

MILITARY RESTRICTIONS ON INDIVIDUAL RIGHTS: AN APPLICATION OF THE HUNTINGTONIAN AND JANOWITZIAN PERSPECTIVES

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Abstract

The United States military imposes restrictions on individual rights virtually nonexistent in the rest of American society. The theoretical perspectives of Huntington and Janowitz provide fruitful ground for understanding the basis of authority for the military to enforce these controls. Each perspective examines the relationship between civilian control over the military and the impact on military effectiveness. These opposing viewpoints offer an analytical framework to evaluate restrictions on service members' freedom of speech and freedom of religion. This analysis will demonstrate the tendency for the military to adhere to more of the Janowitzian principles since the end of the Cold War by integrating features of civil society. This transition away from the Huntington-dominated military institution is due to an increasingly complex and dangerous international environment and the end of conscription. However, the military is still a distinct society from the larger community. Therefore, the military should adopt more inclusive measures but only to the extent that they do not negatively impact military effectiveness. Finally, when service members undergo an indoctrination period, known as initial entry training, their understanding of rights begins to transition from the American civilian conception to the military conception. As a result, service members tend to be more accepting of rights restrictions because of a belief in the common good and the sense of a higher purpose.

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Introduction

The military is unlike any other governmental institution in the United States. With extensive coercive power, the military poses the greatest potential threat to society. The central concern that has fueled debates since the American Founding is the civil-military problematique¹: how does the state ensure that it maintains a strong military to protect against foreign or domestic threats while simultaneously protecting society from those same instruments of violence? Theories of civil-military relations attempt to solve this dilemma by focusing on varying degrees of civilian control to safeguard the state while maintaining a high level of military effectiveness to succeed in war. One aspect that all theories have in common is that despite being a component of a democratic society, the United States military cannot operate in a fully democratic way.² Without safeguards, the military could become an instrument of tyranny or despotism. Thus, the military imposes restrictions on service members' individual rights to protect society from the forces that could undermine the ideals of liberty, equality, and self-rule. To what extent does the U.S. military restrict service members' rights? Is this an effective means in ensuring military effectiveness and at the same time the survival of a democratic society? Finally, why do service members accept these controls over their individual liberties?

This paper addresses these questions by analyzing military restrictions on First Amendment rights and how the military attempts to re-frame how service members interpret these controls. First, critical to this discussion is understanding the basis of authority given to the military to enable these restrictions. Samuel Huntington and

¹ Feaver, "The Civil-Military Problematique: Huntington, Janowitz and the Question of Civilian Control."

² Snyder, "The Citizen-Soldier Tradition and Gender Integration of the U.S. Military," 188.

Morris Janowitz are two of the most prominent scholars of civil-military relations whose theoretical perspectives have shaped academic and practical understandings of how the military operates. Huntington's seminal work, *The Soldier and the State*, has influenced the military by providing a template for military professionalism for nearly six decades. Huntington's "objective civilian control" model profoundly affected military culture by influencing how the civil-military relationship is articulated in military educational institutions and consequently influenced professional behaviors and attitudes.³ The adoption of the objective model has led to a military institution embracing the notion of a separate military sphere to develop technical expertise in the management of violence. According to this model, civilian leadership refrains from interfering in the military domain to maintain military effectiveness. Likewise, the military does not interfere in the political domain because it does not dictate policy; it only provides military advice.

Janowitz's *The Professional Soldier*, which provides an alternative perspective to Huntington's objective model, has been embraced by military leadership more recently. The complexities of military conflict and domestic social changes in the post-Cold War era force the civilian and military spheres to intertwine. Military professionals must understand the political consequences of military operations and posture at home and abroad.⁴ Therefore, according to this view, the military is not an autonomous institution but one that must adapt to the "changes in civil society and the technology of war"⁵ to maintain military effectiveness.

³ Feaver, "The Civil-Military Problematique: Huntington, Janowitz and the Question of Civilian Control"; Nielsen and Snider, *American Civil-Military Relations*; Brooks, "Paradoxes of Professionalism"; Cohen, *Supreme Command*.

⁴ Nielsen and Liebert, "The Continuing Relevance of Morris Janowitz's *The Professional Soldier* for the Education of Officers," 733.

⁵ Feaver, Kohn, and Cohn, "Introduction," 3.

Although the works of Huntington and Janowitz are often portrayed as two opposing camps, “taken in isolation, neither work offers a complete portrait”⁶ of the military profession. Therefore, Huntington and Janowitz are better understood together. These two theoretical perspectives will provide an analytical framework to examine military rights restrictions on service members’ freedom of speech and freedom of religion. Examining these two domains through the lenses of Huntington and Janowitz will provide insight into how these restrictions have evolved throughout history and the enduring acceptance or systematic elimination of these controls. I will demonstrate in Chapter 2 that restrictions examined through the Huntingtonian perspective will seek to control service members at the individual level and are systemically reinforced. The military perceives itself as autonomous and consequently imposes internal controls that benefit the institution. In contrast, the Janowitzian perspective will illustrate how restrictions that prevent or hinder the ability of groups of citizens to participate in the military will get systematically removed. The military will address external or societal changes by incorporating aspects that strengthen the institution.

Through the in-depth examination of service members’ restrictions on speech and religion, I will show that the perspective of Janowitz is preferred to Huntington. In an increasingly complex world, where conflict has become more dangerous, and people have felt more interconnected than ever, the military must adapt to the changing environment. With the advent of the All-Volunteer Force (AVF), not adapting to larger society may also hinder recruiting efforts. Thus, the military must be cognizant of the negative impact rights restrictions may have on remaining competitive in the

⁶ Coletta and Crosbie, “Janowitz and Huntington—Better Together,” 6.

occupational marketplace. Military leaders must continue incorporating aspects of the Janowitzian perspective into the predominantly Huntingtonian influenced establishment. Examples of how this has already been accomplished include more accommodations of religious and faith groups and the increased incorporation of military leaders in the policymaking process. Adopting these principles has led to removing military restrictions that would otherwise limit a service member's free exercise of religion or ability to dissent to current policies.

However, this does not mean a complete disregard for the Huntingtonian perspective. The military is still, in many regards, a distinct society from the rest of the United States. Some restrictions are necessary to ensure a combat-ready military force and maintain good order and discipline. Examples include restricting speech that could have operational impacts and the fact that military commanders must still approve religious accommodations. Therefore, the military should adopt more inclusive measures but only to the extent that they do not negatively impact military effectiveness. Additionally, some degree of scrutiny before restriction removal is necessary.

In addition to how the military imposes rights restrictions and the basis of authority to enable this, it is also essential to address why service members accept these controls. The distinction between American military and civilian rights rhetoric is vital to this concept, which I will explore in Chapter 3. Initial entry training seeks to foster a transition by which service members' rights rhetoric shifts from the civilian conception (individualistic and absolute) to the military conception (collective and qualified). The institutional format of the military transcends "individual self-interest in favor of a presumed higher good" because members are following a calling expressed "in words

like ‘duty’ and ‘honor’ – that sets them apart from the broader society.”⁷ Therefore, if there is a military necessity to restrict individual liberties, service members are likely not to resist. Furthermore, the discussion of military rights rhetoric further emphasizes how the tenets of both Huntington and Janowitz are inseparable from military culture. The “citizen-soldier tradition,” which emphasizes the connection between the military and civic participation, is consistent with Janowitz and illustrated in the discussion of collectiveness. Finally, the notion of qualified rights demonstrates aspects of Huntington’s separate military society.

Most studies concerning Huntington and Janowitz apply their perspectives to macro-level analyses of the military. These evaluations include discussions of the military and the use of force, perceptions of the civil-military gap, or how the military fits within the larger government establishment. Rarely are these theoretical perspectives used to examine micro-level assessments and how the principles laid out in these perspectives impact the internal mechanisms of the military. This paper aims to provide new insights into the enduring importance of these two scholars and how these principles can be applied.

⁷ Moskos, “A New Concept of the Citizen-Soldier,” 664.

Chapter 1: The Huntingtonian and Janowitzian Perspectives

Introduction

This examination of military rights restrictions has two fundamental objectives: (1) understanding why the military imposes restrictions on individual rights of service members and (2) why service members accept these restrictions. In this chapter, I will provide two opposing viewpoints of civil-military relations which provide a theoretical framework from which I will evaluate two subsequent categories of rights restrictions. The arguments posed by Samuel Huntington and Morris Janowitz provide fruitful ground to uncovering the interplay of both military and civilian leadership in the management of the military institution.

Political philosophers have recognized that as individuals come together in civil society, two things occur. Decision-making authority is taken away from the individual and given to a representative leader or council of leaders. Additionally, the individual is no longer responsible for the protection of themselves or their property but instead, this responsibility is given to a specialized group of people – namely the military. The state is responsible for the protection of its citizens, specifically against an external threat. This means developing a strong and effective military establishment to protect the state. However, a dilemma, known as the civil-military problematique, arises in which “the very institution created to protect the polity is given sufficient power to become a threat to the polity.”⁸ The military must be strong enough to fight and win in war but at the same time there must be effective means of control available to the state to safeguard it

⁸ Feaver, “Civil-Military Relations,” 214.

from the military's coercive powers. Therefore, conceptual opinions on civil-military relations can be broken down into two predominant areas: military effectiveness (the ability to win in war) and civilian control (the ability to safeguard the state).

