

**STEWARDSHIP AND THE RETIRED SENIOR LEADER:
TOWARD A NEW PROFESSIONAL ETHIC**

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*In the interest of winning this war we all must defer
judgments about the efficacy of our wartime leaders to
the wisdom of the American voters and the 20-20
hindsight of historians like me . . . after our Soldiers and
Marines come home.*

—Major General Robert H. Scales (Retired)
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I. Introduction

When the nation's senior military leader, the Chairman of the Joint Chiefs of Staff, feels compelled to publicly render as "disappointing" the criticisms by former military officers toward the President's management of national security information, it is a remarkable thing indeed. The August 2012 comments by General Martin Dempsey, describing the policy criticisms as "eroding that bond of trust that we have with the American people,"² is the most recent illustration of an enduring question

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¹ Robert H. Scales, Op Ed, *The Generals' Ill-timed Revolt*, WASH. TIMES, May 2, 2006, at A19.

² General Martin Dempsey, in Victor Davis Hanson, *Should Retired Military Officers Speak Out: Always, Never—or It Sort of Depends?*, NAT'L REV. ONLINE, Aug. 23, 2012, available at <http://www.nationalreview.com/corner/314795/should-retired-military-officers-speak-out-always-never-or-it-sort-of-depends/> (last visited June 4, 2014). See also Jim Garamone, *Public Trust Requires Apolitical Military, Dempsey Says*, U.S. A.F.

about the proper relationship of former military leaders to civilian leadership and active military. It also begs the more nuanced question of appropriate professional ethics for retired military leaders and its consequences for the military profession.

The underlying tension between former military leaders and the executive branch is hardly new. The annals of military and civilian relations are replete with examples of retired flag and general officers openly criticizing military strategic planning, organization, and operations in peace and war. In the mid-1950s, President Dwight Eisenhower was confronted by active and uniformed Army leaders' vociferous opposition to his strategic approach, which relied heavily upon nuclear weapons at the expense of a large standing Army.³ This opposition endured well into the retirements of General Matthew B. Ridgway, General James M. Gavin, and General Maxwell Taylor, who in the 1950s each wrote and advocated against what they perceived to be a poorly conceived policy compromising national security in the face of a rising Soviet threat.⁴

In the modern era, policy advocacy by retired military leaders has taken on a new political character that could hardly be imagined a half century ago. The contemporary nature of instant and enduring information via the Internet and print and cable news has fundamentally altered how the voices of former senior leaders are received and utilized. Association with the active force affords retired senior leaders important

ONLINE, Sept. 17, 2006, available at <http://www.af.mil/news/story.asp?id=123318227> (last visited June 4, 2014); Larry Thornberry, *Political General Complains of Politics: Time for First Amendment Training for Flag Officers*, AM. SPECTATOR, Aug. 23, 2012, available at <http://spectator.org/archives/2012/08/23/political-general-complains-of/> (last visited June 4, 2014).

³ Donald Alan Carter, *Eisenhower Versus the Generals*, 71 J. MIL. HISTORY no. 4, Oct. 2007, at 1169–71; see also ANDREW J. BACEVICH & LAWRENCE F. KAPLAN, *GENERALS VERSUS THE PRESIDENT: EISENHOWER AND THE ARMY, 1953–1955* (Syracuse University and Johns Hopkins University, 1997), available at http://www.maxwell.syr.edu/exed/Sites/nss/NSS_Case_Study_Listing_Descriptions/#CS0697-02 (last visited June 4, 2014) (a case study describing senior Army leader opposition to Eisenhower's strategy of massive retaliation, and the means by which military leaders advanced their opposition).

⁴ *Id.* at 1195. General Ridgway vented his frustration through a series of magazine articles published by the *Saturday Evening Post* and later condensed into a book, *Soldier: The Memoirs of Matthew B. Ridgway*. A year after his 1958 retirement, General Gavin published *War and Peace in the Space Age*, condemning the Eisenhower Administration's strategic emphasis on nuclear weapons. In the same year, 1959, General Maxwell Taylor published *The Uncertain Trumpet*, which took a highly critical look at Eisenhower's reorganization of the military. *Id.* at 1185–95.

credibility and responsibility in matters affecting the national security dialogue, but it requires renewed vigilance and attention.

An essential issue is whether, given the partisanship and proliferation of public information, retired military leaders are bound by a professional ethical standard subjugating their right of public participation to an ethical code of political stoicism and restraint. The following discussion attempts to answer this question by first examining the associative nature of the military profession and the juxtaposition of legitimate policy dissent versus an apolitical professional ethic.

Perhaps most importantly, this article considers whether retired military leaders have a responsibility to the military profession that endures beyond active service. Additionally, this article analyzes the idea of stewardship of the military profession by its retired cohorts in the context of its consequences for the profession of arms, its relationship to the American public, as well as whether retired leaders' enduring association with the armed forces obligates them to an ethical code of nonpartisan restraint in light of their elevated place within military society.

II. The Military as a Profession

Samuel Huntington, through his 1957 book *The Soldier and the State*, remains among the most widely studied and influential commentators on the nature of military professionalism.⁵ In describing the military as a profession much different from its civilian counterparts,

⁵ SAMUEL P. HUNTINGTON, *THE SOLDIER AND THE STATE* (The Belknap Press of the Harvard University Press 1957). For compressive discussions on the nature of the military profession, see also ANTHONY E. HARTLE, *MORAL ISSUES IN MILITARY DECISION MAKING* (University Press of Kansas, 2d ed. 2004); RICHARD H. KOHN, ED., *THE UNITED STATES MILITARY UNDER THE CONSTITUTION OF THE UNITED STATES, 1789–1989* (New York University Press 1991); WILLIAM B. SKELTON, *AN AMERICAN PROFESSION OF ARMS: THE ARMY OFFICER CORPS, 1784–1861* (The University Press of Kansas 1992); DON M. SNIDER & GAYLE L. WATKINS, PROJECT DIRS., & LLOYD J. MATTHEWS, ED., *THE FUTURE OF THE ARMY PROFESSION* (McGraw Hill 2002); MICHAEL ELIOT HOWARD, *SOLDIERS AND GOVERNMENTS* (Indiana University Press 1959); MORRIS JANOWITZ, *THE PROFESSIONAL SOLDIER: A SOCIAL AND POLITICAL PORTRAIT* (Free Press 1960); SAMUEL E. FINER, *THE MAN ON HORSEBACK. THE ROLE OF THE MILITARY IN POLITICS* (Westview Press, F. Pinter, 2d enlarged ed., rev. & updated vers. 1988); CHARLES A. STEVENSON, *WARRIORS AND POLITICIANS: U.S. CIVIL-MILITARY RELATIONS UNDER STRESS case studies* (Routledge Press 2006).

