returned by family member indicating subject was deceased.
- 31 - Former service members indicated they disobeyed orders to surrender and became guerrilla fighters.
- 9 - Former service members indicated they obeyed orders to surrender and later escaped from POW camps to fight as guerrillas.
- 1 - Former service member declined to complete survey stating, "Many of the soldiers who surrendered to the enemy have bad feelings toward those of us who did not surrender."
- 12 - Former service members indicated they arrived in the Philippines after the surrender in 1942 before General MacArthur's return in 1945. These included coast watchers, OSS officers, weather watchers, and those sent to assist guerrilla units. One respondent was a crew member of the USS Narwhal, a submarine that regularly resupplied the guerrillas. Another was a former air crew member who was shot down over the Philippines in 1944 and linked up with the American guerrilla units.

TOTAL QUESTIONNAIRES SENT: 109

TOTAL RESPONSES: 57

NUMBER OF RESPONDENTS INDICATING PRESENCE IN PHILIPPINES AT
THE TIME THE SURRENDER ORDER WAS ISSUED: 41

NUMBER OF THOSE INDICATING THEY DISOBEYED THE SURRENDER
ORDER: 32

NUMBER OF THOSE INDICATING THEY OBEYED THE SURRENDER ORDER:
9

1. NAME AND CURRENT ADDRESS:

2. WHAT WAS YOUR RANK AND WHAT POSITION DID YOU HOLD
WHEN THE PHILIPPINES FELL IN APRIL-MAY 1942?
(e.g. Staff Sergeant, acting platoon leader)

3. WHAT UNIT WERE YOU ASSIGNED TO AT THE TIME OF THE
AMERICAN SURRENDER AND WHERE WERE YOU LOCATED?
(e.g. Bataan, Mindanao, etc.)

4. PRIOR TO THE FALL OF THE PHILIPPINES, DID YOU CONSIDER
OR DISCUSS WHAT ACTION YOU WOULD TAKE IF ORDERED TO
SURRENDER? DID YOUR CHAIN OF COMMAND ENCOURAGE OR
DISCOURAGE PLANS FOR REFUSING TO SURRENDER IF SUCH
AN ORDER WAS ISSUED?

5. DID YOU RECEIVE AN ORDER OR INSTRUCTIONS TO SURRENDER TO THE JAPANESE? IF SO, PLEASE EXPLAIN BRIEFLY HOW THIS ORDER WAS CONVEYED TO YOU? (e.g. in person by my company commander)

6. WHAT REASONS, IF ANY, DID YOUR CHAIN OF COMMAND GIVE FOR THE ORDER TO SURRENDER?

7. DID YOU CONSIDER THE ORDER TO SURRENDER A LAWFUL ORDER FROM YOUR LEGALLY CONSTITUTED COMMANDER?

8. IF YOU DID NOT SURRENDER AFTER THE ORDER WAS ISSUED, DID YOU BELIEVE U.S. AUTHORITIES WOULD TAKE ACTION AGAINST YOU FOR DISOBEYING AN ORDER OR FOR DESERTING YOUR UNIT?

9. TO THE BEST OF YOUR RECOLLECTION, HOW DID YOU VIEW YOUR DUTIES REGARDING WHETHER TO KEEP FIGHTING THE ENEMY OR TO SURRENDER?