One of the most prominent debates about civil-military relations is between political scientist Samuel Huntington and sociologist Morris Janowitz. The perspectives of these two scholars provided the groundwork from which more investigations within the field emerged. Because both Huntington and Janowitz contributed significantly to shaping ideas surrounding civil-military relations, their perspectives will be used as an analytical framework to examine rights restrictions within the military.

Early works within the civil-military relations field portray the Huntington and Janowitz theories as conflicting with one another and therefore scholars had to position themselves in one camp or the other. However, as noted by Coletta and Crosbie, "taken in isolation, neither work offers a complete portrait" as it applies to the military profession; therefore, "Huntington and Janowitz...are better together."⁹ This perspective is more conducive to fully understanding institutional controls by the military on individual rights. Restrictions examined through the Huntingtonian perspective will control service members at the individual level and are systemically reinforced. The military will perceive itself as autonomous and consequently impose internal controls that benefit the institution. In contrast, the Janowitzian perspective will illustrate how restrictions that prevent or hinder the ability of groups of citizens to participate in the military will get systematically removed. The military will address external or societal changes by incorporating aspects that strengthen the institution.

⁹ Coletta and Crosbie, "Janowitz and Huntington—Better Together," 6.

Huntingtonian Perspective

The underpinnings of the Huntingtonian perspective on civil-military relations are influenced by the liberal theory of democracy.¹⁰ The liberal theory argues that protecting the rights and liberties of citizens is the first priority of a democratic state.¹¹ Individuals live in a world of conflict where the liberty to pursue one's passions is never guaranteed, therefore needing the protection of the state. The state achieves this end by instituting a rule of law reinforced by the threat of punishment. Simultaneously, the state must protect its citizens from foreign threats. In an anarchic international community, where conflict and threats cannot be controlled, the state must build an effective military establishment to protect its citizens. The military must be strong enough to protect the state from foreign invaders but at the same time cannot be left unchecked. Freed from state restrictions, "the military would pursue the objects of its own passions and pose an internal threat to sovereign power."¹² However, the military cannot be dominated by the "passions of the civilian majority controlling the state"¹³ because this would negatively affect military strength and thus state security. Therefore, the state must balance the effective means of control over the military with maintaining the military's warfighting capability.

Huntington attempts to solve the problem of civilian control through his endorsement of "objective civilian control." This form of civilian control "achieves its end by militarizing the military, making them the tool of the state" and (with my

¹⁰ Burk, "Theories of Democratic Civil-Military Relations."

¹¹ Burk, 9.

¹² Burk, 10.

¹³ Burk, 10.

emphasis) the “recognition of *autonomous* military professionalism.”¹⁴ This concept emphasizes how the military is subordinate to civilian leadership that dictates security policy. The military, who are professional experts in the “management of violence,” is responsible for determining the military operations to reach these political objectives. They avoid participating in partisan politics and becoming involved in political decision-making. Deference to civilian authority ensures that military effectiveness is maintained by limiting civilian interference into the military domain. Objective civilian control minimizes military power by “professionalizing the military...[and]...by rendering them politically sterile and neutral.”¹⁵ Control in the “subjective” sense can undermine military security by not recognizing a separate military profession, attempt to reduce military power, and can lead to an increase in power amongst more bellicose civilian leadership.¹⁶ However, if civilian control in the objective sense is adhered to, there is no conflict between the military and civilian parts, and military security is maintained. Therefore, the area of “military science is subordinate to, and yet independent of, the area of politics. Just as war serves the ends of politics, the military profession serves the ends of the state.”¹⁷ This model assumes a clear line “between what constitutes political versus military activity,”¹⁸ that is desirable to both military and civilian leadership.

Objective civilian control also assumes a clear separation between “liberal society...and the military [which] is both necessary and beneficial for military professionalism.”¹⁹ Military professionals have a distinctive “military mind” which

¹⁴ Huntington, *The Soldier and the State*, 83.

¹⁵ Huntington, 84.

¹⁶ Huntington, 84–85.

¹⁷ Huntington, 71–72.

¹⁸ Brooks, “Paradoxes of Professionalism,” 11.

¹⁹ Brooks, 11.

“consists of the values, attitudes, and perspectives which inhere in the performance of the professional military function.”²⁰ The military mind, which adheres to conservative realism, emphasizes the “permanence, irrationality, weakness, and evil in human nature,” the “supremacy of society over the individual,” and the importance of order.²¹ Because the world is inherently conflict-ridden, military power is the only defense against international conflict. However, this also means directing this power to interests that will directly affect the security of the state and restrict expansionist policies. Hence, the military professional tends to have an ideologically distinct mind from the rest of society.

Military leaders have three responsibilities to civilian government under objective control. First, they have a “representative function” in which they “represent the claims of military security within the state machinery.”²² This function entails advising civilian leadership on the current state of military capabilities and the minimum amount of military security needed to secure the state. Secondly, they have an “advisory function” where military leaders “analyze and...report on the implications of alternative courses of state action from the military point of view.”²³ The military man must not determine which course of action is the best but instead considers the impact they would have on military capabilities and the ability of the military to carry out those objectives. Finally, military leaders have an “executive function” to “implement state decisions with respect to military security even if it is a decision which runs violently counter to his military judgment.”²⁴ Because the military must remain politically neutral, only the statesman is

²⁰ Huntington, *The Soldier and the State*, 61.

²¹ Huntington, 79.

²² Huntington, 72.

²³ Huntington, 72.

²⁴ Huntington, 72.

responsible for setting political goals. It is up to the military leaders to find the best way possible to achieve those goals with the resources they are given. The Huntingtonian perspective presumes that the civil-military relationship in the advisory processes is (with my emphasis) “essentially *transactional*, rather than collaborative.”²⁵ It reinforces the framing of clear and distinct separations between the military and civilian spheres.

The emergence of military professionalism is a direct consequence of the implementation of objective control. Professional status implies expertise on “the direction, operation, and control of a human organization whose primary function is the application of violence.”²⁶ It also includes the responsibility for the security of society and a degree of corporateness.²⁷ Emphasis is placed on reliance on military education, experience, and organization, which enabled the emergence of an officer corps as an autonomous institution. The growth of military professionalism is predicated on four factors: (1) industrialization influenced the need for specialization and a division of labor, (2) nationalization emerged out of the need for experts in military security to defend the nation-state and maintain independence and integrity, (3) democratization where officers were not selected by birth but instead were chosen by their fellow citizens, and (4) unification of authority which removed a tendency toward party loyalty and instead channeled loyalty into a single government institution.²⁸ This formulation of objective control and military professionalism has “created the lasting impression that civilian leaders must implicitly trust, and grant autonomy to, military leaders.”²⁹ This notion is

²⁵ Brooks, “Paradoxes of Professionalism,” 11.

²⁶ Huntington, *The Soldier and the State*, 11.

²⁷ Huntington, 9–10.

²⁸ Huntington, 30–37.

²⁹ Golby, “Improving Advice and Earning Autonomy: Building Trust in the Strategic Dialogue.”

reinforced by the expectation that military officers abstain from political behavior to maintain their apolitical status.

In sum, the Huntingtonian perspective is characterized by assuming separate military and civilian spheres, which implies an *autonomous military establishment* where professionalism can emerge. Civilians maintain *objective control* over the military in which military advice is *transactional* in nature. Military leaders do not make direct decisions about policy but rather decide on the proper implementation of military means to achieve policy objectives. The military remains *apolitical* to ensure that it remains focused on military capabilities, effectiveness, and preparedness in the nation's defense and does not become involved in policymaking. Finally, as suggested by Feaver et al., the military is *resistant to changes* to the military structure such as “micro-management and political correctness [which] stifle the military's ability to function effectively.”³⁰

Janowitzian Perspective

The Janowitzian perspective challenges the foundations of liberal theory and aligns more with theories of civic republicanism. Civic republicanism argues that the priority of a democratic state is to engage citizens in the activities of public life. Civic participation is a critical component of citizenship and emphasizes shared responsibility for the defense and rule of the state.³¹ Active citizenship can be accomplished through both civic and martial practices, which construct civic virtues by cultivating a sense of responsibility for the common good and ensuring the continuation of the community by thwarting corruption. When such active citizens serve in the military, the “interests of the

³⁰ Feaver, Kohn, and Cohn, “Introduction,” 4–5.

³¹ Burk, “Theories of Democratic Civil-Military Relations,” 10.

military and the interests of the state overlap,”³² which decreases the fear that the military will challenge the state. The main concern under this framework is that citizens will neglect their responsibilities, and the state will encounter more corruption as fewer people engage in military service.³³ Therefore, military effectiveness is directly related to ensuring widespread participation. Furthermore, civilian control over the military does not need to be as overbearing because, as stated above, the interests of the two are overlapping.

Janowitz expands on this theory by introducing challenges present in the post-Cold War era. Military officers have increasingly needed to integrate the “political and social impact of the military establishment on international security affairs”³⁴ across the full spectrum of political and military conflict. The threat of escalating to nuclear war has become progressively more dangerous to the state. Therefore, pragmatic officers are more likely to provide options closer to political objectives than those centered around absolute victory. With the threat of nuclear annihilation, military professionals need to assume a more constabulary force: one “continuously prepared to act, committed to the minimum use of force, and seeks viable international relations, rather than victory, because it has incorporated a protective military posture.”³⁵ The military must be politically astute to serve national interests more effectively. There is more of an intertwining of military action and political consequences, which means military leaders must address three dilemmas when advising about the use of military force. Military leaders must strive for “an appropriate balance between conventional and modern

³² Burk, 11.