Huntington concluded that “the vocation of officership meets the principal criteria of professionalism,” and that “a distinct sphere of military competence exists which is common to all, or almost all, officers and which distinguishes them from . . . civilians.”⁶ Importantly, Huntington’s foremost observation was that apolitical military professionalism, particularly within the officer corps, is essential to the military ideal “in which the behavior of men is governed by a code, the product of generations.”⁷

Anthony Hartle viewed the nature of the military profession similarly, considering the “complexity of the American military ethic.”⁸ Hartle implied there is a military profession by referencing and refining Huntington’s analysis and went on to employ the concept of “*role-differentiated behavior* which calls upon members of a profession to act differently than general members of society.”⁹ He suggested, in broad terms, “that the American professional military ethic is a synthesis of the functional requirements of the profession of arms, the principles underlying the prescriptions of the laws of war, and the moral implications generated by the enduring values of American society.”¹⁰ Citing Huntington, Hartle concluded, “The role of the American military professional is a morally coherent, partially differentiated role that is rationally justified within the context of American society.”¹¹

Hartle cites the lawyer-client privilege and confidentiality as an example of ethical rules governing the conduct of professionals, in this case promotion of the adversarial legal system. “From this view,” Hartle observed, “lawyers are said to have a differentiated role in society.”¹² Hartle argued further, that the position and status of the military affords its profession a similarly differentiated role,¹³ concluding that in many circumstances “society can realize the desired benefits only if the profession operates under special norms,” defined as “an idea that a

⁶ HUNTINGTON, *supra* note 5, at 11.

⁷ *Id.* at 465.

⁸ HARTLE, *supra* note 5, at 7

⁹ *Id.* (emphasis added).

¹⁰ *Id.* at 229.

¹¹ *Id.* at 150.

¹² *Id.* at 8.

¹³ *Id.* at 9.

given behavior is expected because it is right, proper, moral, wise, efficient, technically correct or otherwise defined as desirable.”¹⁴

More generally, the distinguished British officer, academic, and author General Sir John Hackett has written of the military profession:

Service under arms has been seen at some times and in some places as a calling resembling that of a priesthood in its dedication. . . . a more or less exclusive group coherence, a complex of institutions peculiar to itself, and educational pattern adapted to its own specific needs, a career structure of its own and a distinct place in the society which has brought it forth. In all these respects it has strong points of resemblance to medicine and the law, as well as the holy orders.¹⁵

Whether as a function of Huntington’s “role differentiated behavior,” Hartle’s lawyer-client analogy, or Hackett’s almost romantic allusion to the military as a “holy order,” it is clear that there exists a distinctive military profession with its own particular function, character, and ethics. Among its unique characteristics are the differentiated roles and relationships of its two principal cohorts—the active military and the retired military—as essential parts of the same fraternal order.

III. Retired Leaders as Stewards of the Profession

As a function of professional responsibility and association, the retired cohort are those senior members of the profession who dedicated the better part of their working life to military service, were educated in its schools and war colleges, were steeped in its culture, and led its organizations. Their association with the military endures in the mind of the active force and the American public. Even in retirement, a former military member is part of two worlds, both civilian and military. While the profession’s retired cohort does not lay aside the citizen, it is never entirely separate from the soldier, either. With that role of retired soldier comes a certain moral and ethical responsibility as a representative and

¹⁴ *Id.* at 240–41 n.10 (citing FREDERICK L. BATES & CLYDE C. HARVEY, *THE STRUCTURE OF SOCIAL SYSTEMS* 77 (Gardner Press 1975)).

¹⁵ GENERAL SIR JOHN HACKETT, *THE PROFESSION OF ARMS* 9 (MacMillan Publishing Company 1983).

generational steward of the profession itself and as a responsible defender and guarantor for its future.

From a policy and legal perspective, retired members of the military remain tied to the profession through their association with the military via retired pay, benefits including medical care and access to military facilities and installations, and the fact that they are generally subject to involuntary recall to active duty by an order of the Secretary of Defense.¹⁶ Subject to certain conflict of interest prohibitions, federal regulations also allow retired members of the military to retain their military ranks and titles and to wear their uniforms, afford them unique death benefits, and laud them for their service to the nation.¹⁷

Dr. Richard Swain, the former Professor of Officership at the William E. Simon Center for the Professional Military Ethic at the U.S. Military Academy at West Point (2002–2007), has considered the application of codified ethical standards for the military's active cohort. He found public participation of retired officers in certain national policy debates troubling, noting the "famous remark by General George Marshall to a newspaper correspondent that 'I have never voted, my father was a Democrat, my mother a Republican, and I am an Episcopalian.'"¹⁸ Swain concluded that the retired cohort of senior leaders is bound by at least the spirit of Marshall's commitment and abstention from partisan involvement. Swain observed,

It is at least a false proposition that upon retirement officers revert to full civilian status in so far as the obligations they undertook at their commissioning. Retirement is not resignation. It is a matter of fact, not interpretation, that retired officers remain members of the armed forces by law and regulation. . . . Unless, like George Washington, they lay down their commissions by resignation, it is reasonable to assume that they

¹⁶ See 10 U.S.C. § 688 (LexisNexis 2014) (Retired members: authority to order to active duty).