10. WERE YOU FAMILIAR WITH THE ARTICLES OF WAR CONCERNING
SURRENDER TO THE ENEMY?

11. PLEASE EXPLAIN WHAT MOTIVATED YOUR DECISION
WHETHER OR NOT TO SURRENDER.

BIBLIOGRAPHY

BIBLIOGRAPHY

Government Documents

- Eisenhower, Dwight D. Code of Conduct for Members of the Armed Forces of the United States. Executive Order Nr. 10631 (20 August 1955).
- Manual for Courts-Martial, United States 1984. U.S. Government Printing Office.
- Murray, Michael P. Historical Analysis and Critical Appraisal of the Code of Conduct for Members of the Armed Forces of the United States. Newport, RI: The United States Naval War College, June 1973.
- Oaks, Robert C.; North, Kenneth W.; Kjar, Robert H.; Tierman, William H. Evaluation of the Code of Conduct for Members of the Armed Forces of the United States. Newport, RI: The United States Naval War College, June 1974.
- U.S. Department of the Army. The Army. Field Manual 100-1. Aug. 1986.
- U.S. Department of the Army. Code of Conduct/Survival, Evasion, Resistance, Escape (SERE) Training. Army Regulation 350-30. 10 December 1985.
- U.S. Department of the Army. International Law, vol. II. Pamphlet 27-161-2. Oct. 1962.
- U.S. Department of the Army. The Law of Land Warfare. Field Manual 27-10. Jul. 1956.
- U.S. Department of the Army. Operations. Field Manual 100-5. May 1986.
- U.S. Department of Defense, Asst. Sec. of Def. Manpower and Reserve Affairs. Report of Defense Review Committee for the Code of Conduct 1976, Chairman: John F. Ahearne, 1976.

Washington, D.C. National Archives. Record Group 319,
Box 270. U.S. v. Homma, vol. XXVI, p. 3232.

Books and Articles - Primary Sources

Atienza, Rigoberto J. A Time for War; 105 Days in Bataan. Manila: Eugenia S. vda. de Atienza, 1985.

Brougher, William E. South to Bataan, North to Mukden. Athens, GA: University of Georgia Press, 1971.

Hegel, Georg W. F. Early Theological Writings, trans. T. M. Knox. Chicago, 1948.

Hunt, Ray C. and Norling, Bernard. Behind Japanese Lines; An American Guerrilla in the Philippines. Lexington, KY: The University of Kentucky Press, 1986.

Hutchins, Robert Maynard. gen. ed. Great Books of the Western World, 54 vols. Chicago, IL: Encyclopaedia Britannica, Inc., 1952. Vol 23: Leviathan; Or, Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil, by Thomas Hobbes.

Mill, John Stuart. On Liberty. Edited by Shields, Currin V. New York, NY: The Bobbs-Merrill Co., Inc., 1956.

Rousseau, Jean Jacques. The Social Contract. Translated and edited by Charles Frankel. New York, NY: Hafner Publishing Co., 1947.

Schindler, Dietrich, and Toman, Jiri. ed. The Laws of Armed Conflicts; A Collection of Conventions, Resolutions, and Other Documents. Geneva: Henry Dunant Institute, 1981.

Volckmann, Russell W. We Remained. New York, NY: W. W. Norton & Co., 1954.

Wainwright, Jonathan M. General Wainwright's Story. Edited by Robert Considine. Westport, CT: Greenwood Press, 1945.

- Brandt, Richard B. A Theory of the Good and the Right.
Oxford: Clarendon Press, 1979.
- Brandt, Richard B. "Utilitarianism and the Rules of War"
In War and Moral Responsibility, pp. 25-45. Edited
by Marshall Cohen, Thomas Nagel, and Thomas Scanlon.
Princeton, NJ: Princeton University Press, 1974.
- Byrne, Edward M. Military Law. 3rd ed. Annapolis, MD:
Naval Institute Press, 1981.
- Dinter, Elmar. Hero or Coward: Pressures Facing the
Soldier in Battle. Totowa, NJ: Frank Cass and Co.,
1985.
- Esposito, Vincent J. ed. The West Point Atlas of
American Wars, vol. II. New York, NY: Praeger
Publishers, 1959.
- Flammer, Philip M. "Conflicting Loyalties and the American
Military Ethic." In War, Morality, and the Military
Profession. Edited by Malham M. Wakin. Boulder, CO:
Westview Press, 1979.
- Flanagan, E. M., Jr., Lt. Gen. USA (Ret.). Corregidor.
Novato, CA: Presidio Press, 1988.
- Fotion, N., and Elfstrom, G. Military Ethics:
Guidelines for Peace and War. Boston, MA: Routledge
and Kegan Paul, 1986.
- Frankena, William K. Ethics 2nd ed. Englewood Cliffs,
NJ: Prentice-Hall, Inc., 1973.
- Friedman, Leon. ed. The Law of Land War: A Documentary
History, vol. I & II. New York, NY: Random House,
1972.
- Gabriel, Richard A. "Legitimate Avenues of Military
Protest in a Democratic Society." In Military Ethics;
Reflections on Principles - The Profession of Arms,
Military Leadership, Ethical Practices, War and Morality,
Educating the Citizen Soldier. Edited by Malham Wakin,
Kenneth Wenker, and James Kempf. Washington D.C.:
National Defense University Press, 1987.