³³ Burk, 11.

³⁴ Janowitz, *The Professional Soldier*, 420.

³⁵ Janowitz, 418.

weapons”³⁶ and understand the political implications of their use. They must also weigh the consequences of using force “against the potentials for persuasion and conflict resolution.”³⁷ Finally, they must make the management of an effective military force “compatible with participation in political and administrative schemes for arms inspection and control,”³⁸ which could prioritize conventional military arms over nuclear arms. Therefore, there is a reduction in the need for absolutist military leaders and a simultaneous increase in the need for more pragmatic ones – ones that are able to identify that the “political objectives of warfare are gained by adapting the use or the threat of violence to the objectives to be achieved. To use too much or too little is self-defeating.”³⁹

Critically important to this discussion is that incorporating the political dimension does *not* mean the emergence of military professionals who “would insist on competing directly with politicians for the privilege of directing foreign policy.”⁴⁰ Instead, it means that military officers must understand and consider the political environment and not be completely separate from it. The Janowitzian perspective on civilian control aligns more, but not entirely, with Huntington’s notion of “subjective civilian control,” discussed earlier. According to Huntington, subjective control aims to maximize civilian power over the military. Specific civilian groups align themselves with the military in order to promote their interests at the expense of other civilian groups.⁴¹ Historically, subjective civilian control has been identified with the “maximization of the power of particular

³⁶ Janowitz, 417.

³⁷ Janowitz, 417.

³⁸ Janowitz, 418.

³⁹ Janowitz, 264.

⁴⁰ Coletta and Crosbie, “Janowitz and Huntington—Better Together,” 4.

⁴¹ Huntington, *The Soldier and the State*, 80.

governmental institutions, particular social classes, and particular constitutional forms.”⁴²

Examples include the separation of powers over the military between the President and Congress and the use of aristocratic officership in Europe.

As Huntington emphasizes, civilian control in the subjective sense “achieves its end by civilianizing the military, making them the mirror of the state” and “the denial of an independent military sphere.”⁴³ Huntington believes that as the military becomes more integrated into the political process, civilian power begins to erode due to the inherent “conflict between civilian control and the needs of military security.”⁴⁴

However, Janowitz finds that political involvement is necessary to remain effective militarily and supportive of the democratic decision-making process. Nevertheless, such a comparison to Huntington’s subjective control model does have some limits. Janowitz still believes that the military needs to remain apolitical. Therefore, participation in politics is strictly in an advisory role.

As the difference in competencies between the military and civilians become more narrow, military professionals must develop “more of the skills and orientations common to civilian administrators and civilian leaders.”⁴⁵ Surprisingly, the number of “purely” military-oriented professionals has decreased significantly since the Civil War and has continued to decline in the post-Cold War era.⁴⁶ The military has begun to increase the concentration of technical specialists like “engineers, machine maintenance specialists, health service experts, and logistic and personnel technicians”⁴⁷ who have

⁴² Huntington, 81.

⁴³ Huntington, 83.

⁴⁴ Huntington, 84.

⁴⁵ Janowitz, *The Professional Soldier*, 9.

⁴⁶ Janowitz, 9.

⁴⁷ Janowitz, 9.

more in common with their civilian counterparts than those in the military.

Consequently, military commanders must become more politically oriented to accurately articulate military goals to military subordinates and staff. Commanders must also develop a “capacity for public relations, in order to explain and relate [their] organization to other military organizations, to civilian leadership, and to the public.”⁴⁸ Therefore, there has been an increase in transferability between the military and civilian spheres to ensure the military remains operationally effective.

Another significant challenge facing the state is the end of conscription, with the result that mass participation in military service is not required. Janowitz argues that military service is considered a positive obligation that demonstrates one’s obligation to democratic life. Military professionals must be given “a candid and realistic education about political matters”⁴⁹ and follow career patterns that sensitize them to the political and social consequences of military action. Higher education allows the military professional to become more “interested in the relationship between military means and political objectives.”⁵⁰ Janowitz argues that tactical and technical competence is vital in maintaining warfighting proficiency, but understanding politics is important because military leaders may “be acting as a political agent.”⁵¹

Consistent with the Janowitzian perspective, Wood notes that social institutions like the military are not eternal but “subject to pressures for social change imposed by the societies in which they are immersed, and they must change to survive.”⁵² With the

⁴⁸ Janowitz, 10.

⁴⁹ Janowitz, 428.

⁵⁰ Janowitz, 428.

⁵¹ Janowitz, 426.

⁵² Wood, “At the Cutting Edge of Institutional and Occupational Trends: The U.S. Air Force Officer Corps,” 27.

advent of the All-Volunteer Force (AVF), which replaced the military draft in 1973, the military has become more of an “occupational organization” by incorporating more marketplace factors and depending on contractual relationships. These features are more consistent with the civilian workplace than the traditional “institutional military” of the Cold War era. This shift is compounded by macro-level organizational changes like the military being used for non-traditional missions instead of conventional warfare and technological changes that have fragmented the military into specialties.⁵³ Therefore, because the military is more reliant on recruitment efforts, it must remain occupationally competitive by representing itself as a desirable career option to the larger society.

In sum, the Janowitzian perspective is characterized by an *integration* of the military and civilian spheres due to the complexities of conflict in the post-Cold War era. Civilians maintain a more *subjective* version of control over the military by incorporating political astuteness and technical expertise into the military establishment. The military and civilian spheres engage in a *collaborative* advisory process to find the most effective means of utilizing military force. This collaboration does not eliminate the military’s *apolitical nature* but rather orients it to become more pragmatic in advocating for military action by understanding the political consequences of that action. Therefore, military culture must *adapt* to the “changes in civil society and to the technology of war”⁵⁴ to maintain military effectiveness in achieving national security and remaining occupationally competitive.

⁵³ Wood, 30.

⁵⁴ Feaver, Kohn, and Cohn, “Introduction,” 3.

Chapter 2: Military Rights Restrictions

Introduction

In the previous chapter, I discussed two principal theories of civil-military relations: the Huntingtonian and Janowitzian perspectives. This chapter will use these two theoretical perspectives to examine military rights restrictions on (1) freedom of speech and (2) freedom of religion. Examining these two domains through the lenses of Huntington and Janowitz will provide insight into how these restrictions have evolved throughout history and the enduring acceptance or systematic elimination of these controls.

The following attributes characterize the Huntingtonian perspective: (1) an *autonomous military establishment* where (2) civilians maintain *objective* control over the military; (3) military advice tends to be *transactional*, (4) the military remains *apolitical*, and (5) the military is *resistant to changes* to the military structure for fear that it will degrade military effectiveness. Rights restrictions viewed through this perspective will emphasize how the military is a distinct or separate community from civil society, and controls are necessary for preserving order and discipline essential for an effective military establishment. The notion of “judicial deference” illustrates how Huntington’s perspective applies to evaluating rights restrictions. The rulings in several Supreme Court cases have ruled in favor of the military’s decision to impose restrictions on the individual rights of service members. As a result, the U.S. government is only required to show that the military had considerable reasons to impose the restrictions without substantiating those reasons to the same extent that other government institutions are

required. Civilian judges are not capable of understanding the intricacies of the military establishment nor the necessities it requires and thus should not have a role in deciding on military-related Constitutional decisions. Judicial deference further emphasizes the idea that the military is separate from civilian society and therefore has different standards for protecting individual rights. Restrictions will be *internally* focused, controlling service members at the *individual* level, and are systemically *reinforced*. Examples include restricting speech that could have operational impacts and specific religious accommodation approval processes.

In contrast to the above perspective, Janowitz's has the following attributes: (1) an *integration* of both military and civilian spheres where (2) civilians maintain a more *subjective* version of control over the military; (3) the military engages in a more *collaborative* advisory process, (4) the military remains *apolitical*, and (5) the military must *adapt* to changes in civil society to maintain military effectiveness. Rights restrictions considered under this perspective understand the evolving nature of civil society and the necessary impact on shaping the military institution. The military community recognizes that it "cannot detach itself from the tensions of social and political change in the larger society."⁵⁵ Service members, their families, and the military institution will continue to feel the impacts of civil society, and resisting these changes could have worse consequences than accommodating them. Social movements can have positive implications like the furtherance of the citizen-soldier tradition, which emphasizes the connection between the military and civic participation. As noted by Snyder, according to this tradition, "if citizens want the rights and liberties that come

⁵⁵ Janowitz, *The Professional Soldier*, xxxvi.

with living in a free society, they must also share the duties of defending that society from its antidemocratic enemies.”⁵⁶ Particularly with the advent of the All-Volunteer Force (AVF), every qualified American citizen should share military service responsibility. Additionally, because the military now relies on recruiting, the military must incorporate aspects of civil society to remain occupationally competitive with other civilian industries. Thus, restrictions that prevent or hinder the ability of *groups of citizens* to participate in the military will get systematically *removed*. The military will address *external* or societal changes by incorporating aspects that strengthen the institution. Examples include accepted methods of political dissent and religious accommodations for service members.