¹⁷ See generally *id.* § 371 (Retirement for Length of Service), *id.* §75 (subch. II, Death Benefits).

¹⁸ Richard Swain, *Reflection on an Ethics of Officership*, PARAMETERS, Spring, 2007, at 4, 18 (citing Letter from George C. Marshall, to Charles J. Graham (Sept. 23, 1943), in THE PAPERS OF GEORGE CATLETT MARSHALL: VOLUME 2, "WE CANNOT DELAY," JULY 1, 1939–DECEMBER 6, 1941, at 616 (Larry I Bland, Sharon R. Ritenour & Clarence E. Wunderlin, Jr., eds. (Johns Hopkins Univ. Press 1986)).

remain at least ethically obliged to observe the limitations imposed by commissioned service, accepted by the oath they made and commission they still hold. These limitations are imposed by obligations of loyalty to the Constitution, the virtues of patriotism, valor, fidelity, and abilities, and certainly, as officers, include public respect to the office of the President and other Department of Defense civil authorities.¹⁹

Accordingly, for better or worse, retired leaders are inescapably associated with the active cohort and have a powerful professional imperative to abide by a code of conduct consistent with the standards underlying the active military's high esteem among the American people. The public easily and inescapably associates one with the other, often without distinction, and clearly deems retired officers as members of Sir Hackett's military "priesthood."²⁰ Although they are retired, the retired cohort is still perceived as part of the profession, and it naturally follows that they are ethically bound by a certain code of conduct consistent with the character of the profession's relationship to the American people, civilian authority, the active cohort, and their own individual legacy.

Colonel Bernard Horn and Dr. Robert Valker, who write on behalf of military leadership within the Royal Canadian armed forces, support this idea by recognizing the comparative obligation of senior military leaders to the health and efficacy of the military profession. In an analysis easily applicable to the United States, they observed: "Stewardship is therefore formally defined as the special obligation of officers and non-commissioned members who by virtue of their rank or appointment, are directly concerned with ensuring that the profession of arms . . . fulfills its organizational and professional responsibilities. . . ."²¹

These responsibilities are often informed by common standards and a trust relationship with a particular client, something that Huntington

¹⁹ *Id.* at 19. See also Martin L. Cook, *Revolt of the Generals: A Case Study in Professional Ethics*, PARAMETERS, Spring, 2008, at 4, 9. Cook considers the ethical balance between retired officers who engage in public debate on military issues at a cost to the profession, and the benefit such participation brings to important national security dialogue.

²⁰ HACKETT, *supra* note 15, at 9.

²¹ BERNARD HORN & ROBERT WALKER, EDS., *THE MILITARY LEADERSHIP HANDBOOK* 458 (2008) (Dundurn Press and Canadian Defense Academy Press in cooperation with the Department of National Defense, and Public Works and Government Services Canada).

noted, adding, “The client of every profession is society, individually or collectively This social responsibility distinguishes the professional man from other experts.”²² Importantly, Huntington's basic elemental characterization of what constitutes a profession—expertise, responsibility, and corporateness—supports the notion that retired military leaders are stewards of the relationship between the military and its civilian host.²³

Huntington's idea of corporateness, in particular, has a special resonance in describing the active and retired cohorts together under a corresponding professional ethic, and their shared membership within the broader military profession. He describes both “associational” professions (law, medicine) and “bureaucratic” professions (diplomatic corps)²⁴ and notes they are not mutually exclusive. The first has an express code of conduct, while the latter operates under a “collective professional responsibility” toward society.²⁵ The military profession shares elements of both, and the unique characteristic of what Huntington describes as “a sense of organic unity and consciousness of themselves as a group apart from laymen. This collective sense has its origins in the lengthy discipline and training necessary for professional competence, the common bond of work, and the sharing of a unique social responsibility.”²⁶

In much the same way, senior military leaders share a unique responsibility toward the military profession and its interests, place, and role in society.²⁷ As its most experienced members and institutional ballast, they are proprietors of the profession's relationship with civilian authority and serve as a key conduit between the Armed Services and the American people. Retired officers share special trust in facilitating the reputation, influence, credibility, and understanding between the military and the American people. Their status is predicated on credibility, they are trusted for their loyalty and are highly regarded precisely for what the

²² HUNTINGTON, *supra* note 5, at 9.

²³ *Id.* at 10.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See 2012 ARMY POSTURE STATEMENT add. L (2012) (The Army Profession), available at https://secureweb2.hqda.pentagon.mil/vdas_armyposturestatement/2012/addenda/addenda_1.aspx (last visited June 4, 2014). The *2012 Army Posture Statement* includes among its four key concepts the importance of “Stewardship of the Army Profession over time by its leaders, particularly strategic level leaders as they see to the continual generation of new military expertise.” *Id.*

military profession is—a reflection of the country’s highest ideals—and what it is not—a self-interested constituency.

Stewardship of the military profession by past and present leaders who share mutual responsibility and commitment fits easily into this definitional construct. The question, then, is whether this responsibility to the profession extends to members of the retired cohort. The objection by General Dempsey, and others, appears to be that retired officers cross an important association boundary when they exploit their status and professional standing to become political actors.

IV. Stewardship, Stoicism, and Restraint

The nature of retired military professionals, integral as they are to the national security culture, may require in retirement the same kind of Stoic discipline that served them so well amid the trials of active duty. An important aspect of the Stoic character is the measured restraint by former leaders in their critiques of national military policy and operations. This is essential to the profession and its relationship to civilian leaders, their decision-making processes, and the profession’s place in national security and policy dialogue. There is no question retired leaders have the same civic rights to say and participate in the public domain as any other citizen, but the question is, should they? Or, more specifically, should they do so without being bound by a set of ethics to guide that participation?

