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***REDEFINING THE MODERN MILITARY:
THE INTERSECTION OF PROFESSION AND ETHICS***

**EDITED BY NATHAN K FINNEY AND TYRELL O MAYFIELD
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Military forces occupy a unique position in contemporary society. Governed by strict codes of discipline that are not applicable to their civilian populations, being authorised to use extensive lethal force in times of armed conflict, and being required to sacrifice their lives in the name of the nation, all set the military apart. In view of these circumstances, it is fair to ask whether the military is itself a profession, and if so what, if any, ethical principles ground its decision-making, especially in times of armed conflict where lives are taken and sacrificed.

These questions are asked and answered in *Redefining the Modern Military: The Intersection of Profession and Ethics*, edited by Nathan Finney and Tyrell Mayfield, published in 2018 by the Naval Institute Press. Fundamental questions about the nature of military service and its professionalism are raised through the 12 substantive chapters of the book. Issues covered include the nature of professionalism itself, the intersection of law and ethics, the moral and ethical boundaries of military service, the individual obligations of professional conduct, the historical evolution of United States Naval professionalism, the role of military education, the nature of military identity, the relevance of individual ethical orientation, the involvement of other professions on the battlefield and the professionalism of the air force.

This book is timely in its treatment of the topic of professionalism. Foundational studies of the nature of modern military service and its cultural and social dimensions can be traced back to the works of Huntington,¹ Janowitz² and Hackett³ dating from

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¹ Samuel P Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations* (Belknap Press, 1957).

² Morris Janowitz, *The Professional Soldier: A Social and Political Portrait* (Free Press, 1960).

³ General Sir John Hackett, *The Profession of Arms* (Times Publishing, 1963).

the late 1950s and early 1960s. As the editors of the book note, while these studies have essentially established the scholarly field and have continuing relevance in the identification of professional military culture, there have been decisive developments in professional military service since that time. New theatres of potential armed conflict beyond land, sea and air have arisen in the areas of outer space and cyberspace. Additionally, major wars in Vietnam, Afghanistan and Iraq, along with shorter engagements in theatres such as Granada, the Balkans and numerous peace-keeping and peace enforcement operations have all generated their own lessons for military forces and their cultures. Similarly, the rise of military technology, the prevailing reliance upon volunteer military forces, the greater role and capacity of non-state actors in armed conflict, the interconnectedness of global affairs and the capacity for constant observation and critique of military operations through public television and social media, have all brought their own lessons for military professionalism and ethics. Given these major developments, this book is a welcome and useful contribution to the understanding of military professionalism and the ethical framework that has been adopted by contemporary military forces when engaging in the myriad operational roles currently undertaken.

For the purposes of this review, the chapter by Wing Commander Jo Brick of the Royal Australian Air Force possesses particular resonance.⁴ Brick tackles the critical relationship between law and ethics in the context of professional military behaviour. This relationship is generally underexplored in the literature and her treatment of it represents a moment of significant insight and clarity. It is self-evidently true that the legal regulation of armed conflict is voluminous, extensive and dense in its application. The 1949 *Geneva Conventions*⁵ still represent the only treaty series that have received universal ratification. However, despite being a single treaty series, they collectively contain literally hundreds of articles of textual regulation of battlespace activity. Combined with scores of other treaties regulating specific means and methods of armed conflict, along with the broad application of accompanying principles of customary international law, there is a tendency to conclude that the law itself has an almost omnipotent capacity to greatly ameliorate violence in the battlespace and to somehow tame the excesses of armed conflict. This conclusion is undoubtedly partly true, but it misses the inevitable indeterminacy, uncertainty and over and under-inclusiveness of rules and standards that comprise this corpus of this law, indeed any law. While the temptation to assume that law has assimilated or even

⁴ Jo Brick, 'The Military Profession: Law, Ethics and the Profession of Arms' in Nathan K Finney and Tyrell O Mayfield (eds), *Redefining the Modern Military: The Intersection of Profession and Ethics* (Naval Institute Press, 2018) 22.

⁵ *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950); *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, opened for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950); *Geneva Convention Relative to the Treatment of Prisoners of War*, opened for signature 12 August 1949, 75 UNTS 135 (entered into force 21 October 1950); *Geneva Convention Relative to the Protection of Civilian Persons in Times of War*, opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950).

substituted for moral and ethical reasoning is great, such a conclusion is contestable. It is here that the analysis of Brick is the most illuminating. She examines the limits of the law and also the moments where the law may act in opposition to deeper moral judgment. In the latter case, she usefully contrasts the significance of legal compliance in the historic cases of relevant military forces abandoning civilians in Srebrenica and Rwanda, briefly examining the two examples of decision-making by military commanders in terms of reconciling legal obedience against moral conviction. She also draws on these examples to more broadly identify the relationship between professional ethos and legal compliance, observing the necessity of conscious self-reflection in the conduct of decision-making within military operations.

It is this latter point that is most revealing in the analysis that Brick makes. The old Just War theory, which has been decisively supplanted by law's contemporary positivist framework, used to require those engaged in fighting a war to conduct a continued self-assessment of their motivation for engaging in armed conflict. This ensured an internal limiting of excessive force and a set boundary of permissible behaviour driven by deeper registers of legitimacy. This is no longer a mandatory requirement under contemporary requirements of positive law, which merely require a binary assessment of whether a particular action is lawful or not. It is here, though, that self-awareness and an ethical code of behaviour should find their most prominent expression. Brick uses the model of a fiduciary duty owed by the military to the state when acting in the context of armed conflict as a heuristic device to advance this idea. Such a model, whilst not formally applicable, does nonetheless provide a useful basis upon which to conceive of how ethical and moral boundaries can and should inform decision-making under the law in a time of armed conflict. Brick correctly observes that military forces, especially those from liberal democracies, undertake their actions in the name of the populations they represent and accordingly, there is a need for accountability under both legislative and moral codes of behaviour. It is here that professionalism and the professional duties of military forces, who enjoy a monopoly of skill and authority to engage in armed conflict on behalf of the State, are most relevant in providing the means by which these codes of restraint and right behaviour can be informally developed and embraced.

While the law operates as a necessary restraint in ameliorating the excesses of armed conflict, the application of a professional ethos is the added element that completes the sufficient equation and ensures that behaviour in warfare can be effectively bounded. In short, Brick makes a compelling argument for the need to forge a self-aware, ethical reference point when traversing the legal landscape. This raises obvious challenges in terms of education and training (Brick poignantly notes '[t]he law is easy; ethics is hard'⁶) but is a necessary element to underpin the very professionalism that establishes the military's identity and social role in the first place.

The editors Finney and Mayfield are to be congratulated for their attention to the key issue of exploring the relationships between military service, professionalism and ethical orientation. The military occupy a unique legal and social place in their

⁶ Brick (n 4) 34.

capacity to dispense (extensive) lethal force. While much has been invested into the law of armed conflict in the hope that it will sufficiently restrain violence, there is the need for locating deeper registers of ethical duty. This duty finds expression in the recognition of the professional nature of military service and the rights and obligations that flow as a consequence. The approaches taken in this book to examine these issues do a magnificent job of revealing a rich and thoughtful literature of analysis. The book represents a key moment of reflection for all who are interested in understanding issues of restraint, professionalism and ethical boundaries in the conduct of contemporary military operations.