Freedom of Speech

One of the most prominent areas in which the military restricts service members’ rights concerns their freedom of speech. This section examines two categories of free speech restrictions: (1) operations security restrictions and (2) restrictions on dissent. Operations security (OPSEC) refers to the release of critical information which could have operational or strategic impacts on the military. Dissent is a more complex area of speech restrictions that can include a service member’s unprofessional or partisan criticism of a superior officer/government official or disobeying orders. However, professional dissent can also exist in a military organization that fosters candid dialogue. It is important to note that “service member” refers to those actively serving in the military and not military veterans. Due to their civilian status, military veterans are not required to adhere to military restrictions on speech. This distinction is particularly

⁵⁶ Snyder, “The Citizen-Soldier Tradition and Gender Integration of the U.S. Military,” 187.

important concerning the area of political dissent because of the incorporation of veterans' and retired general officers' opinions into partisan politics.⁵⁷

Analyzing restrictions on OPSEC and dissent will illustrate how the military has incorporated more elements of the Janowitzian perspective. In an increasingly complex world, military officers must understand the political consequences of military action. Therefore, they must be afforded some degree of professional dissent as they provide candid counsel to civilian leadership. Interestingly, because the nature of armed conflict has become progressively more dangerous, the military must also maintain some elements of the Huntingtonian perspective. An example of this is adherence to OPSEC regulations to ensure that information that could have operational impacts is not released.

Operations Security Restrictions

In January 1988, the National Security Decision Directive (NSDD) 298 was signed by President Ronald Reagan, which directed all federal agencies to establish an operations security (OPSEC) program.⁵⁸ This national directive resulted in each service branch establishing regulations that governed the purpose, scope, and responsibilities of their respective OPSEC programs. Department of Defense Directive (DoDD) 5205.02E, "DoD Operations Security (OPSEC) Program," defines OPSEC as:

a process of identifying critical information and analyzing friendly actions attendant to military operations and other activities to: identify those actions that can be observed by adversary intelligence systems; determine indicators and vulnerabilities that adversary intelligence systems might obtain that could be interpreted or pieced together to derive critical information in time to be useful to adversaries, and determine which of these represent an unacceptable risk; then

⁵⁷ Saideman, "Dear Civ-Mil Community: The (Retired) Generals Are Speaking & We Should Listen"; Brooks and Robinson, "Let the Generals Speak? Retired Officer Dissent and the June 2020 George Floyd Protests."

⁵⁸ United States Government, "National Security Decision Directive 298."

select and execute countermeasures that eliminate the risk to friendly actions and operations or reduce it to an acceptable level.⁵⁹

OPSEC programs for each service have grown since their initial implementation due to the access service members and adversaries have to more technologically advanced communication platforms and the internet. Therefore, OPSEC programs have had to develop additional restrictions not previously incorporated to thwart potential leakage of critical information. With the advancement of the internet becoming an “ever-greater source of open source information for adversaries of the U.S.,”⁶⁰ there has been a concentration on adapting the program to address these potential vulnerabilities. The collection of open source information through the release of photographs, magazine advertisements, newspapers, congressional hearings, and other public media make up “80 percent of the adversary’s intelligence needs”⁶¹ with minimum risk and cost. The Department of Defense implements restrictions to protect service members and ensure that there are no hindrances to military operations and activities.

The emergence of military blogs or “milblogs” began during the Iraq (2003) and Afghanistan (2001) wars and complicated operations security problems. Milblogs consist of “small websites created by defence personnel around military topics.”⁶² The website Milblogging.com provided the most extensive index of different milblogs globally – accounting for 2,746 military blogs with 10,409 registered members in 44 different countries.⁶³ Service members initially used milblogs to connect with their families but became “empowered by a democratization of information and communication

⁵⁹ Department of Defense, “Department of Defense Directive 5205.02E,” 11.

⁶⁰ Headquarters, Department of the Army, *Army Regulation 530-1 (Operations Security)*, 34.

⁶¹ Headquarters, Department of the Army, 33.

⁶² Resteigne, “Still Connected in Operations?,” 515.

⁶³ Resteigne, 517.

technologies.”⁶⁴ Posts evolved throughout the conflict to provide an outlet for honest and authentic accounts of the war, perceived as missing in traditional media outlets.⁶⁵ Service members’ “collective voice competes with and occasionally undermines the DOD’s elaborate message machine and the much-loathed mainstream media.”⁶⁶ Milblogs, coupled with the 24-hour news cycle, have had a lasting impact on public opinion surrounding military conflicts, for better or worse. However, these new informal outlets can pose a severe threat to operational and strategic objectives and change the tide of an ongoing war.

Because of the potential security concerns posed by milblogs, the DoD began a concerted effort in 2005 to update OPSEC procedures and training and restrict the type of information that service members can post on the internet. Chief of Staff of the Army Peter Schoomaker issued a memorandum to all service members in 2005 voicing his concern about soldiers continuing to “post sensitive information to internet websites and blogs, e.g., photos depicting weapon system vulnerabilities and tactics, techniques, and procedures.”⁶⁷ Other types of sensitive information include posts that outline deployment timelines, current military personnel and equipment strength, names of service members killed or wounded in action before their next of kin is notified, or details concerning ongoing investigations. Schoomaker goes on to state that OPSEC violations “needlessly place lives at risk and degrade the effectiveness of our operations.”⁶⁸

⁶⁴ Resteigne, 516.

⁶⁵ Bleyker, “The First Amendment versus Operational Security: Where Should the Milblogging Balance Lie,” 407.

⁶⁶ Hockenberry, “The Blogs of War.”

⁶⁷ Schoomaker, “All Army Activities (ALARACT) 156/2005.”

⁶⁸ Schoomaker.

Updates soon followed in Army Regulation 530-1 (Operations Security), which explicitly outlined requirements for OPSEC programs, further restrictions on service member speech, and the inclusion of limitations for military family members, contractors, and civilians employed by the military. OPSEC programs now include: monitoring information released to websites, registering blogs with unit OPSEC managers, and providing procedures for unit Public Affairs Officers (PAO)/unit commanders on clearing posts before submission to public forums. Public forums include everything from websites, blogs, and social media to letters, articles, or even resumes. If a service member is found in violation of OPSEC regulations, they are subject to punishment under Article 92 of the Uniform Code of Military Justice (UCMJ), “Failure to Obey a Lawful Order,” or “under other disciplinary, administrative, or other actions as applicable.”⁶⁹ Each unit’s OPSEC program will establish policies and directives that explicitly state that all violations are punitive and that those not subject to the UCMJ may be subject to administrative, disciplinary, contractual, or criminal action.

With the constant access that service members have to the internet in today’s world, OPSEC concerns are more salient than ever. Secretary of Defense Mark Esper reiterated this point by stating, “poor OPSEC practices within DoD in the past have resulted in the unauthorized disclosure or ‘leaks’ of controlled unclassified information (CUI)...as well as classified national security information.”⁷⁰ The past environment of service members relying on “hard-lined” laptops and phones has been replaced by smartphones, social media, and apps. These less secure modes of communication are easily accessed by hostile actors who can gain critical information previously

⁶⁹ Headquarters, Department of the Army, *Army Regulation 530-1 (Operations Security)*, 10.

⁷⁰ Esper, “Reinforcing Operations Security and the Importance of Preventing Unauthorized Disclosures,” 1.

unavailable. The ability to “geotag” locations on social media posts or metadata from pictures or posts can provide adversaries with the exact locations of service members.

Advancements in fitness technology can also result in negative consequences. For example, the fitness app Strava released a “data visualisation map that shows all the activity tracked by users.”⁷¹ The impact on OPSEC is grave – making military bases clearly identifiable with exact locations of roads and internal layout. The brightness of specific routes or locations also indicates the degree to which they are used. Hostile actors can use the data from the Strava heat maps to discern popular meeting locations or even how many personnel are there. Similarly, due to the availability of the internet, service members may be inadvertently violating OPSEC by posting things such as “asking for prayers on mission today” or “can’t wait to come home in a couple of days,” which could indicate operational timelines. Therefore, all service members, OPSEC managers, PAOs, and commanders need to monitor the internet to ensure adherence to OPSEC standards continuously.

Most often, OPSEC violation cases include minor releases of critical information. For example, Major Michael Cohen, a doctor with the 67th Combat Support Hospital, disclosed accounts of military casualties following the December 21, 2004, suicide bombing in Mosul, Iraq killing 22 people.⁷² Due to the graphic detail of his posts, the milblog that Cohen was using was shut down. Cohen provided a short statement on his site that “Levels above me have ordered, yes ORDERED, me to shut down this Web site. They cite that the information contained in these pages violates several Army

⁷¹ Hern, “Fitness Tracking App Strava Gives Away Location of Secret US Army Bases.”

⁷² Bleyker, “The First Amendment versus Operational Security: Where Should the Milblogging Balance Lie.”

Regulations.”⁷³ Other cases involve service members incurring fines or reduction in rank.

However, the ramifications can be extensive when the violation is particularly serious. One of the most notorious cases included releasing classified information by Army intelligence analyst Chelsea Manning (then Private First Class Bradley Manning). In 2010, Manning released approximately “260,000 classified diplomatic reports, along with secret video of U.S. service members killing civilians, to the whistleblower website Wikileaks.org.”⁷⁴ This incident is believed to be “the biggest leak of military secrets in history.”⁷⁵ Manning was charged with 22 violations of the UCMJ to include “aiding the enemy,” “failure to obey a lawful order or regulation,” the Computer Fraud and Abuse Act, the Espionage Act, “stealing government property,” and “wanton publication of intelligence on the internet.”⁷⁶ Manning was sentenced to 35 years in prison, reduced in rank to Private, forfeiture of all pay and allowances, and a dishonorable discharge. In 2017, President Barack Obama commuted her sentence to seven years, and Manning was released shortly after.