Huntington makes perhaps the most detailed and passionate argument for an apolitical military profession as a central tenet of American civil-military relations. His military ideal calls for a conservative profession balanced between functional imperatives and social values, in selfless subjugation to civilian authority despite individual misgivings over policy.²⁸ In his view, “[t]he essence of objective civilian control is the recognition of autonomous military professionalism.”²⁹ He considered the active involvement of individuals in the military profession in politics as a threat to both the military and the nation, noting that “the participation of military officers in politics undermines their professionalism, curtailing their professional competence, dividing the profession against itself, and substituting

²⁸ HUNTINGTON, *supra* note 5, at 2.

²⁹ *Id.* at 83.

extraneous values for professional values.”³⁰ Arguing for partial differentiation of ethics for the military profession as it concerns an inherent right, such as political participation, Hartle acknowledged the need for military leaders to “weigh their special obligation as professionals and their functional requirements” against the exercise of certain individual rights.³¹

In the case of the military profession, ethical differentiation and its associated relevance for retired officers is the idea that the profession’s place in public life is truly distinct. It is defined by its servitude to the elected civilian leadership and the fact that it is fundamentally representative of the nation as a whole, rather than a separate constituency with political interests. The profession’s nonpartisan character is part of what distinguishes the military, and it is a functional requirement derived from a civil-military relationship free of political distractions and debate and all that comes from it.³² General Dempsey’s predecessor as the Chairman of the Joint Chiefs of Staff, Admiral Michael G. Mullen, echoed the same sentiment: “[A] professional armed force that stays out of the politics that drive the policies it is sworn to enforce is vital to the preservation of the union and to our way of life.”³³

The principal point of reference for both Mullen, Huntington, and Hartle was the active duty force, but an important analogy for the whole military profession is easily drawn. The associative nature of the retired cohort to the active force should drive former senior leaders to abstain from criticism of current civilian leadership, defense policy, or operations.

³⁰ *Id.* at 71.

³¹ HARTLE, *supra* note 5, at 168.

³² For an excellent and unique study of the conservative political alignment of the Army’s officer corps, and its implications for civil-military relations, see JASON K. DEMPSEY, *OUR ARMY, SOLDIERS, POLITICS, AND AMERICAN CIVIL-MILITARY RELATIONS* (Princeton Univ. Press 2010).

³³ Admiral Michael G. Mullen, *Military Must Stay Apolitical*, *JOINT FORCE Q.*, July 1, 2008, at 2. Retired Air Force General Richard Myers, also a former Chairman of the Joint Chiefs, has similarly commented that retired generals who allow themselves to be “used as a potted palm at political conventions really do a disservice” to the military. Thomas E. Ricks, *Get Retired Generals Out of Politics Now; “Shut Up and Go Home to Your Farm,”* *FOREIGN POL’Y* (Online ed.), Apr. 12, 2010, available at http://ricks.foreignpolicy.com/posts/2010/04/12/get_retired_generals_out_of_politics_now_shut_up_and_go_home_to_your_farm (last visited June 12, 2014). *Id.*

There is a balance between political non-participation and advocacy. No one would suggest members of the military profession abdicate their right to vote, contribute, join, or discuss policy in appropriate settings. But active criticism of a particular policy or civilian leader by retired general officers, like in the 2006 “revolt of the generals” calling for the resignation of Secretary of Defense Rumsfeld, was a stunning example of the profession being drawn into a public discourse implicating specific executive prerogatives of civilian leadership, especially the President.³⁴ It forced the active military cohort into the untenable position of defending or decrying claims by retired general officers and thus suggested a discord between the military and the Secretary of Defense. In the end, the incident diminished both, including the officers involved. And for good reason.

Military leaders are individually and collectively representative of the profession and are an expression of its unique character that is properly apolitical. The potential cost to political activism paid by the credibility of the military profession and institution is far greater than the cost of restraint. What distinguishes the military profession from the other professions is precisely what is lost when retired leaders enter the public domain to criticize current policy and operations not as selfless servants, but as critics.

So how should retired leaders act? What model within the military profession should inform their approach to political activism? One possibility is the sort of professional stoicism described as far back as Marcus Aurelius, recognizing the value and acceptance of political realities that are beyond the span of immediate control. The lesson of stoicism is a lesson, in part, of restraint and tacit understanding of the soldier's relationship to civilian governance.

³⁴ See generally Perry Bacon Jr., *The Revolt of the Generals*, TIME, Apr. 16, 2006, available at <http://www.time.com/time/printout/0,8816,1184048,00.html> (last visited June 4, 2014); David S. Cloud & Eric Schmitt, *More Retired Generals Call for Rumsfeld's Resignation*, N.Y. TIMES, Apr. 13, 2006, available at <http://www.nytimes.com/2006/04/14/washington/14military.html?pagewanted=all&r=0> (last visited June 4, 2014); Richard J. Whalen, *Revolt of the Generals: Military Officers Speak out Against a Failed War*, NATION, Oct. 16, 2006; *A News Hour with Jim Lehrer* (Online ed.), PBS, Apr. 18, 2006, available at http://www.pbs.org/newshour/bb/military/jan-june06/rumsfeld_4-18.html (last visited June 4, 2014).

Dr. Michael Evans, of the Australian Defense College in Canberra, has made the case for an application of Stoic traditions in western military professions based on a system of four cardinal virtues of courage, justice, temperance, and wisdom.³⁵ In doing so, he suggests, in part, that military leaders learn from the Stoic conviction “that virtue consists in knowing what is in one’s control and what is not,”³⁶ and the associated obedience to one’s professional calling.³⁷

It is not for nothing that Epictetus compares the Stoic’s life to that of the discharge of military service. . . . Each man’s life is a campaign, and a long and varied one. It is for you to play the soldier’s part—do everything at the General’s bidding, divining his wishes, if it be possible.³⁸

At every stage of his military career, no matter what the personal discomfort, the professional officer must seek to behave correctly. As Epictetus puts it, life is like a play, and “it is your duty to act well the part that is given you; but to select the part belongs to another.”³⁹

Stoicism might therefore be useful as a system for informing the conduct of former military leaders in their approach to policy dialogue and dissent. By “playing the soldier’s part” they are satisfying the higher virtue of temperance and wisdom so crucial to service in arms, in deference to the professional ethic of non-partisanship and recognition of its importance to the military, now and for the future.