- Hall, Jerome. General Principles of Criminal Law, 2nd ed. Indianapolis, IN: Bobbs-Merrill, 1960.
- Hospers, John. Human Conduct; Problems of Ethics, shorter edition. New York, NY: Harcourt Brace Jovanovich, Inc., 1972.
- Huntington, Samuel P. The Soldier and the State; The Theory and Politics of Civil-Military Relations. Cambridge, MA: The Belknap Press of Harvard University Press, 1957.
- Issacs, Jeremy, producer. The World at War. 26 volume video series. New York, NY: Thames Television, 1982. Vol 23: Pacific - The Island to Island War, by David Wheeler.
- Johnson, James Turner. Just War Tradition and the Restraint of War; A Moral and Historical Inquiry. Princeton, NJ: Princeton University Press, 1981.
- Kalshoven, Frits. The Law of Warfare. Geneva: Henry Dunant Institute, 1973.
- Keijzer, Nico. Military Obedience. Alphen aan den Rijn, The Netherlands: Sijthoff, and Noordhoff, 1978.
- Levi, Howard S. "Maltreatment of Prisoners of War in Vietnam." In Boston University Law Review. (Summer, 1968).
- Linderman, Gerald F. Embattled Courage; The Experience of Combat in the American Civil War. New York, NY: The Free Press, 1987.
- Milgram, Stanley. Obedience to Authority. New York, NY: Harper and Row, 1974.
- Millett, Allan R., and Maslowski, Peter. For the Common Defense; A Military History of the United States of America. New York, NY: The Free Press, 1984.
- Morris, William. ed. The American Heritage Dictionary of the English Language. New York, NY: Houghton Mifflin Co., 1969.

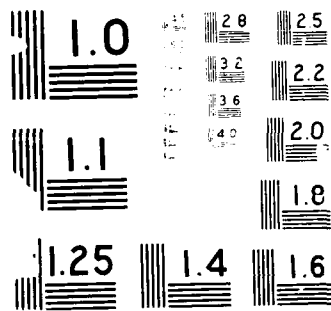
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SURRENDER - A SOLDIER'S LEGAL ETHICAL AND MORAL
OBLIGATIONS; WITH PHILIPPINE CASE STUDY(U) ARMY COMMAND
AND GENERAL STAFF COLL FORT LEAVENWORTH KS M S KLIMOW
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UNCLASSIFIED





- Morton, Louis. The Fall of the Philippines. United States Army in World War II. Washington D.C.: U.S. Government Printing Office, 1953.
- Preston, Richard A., and Wise, Sydney F. Men in Arms. 4th ed. New York, NY: Holt, Rinehart, and Winston, 1979.
- Roberts, Adam and Guelff, Richard. ed. Documents on the Laws of War. Oxford: Clarendon Press, 1982.
- Said, Edward W. "Irangate: A Many Sided Crisis." Journal of Palestine Studies vol XVI, nr. 4 (summer 1987).
- Schultz, Duane. Hero of Bataan: The Story of General Jonathan M. Wainwright. New York, NY: St. Martin's Press, 1981.
- Struckmeyer, Frederick R. "The 'Just War' and the Right of Self Defense." In War Morality and the Military Profession. Edited by Malham M. Wakin. Boulder, CO: Westview Press, 1979.
- Wakin, Malham M., ed. "Ethics of Leadership." In War, Morality, and the Military Profession. Boulder, CO: Westview Press, 1979.
- Walzer, Michael. Just and Unjust Wars; A Moral Argument with Historical Illustrations. New York, NY: Basic Books, Inc., 1977.
- Walzer, Michael. Obligations; Essays on Disobedience, War, and Citizenship. Cambridge, MA: Harvard University Press, 1970.
- Wheeler, Michael O. "Loyalty, Honor, and the Modern Military." In War, Morality, and the Military Profession. Edited Malham M. Wakin. Boulder, CO: Westview Press, 1979.

Unpublished - Secondary Sources

- Hillman, Rolfe Col. (Ret.). Arlington, VA. Letter to the author. 26 Jan. 1989.

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