When viewing OPSEC regulations through the Huntingtonian perspective, restrictions on free speech are instituted to limit the disruption to military operations and to protect the United States from harm. Huntington’s “objective” model of civilian control assumes that the military will operate autonomously and therefore “separate” from civilian society. Under this assumption, the military is justified in implementing restrictions because they have a direct link to military effectiveness. The potential

⁷³ Joyner, “US Wounded in Iraq Reaches 10,000.”

⁷⁴ “Alleged Army Whistleblower Felt ‘Isolated.’”

⁷⁵ Nicks, “Private Manning and the Making of Wikileaks.”

⁷⁶ Londono, Rolfe, and Tate, “Verdict in Bradley Manning Case.”

operational or strategic impacts from releasing critical information outweigh the protection of service members' constitutional rights. Furthermore, military professionals have a distinctive "military mind" that distinguishes them from the rest of society. To be professional is "to exist apart from society, not just physically but also psychologically and ideologically."⁷⁷ Therefore, a military professional socialized under the Huntington norms would not object to these restrictions because society is superior to the individual.⁷⁸

Similarly, Janowitz's discussion of the opposing military perspectives of "absolutists" and "pragmatists" illustrates how these two categories of officers come to similar conclusions concerning OPSEC restrictions. The absolutist school of thought is

a direct outgrowth of the frontier and punitive expedition tradition. Warfare...is the most fundamental basis of international relations. Since political objectives of war are gained by victory, the more complete the victory, the greater the possibility of achieving political goals. In short, there is no substitute for "total victory."⁷⁹

By contrast, the pragmatic school of thought stresses the following:

Warfare is but one instrument of international relations, along with ideological and economic struggle. The political objectives of warfare are gained by adapting the use or threat of violence to the objectives to be achieved.⁸⁰

Absolutists who assume the end of "total victory" believe the "means must be adjusted in order to achieve it."⁸¹ Pragmatists differ on this point: they are not concerned with "adapting military means to achieve desired political ends, but insist that the end must be conditioned by what military technology is capable of achieving."⁸²

⁷⁷ Brooks, "The Paradoxes of Huntingtonian Professionalism," 19.

⁷⁸ Huntington, *The Soldier and the State*, 79.

⁷⁹ Janowitz, *The Professional Soldier*, 264.

⁸⁰ Janowitz, 264.

⁸¹ Janowitz, 265.

⁸² Janowitz, 265.

Although the “means” that Janowitz references indicate more traditional military means like equipment and technology, it does not negate the use of military restrictions to achieve military and political ends. Because of the potential operational and strategic impacts of releasing critical information, adhering to OPSEC regulations is necessary for both absolutist and pragmatic officers. Absolutists would see the punitive measures as an effective means to control service members and increases chances of absolute victory. Pragmatists would understand that the evolving complexities of the international environment and the advancements in technology warrant some controls. The pragmatic view that military force is “used to stop the war as soon as possible”⁸³ emphasizes the need to restrict the informational content released on public forums. Adversaries can use the information released to target military personnel or locations, thereby extending the duration of the military conflict, and thus preventing it from being settled peacefully. Therefore, from both the Janowitzian and Huntingtonian perspectives, restrictions on free speech within the confines of OPSEC regulations are supported.

Restrictions on Dissent

Unlike operations security restrictions, which are typically black and white, dissent tends to be a more complex area of speech restrictions imposed on service members. Distinguishing between complaints and dissent can be troublesome and is further complicated by loyal versus disloyal dissent. Some form of dissent will naturally occur in military organizations and can manifest itself during times of adverse working conditions, when service members feel their unit is in decline, or due to the actions of a toxic leader.⁸⁴ Furthermore, service members have conflicting identities and

⁸³ Janowitz, 275.

⁸⁴ Craig, “Leveraging the Power of Loyal Dissent in the U.S. Army,” 98.

relationships which require differing degrees of loyalty. Robinson, Cohn, and Margulies provide a comprehensive typology of loyalty structures to which service members must maintain allegiance. These loyalty structures include (1) authoritative (obedience to constitutional command authorities), (2) democratic (support of liberal democratic governance), (3) operational (imperative for capacity to fight and win wars), (4) supervisory (responsibility for military subordinates), (5) conscientious (personal moral convictions and beliefs), (6) professional (commitment to professional ethos), and (7) institutional (obligations to law, regulation, and senior military leaders).⁸⁵ A military member is “simultaneously a representative and guardian of organizational values; an agent of the government, his or her commander, and society; and leader responsible to the other members of his or her unit.”⁸⁶ Each of these may not conflict with one another at all times, but when they do, “an act of dissent may uphold one loyalty at the expense of others.”⁸⁷ For example, a service member may be ordered to “take the hill” to accomplish a mission while simultaneously having to reconcile the need to protect his/her subordinates. In this instance, the service member may suppress allegiance to his/her subordinates’ immediate safety to meet tactical objectives. This example may seem like a simple answer, but this weighing of loyalty becomes more complicated when military leaders must balance multiple “civilian masters.” Competition for “resources and autonomy means that executive and legislative institutions often give the military conflicting guidance.”⁸⁸ In these cases, with whom does the service member align?

⁸⁵ Robinson, Cohn, and Margulies, “Dissents and Sensibility: Conflicting Loyalties, Democracy, and Civil-Military Relations,” 67.

⁸⁶ Robinson, Cohn, and Margulies, 66.

⁸⁷ Brooks and Robinson, “Let the Generals Speak? Retired Officer Dissent and the June 2020 George Floyd Protests.”

⁸⁸ Robinson, Cohn, and Margulies, “Dissents and Sensibility: Conflicting Loyalties, Democracy, and Civil-Military Relations,” 65.

Apart from two civilian entities, what happens when the President, acting as the Commander-in-Chief, orders the military to do something that may conflict with the democratic principles the military is sworn to protect?

Wong and Lovelace provide further insight into the potential options for dissent by military personnel operating in a complex political and military environment. There are options for military leaders beyond “strict obedience, resignation, or retirement”⁸⁹ if those leaders feel strongly towards a flawed policy. According to the spectrum developed by Wong and Lovelace, options rest between the degree to which civilians resist military advice and the extent of the threat to national security. Examples of available options include attempting to gain consensus, compromising, writing scholarly articles, declining advancement or assignment, or testifying before Congress.⁹⁰ Important to note is that the model presented by Wong and Lovelace is intended to provide leaders with options before a policy decision is made.

Huntington recognizes that military professionals have dueling loyalties, but adherence to military obedience is supreme. He notes that:

As a soldier, he owes obedience; as a man, he owes disobedience. Except in the most extreme instances it is reasonable to expect that he will adhere to the professional ethic and obey. Only rarely will the military man be justified in following the dictates of private conscience against the dual demand of military obedience and state welfare.⁹¹

Military professionals have overriding obligations to their “civilian masters;” therefore, dissent is rarely acceptable. When a military leader receives “a legal order from an authorized superior, he does not argue, he does not hesitate, he does not substitute his

⁸⁹ Wong and Lovelace, “Knowing When to Salute,” 284.

⁹⁰ Wong and Lovelace, 284.

⁹¹ Huntington, *The Soldier and the State*, 78.

own views; he obeys instantly.”⁹² Huntington notes that the military man is “judged not by the policies he implements, but rather by the promptness and efficiency with which he carries them out.”⁹³ Strict adherence to obedience is necessary to ensure that the military remains an effective tool of the state. Therefore, restrictions by the military to punish service members who dissent are essential to maintain good order and discipline.

Military traditionalists, who adhere to the Huntingtonian perspective, concur with the need for absolute obedience based on the authority granted to civilian entities in the U.S. Constitution. Dissent is only justified “under the most exceptional circumstances and must be confined to the purely military aspects of a decision.”⁹⁴ Military leaders should not disregard an order based on moral grounds because “one individual’s definition of what is moral, ethical, and even professional can differ from someone else’s.”⁹⁵ From this perspective, civilian leadership has the “right to be wrong.”⁹⁶

However, strict adherence to the Huntingtonian perspective can have dangerous consequences. Blind obedience to civilian authority and a clearly defined division of labor are not sustainable in the current military environment. The nature of armed conflict has evolved to such an extent that purely military and political spheres are not as discernible as they were in the past. It is necessary to allow for professional dialogue amongst military and civilian leaders and not punish military officers who disagree. Janowitz’s fifth hypothesis stresses the increasing importance of military officers’ political indoctrination as “the growth of the destruction of warfare increases.”⁹⁷

⁹² Huntington, 73.

⁹³ Huntington, 73.

⁹⁴ Milburn, “Breaking Ranks: Dissent and the Military Professional.”

⁹⁵ Myers and Kohn, “The Military’s Place,” 149.

⁹⁶ Feaver, “The Civil-Military Problematique: Huntington, Janowitz and the Question of Civilian Control,” 154.

⁹⁷ Janowitz, *The Professional Soldier*, 14.

Therefore, military officers must understand the political consequences of military action as they provide candid counsel to civilian leadership. Military officers' expertise, social backgrounds, and career experience provide a unique perspective that must be allowed to influence the national security decision-making process. Officers that have undergone political indoctrination or socialization have "enabled them to exchange views with civilian policy makers."⁹⁸ Thus, the collaborative nature of national security policymaking between civilian and military leadership minimizes the need for more extreme versions of dissent. Unlike the military officers under the Huntingtonian perspective, military officers have a "seat at the table" to influence security policy which allows for disagreements between military and civilian establishments.