Just as importantly, a Stoic approach to post-retirement partisanship demonstrates loyalty to the Active cohort by mitigating public challenges to the credibility of the active military leadership when they speak, act, or advocate on behalf of the President or other civilian leaders. Echoing

³⁵ Michael Evans, *Captains of the Soul, Stoic Philosophy and the Western Profession of Arms in the Twenty-first Century*, 64 NAVAL WAR C. REV., Winter 2011, no 1, at 35 (citing JOHN SELLERS, *STOICISM* 1–31 (Univ. of California Press 2007)).

³⁶ *Id.* at 37.

³⁷ *Id.* (citing JOSEPH GERARD BRENNAN, *FOUNDATIONS OF MORAL OBLIGATION: THE STOCKDALE COURSE 2* (Presidio 1994)).

³⁸ *Id.* at 38 (citing Epictetus, *Discourses*, in KEITH SEDDON, *EPICTETUS’ HANDBOOK AND TABLET OF CEBES: GUIDE TO STOIC LIVING* 27 (Routledge 2005)).

³⁹ *Id.* at 45 (citing Epictetus, *Enchiridion* (trans. George Long 21–22, Prometheus Books 1991)).

Huntington's concern that partisanship could "divide the profession against itself" when retired leaders enter the public domain to criticize civilian or active military authorities, they risk compromising the legitimacy of current leaders whose express duty it is to execute orders that are given.⁴⁰ Policy criticism by respected voices within the military profession carry with it a challenge to the profession itself, particularly the active cohort; as a result, their tempered restraint in such matters helps sustain the military's much-earned trust among the public at large and within the ranks of the military.

V. Professional Stewardship and Civil Society

There exists an inescapable ethical component to a career officer's relationship to the military profession in its relationship to civil society. If it is appropriate for military leaders in a democracy to be apolitical during active service (and that such is in the best interest of the nation), then it is reasonable to expect that officers respect the same standard upon transition to a retired status. There is an ethical trust, and perhaps even a moral virtue, in the separation of a nation's professional military from the public domain. Professional ethics help bind the active and retired cohorts together as members of one very special fraternity, and remain a defining characteristic of the profession's relationship to American society.⁴¹

Americans ascribe a certain trust to their military leaders because, in part, they represent an institution considered a national asset and an essential instrument of civilian authority.⁴² There is, accordingly, a noble concordance of ethical imperatives and institutional priorities in military-civilian relations that endures despite the transition to retired status and return to civilian life. When career military leaders enter the domain of

⁴⁰ HUNTINGTON, *supra* note 5, at 71.

⁴¹ See General Martin Dempsey, in Jim Garamone, *Public Trust Requires Apolitical Military, Dempsey Says*, ARMED FORCES PRESS SERV., Sept. 17, 2012, available at <http://www.af.mil/news/story.asp?id=123318227> (last visited June 4, 2014). Dempsey is quoted as saying, "Former service members who continue to use their military title should just think about what impact their actions will have on our standing as a profession with the American people if they engage in partisan political activity." *Id.*

⁴² Jeffery M. Jones, *Americans Most Confident in Military, Least in Congress*, GALLUP, June 23, 2011, available at <http://www.gallup.com/poll/148163/americans-confident-military-least-congress.aspx/> (last visited June 4, 2014) (The survey by the Gallup organization found the U.S. military had highest level of institutional confidence of any organization in America, followed by small business, the police, and organized religion.).

policy advocacy and partisanship, they risk betraying the very attribute that distinguishes them in the first place. If former leaders appear to leverage their active service as the fulcrum by which they enter the public space to criticize policy, or even worse, to profit from it, they may lose the halo of selflessness so strongly engendered by a successful military career, and the profession they represent.

What is at risk when retired senior leaders question the decision-making process of the active cohort and civilian leadership? For many, it is nothing less than the credibility of the military profession itself. Costs to the profession, large and small, occur when former military officers openly criticize the current military and civilian leadership, appear to gain personally from such criticism, or perpetuate the idea of a monolithic military establishment as an interest group or vague political constituency. When this happens, public trust in the military as a whole risks compromise. The public will naturally infer that retired senior officers are channeling a prevailing view within the military potentially at odds with the current civilian or military leadership, putting active members of the profession in the position of having to defend civilian policy or military advice.

For example, if a president thinks a senior leader will turn against him publicly upon retirement, write tell-all books, or enter the public domain of discourse and punditry, then why trust him today—or any military leader, for that matter? Dissent by retired officers in controversial or politicized matters can attach to the active service and inform Congress and the administration about the sort of military they are dealing with, correctly or not. This dissent can result in a false perception by the public and Congress that the views expressed by the retired cohort are the views of the organization as a whole. What happens to the public's perception of the profession when the public domain is occupied by discordant military voices and disquisitions regarding strategy (especially, when they create a cacophony of contradictory expert assessments among various constituencies involved in a particular issue or approach)?

In answering this question, Army Lieutenant Colonel Jason Dempsey, who holds a Ph.D in Political Science from Columbia University, considered the impact on the active force of political involvement by recently retired general officers and its relationship with civilian authority, and found that there is indeed a cost.