The distinction between officers and enlisted military personnel is important to note. Under the provisions of 10 U.S. Code § 502, enlisted service members must make an oath of enlistment. They swear to "obey the orders of the President of the United States and the orders of the officers appointed over [them]."⁹⁹ Officers, in comparison, do not have this provision. Officers swear to "support and defend the Constitution of the United States."¹⁰⁰ Therefore, military officers are obligated to the Constitution and are not bound to strict obedience to civilian leadership. This nuanced difference allows officers to professionally object to orders deemed contrary to the democratic values outlined in the Constitution or those potentially threatening national security.

Janowitz recognizes that this view of civil-military discourse may be idealistic. The military does not have a "unified theory of war and a consistent set of tactics for

⁹⁸ Coletta and Crosbie, "The Virtues of Military Politics," 4.

⁹⁹ Enlistment oath: who may administer.

¹⁰⁰ Oath of office.

influencing executive and legislative decisions.”¹⁰¹ Based on the absolutist and pragmatic perspectives discussed earlier, differing opinions amongst military officers could create significant cleavages over military strategy and doctrine. As a result, there would “be deeply frustrated officers from both camps, highly capable, politically aware, and sorely tempted...to exploit fissures on the civilian side so as to move defense and national policy in the ‘right’ direction.”¹⁰² During extraordinarily challenging times, the more politically astute officers may become resentful of civilian decisions. Civilian leadership, therefore, must be “more finely attuned to the delicate politics involved when civilians pick and choose the ‘winners’ among the dissenting generals.”¹⁰³ To combat this, the President may opt to “split the difference” and decide to go with a hybrid model that incorporates aspects of both competing perspectives.¹⁰⁴

Most often, when a service member is charged with dissent, it falls within the category of disloyal dissent in which comments are deemed unprofessional, critical of superiors, or partisan. Subchapter X of the UCMJ includes four distinct “punitive articles” used as the basis of restrictions on service member dissent speech. These articles include (1) Article 88, “Contempt Toward Officials,” (2) Article 92, “Failure to Obey a Lawful Order or Regulation,” (3) Article 133, “Conduct Unbecoming an Officer and a Gentleman,” and (4) Article 134, “General Article.”¹⁰⁵ Article 88 prohibits “contemptuous” speech towards government officials such as the President, Congress, or

¹⁰¹ Janowitz, *The Professional Soldier*, 16.

¹⁰² Coletta and Crosbie, “The Virtues of Military Politics,” 5.

¹⁰³ Feaver, “The Right to Be Right,” 123.

¹⁰⁴ Feaver, 124. Feaver uses President Eisenhower’s Solarium exercise and President Obama’s 2009 mini-surge as examples of how presidents have attempted to build consensus by “splitting the difference.”

¹⁰⁵ United States Department of Defense and Joint Service Committee on Military Justice, *Manual for Courts-Martial, United States 2019 Edition*.

the Secretary of Defense.¹⁰⁶ Article 92 states that service members are subject to this article if they violate or fail to obey an order or regulation or are derelict in their duties.¹⁰⁷ Article 133 can punish dissent by prohibiting disloyal statements as “conduct unbecoming of an officer and a gentleman.”¹⁰⁸ Finally, Article 134 punishes service members for “all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces.”¹⁰⁹

Dissent regulations are further compounded by DoD directives and instructions like DoDI 1325.06, “Handling Dissident and Protest Activities Among Members of the Armed Forces,” and DoDD 1344.10, “Political Activities by Members of the Armed Forces.” DoDD 1344.10 emphasizes how service members “should not engage in partisan political activity...and...avoid inferences that their political activities imply or appear to imply official sponsorship, approval, or endorsement”¹¹⁰ by the armed forces. Therefore, service members are prohibited from participating in political fundraising, rallies, radio or television program discussions of advocacy towards a particular party, or conducting or participating in political opinion surveys while on duty or in duty uniform. These restrictions are put in place to prevent the perception that an individual’s political expression is the military’s official stance. DoDI 1325.06 outlines responsibilities and procedures for commanders and service members. These include prohibiting personal publication, either written or electronic, while on duty; prohibiting on-post demonstrations; and preventing participation in off-post demonstrations if a service

¹⁰⁶ United States Department of Defense and Joint Service Committee on Military Justice, IV–21.

¹⁰⁷ United States Department of Defense and Joint Service Committee on Military Justice, IV–27.

¹⁰⁸ United States Department of Defense and Joint Service Committee on Military Justice, IV–134.

¹⁰⁹ United States Department of Defense and Joint Service Committee on Military Justice, IV–135.

¹¹⁰ Department of Defense, “Department of Defense Directive 1344.10,” 2.

member is on duty, is in a foreign country, or violence is likely to result.¹¹¹ Additionally, DoDI 1325.06 prohibits service members from participating in or advocating for extremist, supremacist, or criminal doctrine and ideology. These DoD directives and instructions restrict service members' speech because they could "present a clear danger to the loyalty, discipline, or morale of the troops."¹¹²

In the most recent case of dissent, Marine Corps Lieutenant Colonel Stuart Scheller criticized top generals' handling of the United States' 2021 withdrawal from Afghanistan. In his explosive video, he states that he is "willing to risk my current battalion commander's seat, my retirement, my family stability to say some of the things that I want to say."¹¹³ He goes on to demand accountability from senior ranking officials like Secretary of Defense Lloyd Austin and Chairman of the Joint Chiefs of Staff General Mark Milley for the death of 13 service members due to an attack at Kabul Air Base. In subsequent posts, Scheller encourages others to "burn the f***** system down," which according to Macander is "far beyond the bounds of allowable dissent."¹¹⁴ As a result of his video and social media posts, Scheller was relieved of his command. Scheller also pled guilty to six violations of the UCMJ, including "contempt toward officials," "willfully disobeying a superior commissioned officer," "disrespect toward a superior commissioned officer," "failure to obey a lawful order or regulation," "dereliction in the performance of duties," and "conduct unbecoming of an officer and a gentleman."¹¹⁵ He received a letter of reprimand and loss of one month's pay (\$5,000).

¹¹¹ Department of Defense, "Department of Defense Directive 1325.06."

¹¹² Department of Defense, 8.

¹¹³ Scheller, *Lt Colonel Stuart Scheller to SECDEF: We Demand Accountability!*

¹¹⁴ Macander, "How to Dissent Without Losing Your Career, or Your Republic."

¹¹⁵ Morgan, "Judge Sentences Viral Marine Scheller Who Called out Afghan Debacle – Here's His Ruling"; "Lt. Col. Stuart Scheller Faces Six Charges in Court Martial; Marine Corps Scoured His Social Media: Report."

Parker v. Levy (1974) is one of the most compelling Supreme Court cases challenging the constitutionality of freedom of speech restrictions. Army Captain Howard Levy was a dermatologist who deeply opposed the Vietnam War. While acting as the chief of Dermatological Service at Fort Jackson, SC, Levy made inappropriate statements to subordinates during training for Special Forces units. Levy's comments include the following:

The United States is wrong in being involved in the Viet Nam War. I would refuse to go to Viet Nam if ordered to do so. I don't see why any colored soldier would go to Viet Nam: they should refuse to go to Viet Nam and if sent should refuse to fight because they are discriminated against and denied their freedom in the United States, and they are sacrificed and discriminated against in Viet Nam by being given all the hazardous duty and they are suffering the majority of casualties. If I were a colored soldier I would refuse to go to Viet Nam and if I were a colored soldier and were sent I would refuse to fight. Special Forces personnel are liars and thieves and killers of peasants and murderers of women and children.¹¹⁶

Levy was court-martialed and sentenced to three years in prison for "conduct unbecoming of an officer and gentleman" and for "disorders and neglects to the prejudice of good order and discipline in the armed forces."¹¹⁷ Levy appealed the conviction to the Supreme Court, stating that the "alleged" violations of the UCMJ were unconstitutionally "vague" and "overbroad." However, the Court held that the military was justified in restricting free speech under the First Amendment because it could interfere with military effectiveness by endorsing the perception that service members can disobey orders. The Court stated that (with my emphasis):

While the members of the military are not excluded from the protection granted by the First Amendment, the different character of the military community and of the military mission *requires a different application of those protections*. The fundamental necessity for obedience, and the consequent necessity for imposition

¹¹⁶ Kenworthy, "Military Speech."

¹¹⁷ Mazur, *A More Perfect Military*, 57.

of discipline, *may render permissible within the military that which would be constitutionally impermissible outside it.*¹¹⁸

Furthermore, the Court emphasized how “the military is, by necessity, a specialized society,” and the military is “a society apart from civilian society.”¹¹⁹ The language used in the majority opinion mirrors the Huntingtonian perspective of objective civilian control. This application of “judicial deference” to the military set in motion the principle that, according to Mazur, the “military should be viewed as morally superior to civilian society, with military values elevated above constitutional values.”¹²⁰ Therefore, the military is justified in departing from the usual protections given to free speech.

On the other hand, Steck maintains that existing restrictions on military free speech are “overbroad, obsolete, and should be replaced by an adjusted application of existing doctrines of employer regulation of employees’ speech.”¹²¹ He critiques the Huntingtonian assumption that the military community is entirely separate and subject to judicial deference. Steck proposes a reformed application of the *Pickering* standards and balancing test to military speech, established in *Pickering v. Board of Education*. The modified *Pickering* standard would be adapted to accommodate the unique nature of military service, both in combat and non-combat environments. While overseas, the service member will have more restrictions because the conditions resemble a “separate community.” However, when in a non-combat environment, service members would have fewer restrictions because they essentially “transform into a civilian while off-duty.”¹²² It would be necessary to ensure that speech is not violating the general articles

¹¹⁸ *Parker v. Levy*.

¹¹⁹ *Parker v. Levy*.

¹²⁰ Mazur, *A More Perfect Military*, 60.

¹²¹ Steck, “Dissent Without Disloyalty: Expanding the Free Speech Rights of Military Members Under the General Articles of the UCMJ,” 1608.

¹²² Steck, 1635.

but allows service members to dissent on the substance of policies, not the specific individual making or enforcing them. By allowing some form of dissent, the *Pickering* standard aligns more with the Janowitzian perspective.

A potential consequence of allowing more tolerance for dissent is that military officers may feel greater pressure to exercise their right to disagree in public ways. For instance, a military officer who opposes a policy decision may decide to “resign in protest” or engage in what Feaver refers to as “McMasterism.” This extreme form of political dissent was influenced by H.R. McMaster’s review of the performance of military generals during the Vietnam War in his book *Dereliction of Duty*. McMaster claims that military officers were derelict in two ways: (1) they lied to civilian leadership about the actual views of military advice and various options available, and (2) they were silent when the executive branch misrepresented their views to the public and Congress.¹²³ According to Feaver, McMasterism argues that when civilian leadership is actively trying to suppress the military opinion, and the military opinion is more right than the civilian one, military officers must ensure that their voices are not only heard but heeded.¹²⁴ When they feel this is not occurring, there are two options – “resign in protest or go over the heads of the president to the American people, the Congress, or both.”¹²⁵ As illustrated by this example, although the Janowitzian perspective supports dissent, it has to be done professionally – physical coercion to intimidate or resist civilian authority is not an option. To be allowable, dissent should exhibit the following criteria: “avoiding giving support to a partisan narrative, adhering to military professionalism, avoiding

¹²³ Feaver, “The Right to Be Right,” 94.

¹²⁴ Feaver, 94.

¹²⁵ Feaver, 95.

personal attacks, and exhibiting a clear understanding of civilian control of the military.”¹²⁶ A complication arises when the action of a dissenting officer is intentionally politicized, which contradicts Janowitz’s belief that the military must remain apolitical. The publicity surrounding a resignation, or outspoken testimony, should focus the criticism on the content of the disagreement or a trend within the military establishment, but not on a specific administration. Therefore, military officers must be cognizant of the consequences of such public displays of dissent and avoid contributing to a partisan narrative.

Summary

This section focused on two areas in which the military restricts service members’ freedom of speech: (1) operations security restrictions and (2) restrictions on dissent. Operations security (OPSEC) refers to the release of critical information which could have operational or strategic impacts on the military. The perspectives of both Huntington and Janowitz support OPSEC regulations. These restrictions on free speech are instituted to limit disruption to military operations and to protect the United States from harm. Therefore, they are necessary to safeguard democratic society and prevent further escalation during military conflict.

Despite agreement on OPSEC restrictions, the discussion of dissent illustrates a tendency for the contemporary military to adopt more of Janowitz’s principles. In the post-Cold war era, military officers and civilian leadership have embraced a more collaborative policy-making process. The nature of armed conflict has evolved to such an extent that purely military and political spheres are not as discernible as they were in

¹²⁶ Macander, “How to Dissent Without Losing Your Career, or Your Republic.”

the past. Therefore, it is necessary to allow for professional dialogue amongst military and civilian leaders and not punish military officers who disagree. This notion of professional dissent directly conflicts with the Huntingtonian perspective, which advocates for absolute obedience and clearly defined divisions of labor between military and civilian leadership. However, strict obedience can have dangerous consequences. Therefore, the military must continue to advocate for professional discourse, consistent with the Janowitzian perspective.

Freedom of Religion

Another area of military rights restrictions includes those imposed on service members' freedom of religion. First, it is critical to understand the constitutional foundation and case law surrounding religious practices more generally. This analysis will provide the basis upon which military rights restrictions are derived and implemented. With these laws and decisions as a backdrop, two areas of military religious rights restrictions will be examined: (1) accommodations for religious practices in the military and (2) the military chaplaincy. Religious accommodations excuse service members from military policies, practices, or duties that would otherwise be expected. Examples of accommodations include wearing religious apparel in uniform, observing religious holidays, or being exempt from medical procedures due to religious reasons. The discussion on the military chaplaincy consists of the role of the military chaplain, the topic of pluralism, and how Department of Defense (DoD) policies and regulations influence these aspects.

By examining these two domains of religious freedom, I will show that the military has integrated more principles consistent with Janowitz's perspective within the

last two decades. The military has become more accommodating of different religions and faith groups and ensuring that all service members receive religious support. However, because the military remains a unique and distinct society, some aspects of the Huntingtonian perspective are still present. Examples include the establishment of a military chaplaincy that is separate from civilian religious congregations and the religious accommodations approval process is done through military command channels.

Constitutional Foundation and Case Law:

The following discussion will examine First Amendment religious freedoms and associated case law. These Supreme Court decisions and interpretations of the Constitution provide the legal framework for how the military restricts or accommodates the religious liberties of service members. Understanding these principles allows for a more comprehensive view of how they influence military regulations. Because this discussion is centered around legal precedents more generally, the Huntingtonian and Janowitzian perspectives will be applied in a subsequent section about military-specific religious restrictions on personnel in uniform and military chaplaincy.

The First Amendment of the United States Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”¹²⁷ These are commonly referred to as the Establishment and the Free Exercise Clauses.

Free Exercise Clause:

The Free Exercise Clause establishes protections for individuals to exercise religious beliefs freely and, to some degree, religious practices without government

¹²⁷ U.S. Constitution, amend. 1.

interference. The 1878 Supreme Court case, *Reynolds v. United States*, was the first case in which an individual claimed to be exempt from criminal law based on the right to exercise their freedom of religion. George Reynolds, a member of The Church of Jesus Christ of Latter-day Saints (LDS Church), was charged with bigamy under the Morrill Anti-Bigamy Act. Reynolds and the LDS Church believed that the Act was unconstitutional because it prevented members from freely practicing their religion by restricting members' ability to practice polygamy. The Court held that "laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices."¹²⁸ Allowing religious doctrine to dictate specific religious actions would put these practices in a superior position to the supreme law of the land. Therefore, the Free Exercise Clause protects the right to hold religious beliefs but does not authorize the right to engage in whatever religious practices the believer or religious organization requires.

In 1990, the Free Exercise Clause was reinterpreted in *Employment Division, Department of Human Resources of Oregon v. Smith*. Alfred Smith, a member of the Native American Church, was fired from his job at a drug rehabilitation center for ingesting peyote as part of a religious ceremony. Smith attempted to file unemployment compensation with the Employment Division of the Oregon Department of Human Resources but was denied due to being fired for misconduct. The case was ultimately brought before the Supreme Court. The state of Oregon claimed it was justified in denying unemployment benefits because the possession and use of peyote was a crime. However, Smith argued that the Oregon law was unconstitutional because it infringed on

¹²⁸ *Reynolds v. United States*.

his ability to practice his religion freely. The Court held that the Free Exercise Clause never “relieve[s] an individual of the obligation to comply with a valid and neutral law of general applicability.”¹²⁹ Therefore, although the government cannot pass laws that overtly prohibit specific religious practices, it can pass neutral laws that hinder certain practices from occurring. Because the Oregon law did not expressly prohibit the use of peyote but illegal substances generally, it was deemed constitutional.

The *Reynolds* ruling was significant in establishing that the “strict scrutiny” or “compelling interest” standard for determining whether a law unconstitutionally burdened religious freedom did not apply. Before *Reynolds*, the government “had to show that it had a compelling interest in the challenged law as well as no less burdensome means to achieve that interest.”¹³⁰ However, the enactment of the Religious Freedom Restoration Act (RFRA) of 1993 reinstated the heightened level of scrutiny. The RFRA states that (1) “governments should not substantially burden religious exercise without compelling justification” and (2) “the compelling interest test...is a workable test for striking sensible balances between religious liberty and competing prior governmental interest.”¹³¹ Therefore, the burden of proof is on the government, not the individual, to prove whether a law or statute is justified in infringing on religious freedom.

Establishment Clause:

The Establishment Clause prohibits the government from establishing or sponsoring a particular religion. This clause establishes limitations placed on Congress to prevent legislation that establishes a religion, promotes theocracy, or uses taxes to

¹²⁹ *Employment Division, Department of Human Resources of Oregon v. Smith*.

¹³⁰ Frey, “Serving Two Masters: A Scheme for Analyzing Religious Accommodation Requests in the Military,” 53.

¹³¹ Religious Freedom Restoration Act of 1993.

pursue either of these goals. The Court has primarily used the *Lemon* test to determine whether a government action violates the Establishment Clause. This test is derived from the 1971 Supreme Court case, *Lemon v. Kurtzman*, where the Court determined that Pennsylvania and Rhode Island legislation allowing tax-funded reimbursements to church-affiliated schools was unconstitutional. The *Lemon* test consists of three questions: (1) does the law/statute in question have a secular legislative purpose?, (2) does its principle or primary effect advance or inhibit religion?, and (3) does it foster an excessive government entanglement with religion?¹³² A law is unconstitutional if it fails any one of the three questions. Despite this test, Chief Justice Warren Burger noted that “the line of separation, far from being a ‘wall,’ is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.”¹³³ Therefore, some interaction between the government and religious organizations is inevitable because absolute separation is not achievable.