If retired generals continue to leave the force and enter the partisan political fray as a means to settle unresolved grievances, they are likely to inspire elected leaders to further vet the political affiliations of those officers considered for promotion. Furthermore, when officers endorse parties or candidates as a means of resolving conflicts with their former bosses, they may lead other elected officials to question the motivation of military advice in other contexts.⁴³

Writing of the role and impact of military veterans participating in competing conservative and liberal media campaigns during the 2008 presidential election, Lieutenant Colonel Dempsey further observed, “The armed forces risk being torn apart by internal political conflicts in addition to squandering the military’s reputation for unwavering subservience to the democratic process.”⁴⁴

Military professionals who engage in this kind of partisan public dialogue also invite suspicion by opposing sides of important national security and defense issues. Further, they risk criticism of self-interest for profit or position that may taint the military as a whole. This, then, risks mistrust by the executive and legislative branches, which in turn may call into question the honest and essential advice of active military leaders in their role as advisors on national strategy.

During the 2012 political campaign, Dr. James Golby of West Point, Dr. Peter Feaver of Duke University, and Kyle Dropp of Stanford University, writing for the Center for a New American Security (CNAS), took a critical view of the role of military endorsements and the intercourse between retired general officers and politics in the context of presidential elections. They note the prized status of retired flag officers as advisors and participants in national campaigns, where “[t]he message of such endorsements is clear and unmistakable: ‘I am a distinguished military voice speaking on behalf of the military. Because “we, the military” trust this person to be commander in chief, you can, too.’”⁴⁵

⁴³ DEMPSEY, *supra* note 32, at 192.

⁴⁴ *Id.* at 193.

⁴⁵ JAMES GOLBY, KYLE DROPP & PETER FEAVER, MILITARY CAMPAIGNS, VETERANS’ ENDORSEMENTS AND PRESIDENTIAL ELECTIONS 6 (Oct. 2012) (Center for a New American Security).

Indeed, during the recent 2012 election, numerous retired military officers endorsed presidential candidates including dozens of retired three- and four-star generals.⁴⁶ Such high-profile involvement, presumably designed to bolster a candidate's national security credentials and foreign policy agenda, creates undue risk to the objective character so integral to the military profession and its relationship to civil society.⁴⁷ The Golby, Feaver, and Dropp study detailed the potentially adverse consequences resulting from political activity by retired senior leaders on the military profession's standing within civil society.

[The survey suggests that] such endorsements do affect the way the public views the military and that endorsements may undermine trust and confidence in the military over the long term. . . . This perception also might undermine military recruiting efforts and hinder effective civil-military relations.⁴⁸

While acknowledging the controversial nature of Secretary Rumsfeld's perceived politicization of the officer corps, West Point Professor Colonel Matthew Moten has nonetheless observed, "While those are matters of concern, as policy choices by civilian leaders they lie outside the scope of the professional military ethic."⁴⁹ In condemning the conduct of retired general officers associated with the "revolt of the generals" and their call for Rumsfeld's resignation, Moten accurately captured the implications for their entry into the public policy domain, most specifically their adverse effect upon the nonpartisan ethic of military service.⁵⁰ He noted:

This dissent and the widespread perception that the retired generals "spoke for" their former colleagues still on active duty threatened the public trust in the

⁴⁶ Andrew Tilghman, *Retired Officers Endorse Romney, but Report Says Effect May Be Negligible*, ARMY TIMES, Oct. 29, 2012, at 12.

⁴⁷ Given the fact that over 300 retired general officers endorsed Mr. Romney, who lost the election to President Obama, they evidently do very little good for their intended beneficiary.

⁴⁸ GOLBY ET AL., *supra* note 45, at 18.

⁴⁹ Matthew Moten, *The Army Officer's Professional Ethic—Past, Present, and Future*, STRATEGIC STUD. INST., U.S. ARMY WAR C., Feb. 2010, at vi.

⁵⁰ *Id.*

military's apolitical and nonpartisan ethic of service as well as the principle of civilian control.⁵¹

Others have similarly observed the detrimental effect on civil-military relations whenever retired senior leaders enter the political domain. In studying the political activity of retired general officers during the mid-1990s, Boston University professor Andrew Bacevich, a West Point graduate and career Army officer, concluded that all they accomplished was a regrettable degradation of the profession, and themselves.⁵²

At its core, the concern arising when retired senior leaders enter public policy debates has its roots in the relationship of the military profession to civil society, national leadership, and the active military itself. Accurately or not, and fairly or not, retired senior leaders represent something bigger than themselves whenever they enter the public domain and with that comes a certain responsibility. The representation is nearly always implicit, but as Golby, Feaver, and Dropp observe, that is enough. "When veterans of any rank explicitly or implicitly suggest that they are speaking on behalf of the military as an institution, they have crossed the line and are risking considerable damage to the norm of a non-partisan military."⁵³

VI. Stewardship, the Individual, and *Noblesse Oblige*

Finally, as part of a differentiated ethic for former military leaders, there is a nuanced argument for nonpartisanship in the social idea of a differentiated moral obligation, known as *noblesse oblige*. The term describes a commitment by those with social status to conduct that is noble, or deserving of received honors. Generally stated, the application of *noblesse oblige* to the military profession and its retired senior leaders

⁵¹ *Id.* at 17–18. ("Equally troubling was a 2008 report that numerous retired officer-commentators on television news programs had parroted without attribution 'talking points' provided by the Department of Defense. Some of these former officers, most of them former generals, also had fiduciary ties to defense industries with contracts in support of the war effort. Those ties had also gone undisclosed. . . . The palpable sense that those retired officer had sold their professionalism to the highest bidder cast an ethical shadow over all the military services.")

⁵² ANDREW J. BACEVICH, *THE NEW AMERICAN MILITARISM: HOW AMERICANS ARE SEDUCED BY WAR* 61–62 (Oxford Univ. Press 2005).

⁵³ GOLBY ET AL., *supra* note 45, at 19.

suggests an unwritten code of principles derived from service to the nation. Its origins are social and professional norms and the conditions under which the military profession functions within the American system. It informs the conduct of individuals and is adopted and enforced by members of the military profession and society.⁵⁴

At its definitional core, *noblesse oblige* concerns aspiration toward a higher ethical ideal, informed by conduct that is entirely consistent with the military professional ethic and character. In the case of retired senior leaders, most especially general officers, they carry with them much deserved status as elite leaders of the country's most venerated and essential national security institution. Consequently, their standing within society and its attendant responsibilities endure; their position and responsibility in retired status should be considered an extension of their active service.

The idea originates from the notion that the apolitical professional ethic associated with the military profession risks betrayal when career officers surrender to an appetite for political participation wholly inconsistent with the profession's relationship to civil society. Retired leaders who engage in public criticism of military policy often take refuge in the notion that their partisanship is consistent with their commitment to the military and the nation, generally relying on the idea that their participation in the issue is in the best interest of both. But they misunderstand both the potential consequences, and the cost. In a world with large and imposing challenges, the sideline sniping by those no longer vested with personal responsibility for leadership threatens the credibility of the military profession and achieves little for servicemembers in the field.

Out of a sense of *noblesse oblige*, therefore, retired military leaders should refrain from exercising certain civic rights to comment on and critique the civilian and active military leadership. Such restraint should arise from a genuine commitment to stewardship of the military profession, and concern for its highly reputable place within the American system. Their conduct with regard to the nonpartisan military profession should originate from an individual sense of social obligation, with a commitment to the profession's unique place and function in society.

⁵⁴ Jon Elster, *Rationality, Morality, and Collective Action*, 96 *ETHICS*, Oct. 1985, no. 1, at 136-55.

A good analogy for this proposal is the U.S. judiciary. There is an unwritten professional code that generally restrains members of the judiciary from public criticism of judicial decisions by others out of a personal and professional commitment to the rule of law.⁵⁵ If judicial decisions were commonly prey to popular criticism outside formal appellate processes, citizens and institutions would begin to question the competency and legitimacy of the judiciary as an essential social and political institution. In this way, the military is no different. When retired senior officers question the validity of military policy or the civilian leadership they call into question the expertise and competence of the profession itself, and those active members participating in the decision-making.⁵⁶

As the military develops its senior leaders, the profession must continually affirm its apolitical character if it is to achieve consensus of the ethic's fundamental value, and the alternative's genuine professional risks. A good start to this habituation would be a straight-forward approach to a new professional ethic regarding nonpartisanship by members of the profession's retired cohort.

VII. Toward a New Professional Ethic

The relationship of the military profession to society has long been influenced by a code of ethical conduct that is both expressed in the *Joint Ethics Regulation* and implied through standards of conduct developed over many generations.⁵⁷ Huntington described this ethical behavior as

⁵⁵ While public criticism among and between members of the federal judiciary is rare, it does occasionally happen, as has recently been the case in the running contest on judicial interpretation between conservative U.S. Supreme Court Justice Anthony Scalia and liberal Judge Richard Posner, Seventh Circuit Court of Appeals. See Garrett Epps, *How Two of the Nation's Leading Conservative Jurists Locked Horns Over a Two-Word Phrase*, ATLANTIC MAG., Sept. 22, 2012, available at <http://www.theatlantic.com/national/archive/2012/09/how-two-of-the-nations-leading-conservative-jurists-locked-horns-over-a-two-word-phrase/262700/> (accessed February 10, 2013).

⁵⁶ In the case of the 2006 "Revolt of the Generals," Jason Dempsey notes the affect the criticism may have had on the active military leadership's credibility, "That John Batiste and Paul Easton felt military advice on Iraq had been ignored could reasonably lead one to wonder if the remaining generals on active duty were competently engaging civilian leadership. It also injected the views of senior military leaders in a political arena over which officers have little control." DEMPSEY, *supra* note 32, at 192.

⁵⁷ U.S. DEP'T OF DEF., DIR. 5500.07, JOINT ETHICS REGULATION (29 Nov. 2007), available at http://www.dod.mil/dodgc/defense_ethics/ethics_regulation/ (accessed June 20, 2014).

“comparable to the canons of a professional ethics of the physician and lawyer . . . the officer’s code expressed in custom, tradition, and the continuing spirit of the profession.”⁵⁸

Voicing the need for a coherent statement of Army ethics, Colonel Moten astutely argued that “the Army officer corps has both a need and an opportunity to better define itself as a profession, forthrightly to articulate its professional ethic, and clearly to codify what it means to be a military professional.”⁵⁹ In view of the connection between the two military professional cohorts, any future professional ethic must include the recognition of unintended adverse consequences of retired officers entering the public domain for policy or partisan advocacy.

Retired general officers, in particular, merit a special accounting because of their unique status both within the military profession and American society. The CNAS study of the role of general officers in the 2012 presidential election specifically distinguished this small but crucial population for special consideration, and noted:

Once an officer achieves flag rank, it seems likely that the broader public would view his statements as “official” even if he tried to claim they were his own private, personal views. . . . Consequently, an effective taboo must focus on flag officers at a minimum.⁶⁰

Nearly all professions have ethical standards that codify rules and issue guidance offering clarity, certainty, and concordance to an often discordant constellation of rules governing personal and professional behavior, particularly those like the military where trust and accountability are considered essential. Golby, Feaver, and Dropp described the nature of an ethical standard for military professionals in relation to policy and politics, noting “the prudent course is to adopt norms of behavior that create the brightest possible line between the sphere of partisan politics that picks the American commander in chief and the sphere of military professionals who must serve unreservedly regardless of what the other sphere produces.”⁶¹

⁵⁸ HUNTINGTON, *supra* note 5, at 16.

⁵⁹ Moten, *supra* note 49, at vi.

⁶⁰ GOLBY ET AL., *supra* note 45, at 19.

⁶¹ *Id.* at 20.

Lieutenant Colonel Jason Dempsey, in turn, having considered in depth the political attitudes of the U.S. Army, believed that the military needs to internalize these norms of nonpartisan behavior within the profession and ensure its neutrality during often partisan national debates over national defense and foreign policy as a way of preserving its reputation with civil society. “It is therefore crucial,” he wrote, “for the military to educate its members on appropriate norms of behavior at a time when military leaders must carefully navigate a contentious domestic political environment that is sharply divided on issues of national security.”⁶²

A professional ethic addressing the conduct of retired leaders is easily reconciled with the norms of behavior currently incumbent on military leaders though the existing paradigm of federal government ethics designed to mitigate financial conflicts of interest.⁶³ These rules

⁶² Moten, *supra* note 49, at 188.

⁶³ 18 U.S.C. § 207(a)(1) (LexisNexis 2014).

Former Government officers and employees may not knowingly make a communication or appearance on behalf of any other person, with the intent to influence, before any officer or employee of any Federal agency or court, in connection with a *particular matter* in which the officer or employee *personally and substantially* participated, which involved a *specific party* at the time of the participation and representation, and in which the U.S. is a party or has a direct and substantial interest.

Id. § 207(a)(2).

For a period of 2 years after termination of Government service, former Government officers and employees may not knowingly make a communication or appearance on behalf of any other person, with the intent to influence, before any officer or employee of any Federal agency or court, in connection with a particular matter which the employee reasonably should have known was actually pending under his or her *official responsibility* within 1 year before the employee left Government service, which involved a specific party at that time, and in which the U.S. is a party or has a direct and substantial interest.

Id. § 207(b).

For a period of 1 year after leaving Government service, former employees or officers may not knowingly represent, aid, or advise someone else on the basis of *covered information*, concerning any ongoing *trade or treaty negotiation* in which the employee

are in place because they serve the best interests of the public. A reasonable set of sanctions for retiring senior leaders is entirely consistent with this.

So what can be done? First, there needs to be an acknowledgement that the non-partisan nature of the military profession extends to its retired cohort. This article makes the argument why. Second, this new professional ethic must become part of the dialogue at Army and joint ethics events like the annual Command and General Staff College Ethics Symposium, held at Fort Leavenworth, Kansas and the Annual Army Profession Forum/Symposium held at West Point. It is a topic that should be integrated into the senior leader narrative for the profession, and considered and advocated by military institutions like the Center for the Army Profession and Ethic (CAPE). Furthermore, non-partisanship should be added to the instruction and formal education of general officers at the joint and Service level, such as the Chief of Staff's Army Senior Leader Development Program (ASLDP) and the Senior Official Personal/Support Staff Collective Training Package (addressing travel, gifts, relations with contractors, official/unofficial functions, etc.)

Institutionally, and not unlike what many bar associations and attorney credentialing authorities do within the legal profession, the Chairman of the Joint Chiefs or the Service Chiefs of Staff could establish a Committee for Military Professional Ethics, with a subcommittee empowered to receive, consider, and make findings and recommendations regarding the professional conduct of retired senior leaders: whether cited actions were consistent with the military

participated personally and substantially in his last year of Government service.

Id. § 203.

After you leave Government service, you may not accept compensation for representational services, which were provided by anyone while you were a Government employee, before a Federal agency or court regarding particular matters in which the Government was a party or had a substantial interest. This prohibition may affect personnel who leave the Government and share in the proceeds of the partnership or business for representational services that occurred before the employee terminated Federal service. (Examples: Lobbying, consulting, and law firms).

Id.

professional ethic. These can be published, distributed among the Services, and forwarded to military-oriented organizations and associations, akin to what the Army Judge Advocate General may do with judge advocates found to have violated the rules of professional responsibility and conduct.⁶⁴ There is, for example, nothing in law or policy expressly prohibiting Army leadership from issuing a memorandum of concern or reprimand to retired officers for conduct that would merit the same were they still on active duty.

This formal approach might codify a two-year “cooling off” period following retirement, prohibiting any public statement advocating for or against a particular policy, political candidate, or operational matter implicating the Department of Defense or its subordinate military services. Lieutenant Colonel Dempsey also suggests consequences for recently retired general officers who “use the military’s prestige for partisan purposes.”⁶⁵ Measures include removing the title of general from official correspondence, denial of speaking rights before active military audiences, and exclusion from various mentoring programs.⁶⁶ He concludes that, at a minimum, “more professional opprobrium should be meted out to those who step in front of national political conventions and have the temerity to claim to be ‘simple soldiers.’”⁶⁷

Regardless of what form any penalties take, the achievement would be the professional recognition of a new ethic of nonpartisanship incumbent upon retired senior leaders. The normative values for the profession would help define a standard recognizing the important role that retired senior leaders play as stewards and, as Huntington concluded, “remain true to themselves, to serve with silence and courage in the military way.”⁶⁸ It would also clearly articulate the risks and potential adverse consequences to the profession and the civil-military relationship that come from retired officers who, as Lieutenant Colonel Dempsey described, implicitly deal in “a commodity they should realize is not theirs to trade.”⁶⁹

⁶⁴ See U.S. DEP’T OF ARMY, REG. 27-1, JUDGE ADVOCATE LEGAL SERVICES (30 Sept. 1996) (revised by RAR, 13 Sept. 2011) (revising Chapter 7 (Professional Conduct Inquiries)).

⁶⁵ DEMPSEY, *supra* note 32, at 191.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ HUNTINGTON, *supra* note 5, at 466.

⁶⁹ DEMPSEY, *supra* note 32, at 191.

VIII. Conclusion

Taken together, the changes suggested in this article would help to protect and perpetuate the American public's perception of the military as an honorable, ethical institution and profession free of partisan bias. There is no question that the active duty servicemember is bound by the profession's nonpartisan standard. The retired cohort's close and continued association with the military profession demands that they, too, abide by those same ethical imperatives. The profession of arms should take nothing for granted in the realm of military and civilian relations, and cannot afford to risk "eroding that bond of trust we have with the American people."⁷⁰

⁷⁰ Dempsey, *supra* note 2.