Two additional tests are utilized to evaluate Establishment Clause claims: (1) the “coercion test” and (2) the “endorsement test.” The coercion test was established in *Lee v. Weisman* (1992), where the Court found clergy-led prayer within public schools unconstitutional. Justice Anthony Kennedy found that students who attend public school activities may feel coerced into approving of religious practices that they may otherwise object to. He notes that this “pressure, though subtle and indirect, can be as real as any overt compulsion.”¹³⁴ Therefore, this test considers whether a law or activity is being used to coerce people to participate in religion or aid religion in a way that limits

¹³² *Lemon v. Kurtzman*.

¹³³ *Lemon v. Kurtzman*.

¹³⁴ *Lee v. Weisman*.

religious freedom. The endorsement test was established in *Lynch v. Donnelly* (1984), a case concerning the legality of an outdoor Christmas nativity scene on town property. The Court found that the nativity scene was a passive representation of religion and, therefore, constitutional. Justice Sandra Day O'Connor proposed the endorsement test to clarify "the *Lemon* test as an analytical device" and ensure that "a government practice not have the effect of communicating a message of government endorsement or disapproval of religion."¹³⁵

Accommodations for Religious Practices in the Military

As of 2017, the DoD formally recognizes 221 religions and faith groups. Under the Armed Forces Chaplains Board (AFCB) advisement, the DoD expanded the list and essentially doubled the number of religions previously identified.¹³⁶ This change ensured that the military was more aligned with the National Defense Authorization Act (NDAA) of 2013, which outlines the "protection of rights of conscience of members of the Armed Forces and chaplains of such members."¹³⁷ This regulatory change is indicative of the "organizational revolution" in the military establishment referenced by Janowitz:

In the past, when the officer corps was dominated by a Protestant Episcopalian upper middle-class background, the "outsiders" either transformed themselves, or were few enough to be merely tolerated. With a larger number of officers from more humble social backgrounds, plus a greater variety of religious, ethnic, and racial backgrounds, the military community has become more of a melting pot.¹³⁸

The diversity of the officer and enlisted corps has continued into today's military, despite the introduction of the All-Volunteer Force (AVF), which might have limited religious heterogeneity. Although the military has increased measures to enable service members

¹³⁵ *Lynch v. Donnelly*.

¹³⁶ Department of Defense, "Faith and Belief Codes for Reporting Personnel Data of Service Members."

¹³⁷ National Defense Authorization Act for Fiscal Year 2013, sec. 533.

¹³⁸ Janowitz, *The Professional Soldier*, 178.

the latitude to exercise their religious freedoms, the DoD still remains a “unique federal agency where the free exercise of religion cannot be always guaranteed.”¹³⁹

Consequently, most service members still require the approval of religious accommodations from their respective chains of command. In this way, the military has maintained aspects of the Huntingtonian perspective because the ultimate approval authority remains within the military ranks and not with civilian society.

The governing document for religious accommodations is Department of Defense Instruction (DoDI) 1300.17, “Religious Liberty in the Military Services,” which establishes the DoD’s policy “in furtherance of the Free Exercise Clause of the First Amendment to the Constitution of the United States, recognizing that Service members have the right to observe the tenets of their religion, or to observe no religion at all.”¹⁴⁰ The DoDI assigns responsibilities for, and procedures regarding, religious accommodations for service members. Furthermore, this policy establishes that the DoD will accommodate “individual expressions of sincerely held beliefs (conscience, moral principles, or religious beliefs), which do not have an adverse impact on military readiness, unit cohesion, good order and discipline, or health and safety,”¹⁴¹ and these beliefs cannot be used as a basis for adverse action or discrimination.

Most significantly, DoDI 1300.17 establishes a process of requesting a religious accommodation. Accommodations include, but are not limited to, observing religious holidays or days of worship, granting religious rations, exempting some required medical practices, wearing religious apparel, and excepting grooming standards. Each service

¹³⁹ Ford, “Understanding the U.S. Army’s Religious Accommodation Policy and Procedures,” 4.

¹⁴⁰ Department of Defense, “Department of Defense Instruction 1300.17,” 1.

¹⁴¹ Department of Defense, 4.

members' accommodations are reviewed and adjudicated by the lowest level of command necessary. However, if the service member requires a waiver to current military policies or regulations, the accommodation request is forwarded to the Secretary of the Military Department concerned. Examples of these types of accommodations could be waivers for uniform standards (wearing religious apparel) or grooming standards. During the approval process, two factors are considered:

(1) the compelling governmental interest in mission accomplishment, including military readiness, unit cohesion, good order and discipline, or health and safety [and] (2) alternate means available to address the requested accommodation. The means that is least restrictive to the requestor's religious practice and that does not impede a compelling governmental interest will be determinative.¹⁴²

In accordance with the Religious Freedom Restoration Act (RFRA), discussed previously, the military will not deny a service members' accommodation unless the "military policy, practice, or duty is in furtherance of a compelling governmental interest," or if it is the "least restrictive means of furthering that compelling governmental interest."¹⁴³ Consistent with the "strict scrutiny" standard re-established in the RFRA, the military has the burden of proof, not the individual service member, in proving that a specific religious accommodation conflicts with a military requirement. Commanders may determine whether to approve accommodations in whole or in part, depending on whether there is a compelling governmental interest towards mission accomplishment. These considerations can be related to deployments, health or safety issues pertaining to the accommodation request, or training and other events where the accommodation could

¹⁴² Department of Defense, 11.

¹⁴³ Department of Defense, 5.

affect good order and discipline.¹⁴⁴ Ultimately, the commander has 30 days from submission to notify the service member of approval or disapproval.

Although the military recognizes the need to support service members' religious freedom, "there has often been a conflict between the commander's responsibility to accomplish the mission and the soldier's need for accommodation of religious practice."¹⁴⁵ Frey notes that "as a specialized society, the military's interest in maintaining good order and discipline is a powerful counterweight to military members' First Amendment liberties, and it is only in rare circumstances that individual rights can overcome the military's interests in a uniform, disciplined force."¹⁴⁶ This statement is indicative of the military's adherence to Huntingtonian principles. Military commanders and higher echelon authorities are, in a way, gatekeepers to an individual service member's ability to express their religious freedom. By focusing on the internal impact to the military organization, if an accommodation proves to conflict with military effectiveness, the commander will deny the request, putting the needs of the military first. The complexity of the accommodation process is compounded by the fact that military commanders and lawyers must sift through regulations and confusing guidance to strike a balance between service members' rights under the First Amendment and mission requirements.¹⁴⁷ The commanders' interpretation of the regulation, the service members' sincerity, military necessity, and the religious legitimacy of the request all give rise to the complexity of the problem of accommodations.¹⁴⁸

¹⁴⁴ Department of Defense, 11.

¹⁴⁵ Goellen et al., "A Study of the Accommodation of Religious Practices in the United States Army," 1.

¹⁴⁶ Frey, "Serving Two Masters: A Scheme for Analyzing Religious Accommodation Requests in the Military," 90.

¹⁴⁷ Grant, "The Need for (More) Guidance Regarding Religious Expression in the Air Force," 1.

¹⁴⁸ Goellen et al., "A Study of the Accommodation of Religious Practices in the United States Army," 1.

Furthermore, as mentioned earlier, there are 221 formally recognized religions and faith groups in the military. Diverse religious requirements with differing ritual and worship practices, dress and appearance needs, dietary restrictions, and medical treatment demands “make it difficult for commanders to deal consistently with various requests for accommodation.”¹⁴⁹ Therefore, an accommodation request may be approved by one commander but denied by another. Although the commander who denied the accommodation may be justified, the public perception could have negative consequences. The argument could be made that “military policies which do not allow expressions of faith – even seemingly benign ones such as beards or articles of clothing – are a de facto exclusion of those groups.”¹⁵⁰ On the surface, it may appear that Western religions are more accepted than Eastern ones because U.S. military standards have evolved to conform to the predominantly practiced Judeo-Christian faiths.

Frey notes that military approval authorities must consider two aspects of religion that drive the conflict with military duties: the “compliance” and the “persecution” clauses of religion.¹⁵¹ The compliance clause refers to adhering to certain rules or practices to demonstrate faith. Each religion has specific codes or customs that believers are expected to follow. Examples might include Jews requiring kosher meals, Muslims performing daily ritual prayers, or Catholics wearing the ash cross on Ash Wednesday. More non-traditional practices can consist of the ceremonial use of peyote by Native Americans. Commanders must understand how refusing to accommodate these religious

¹⁴⁹ Goellen et al., 5.

¹⁵⁰ Frey, “Serving Two Masters: A Scheme for Analyzing Religious Accommodation Requests in the Military,” 52.

¹⁵¹ Frey, 67.

practices or customs could harm the service members' ability to remain in good standing with their religious faith.

Compared to the compliance clause, the persecution clause refers to how some religions ingrain the notion that being punished for one's beliefs is an act of religious heroism and belief validation. Service members of a specific faith could feel they must sacrifice their beliefs for military requirements. Consequently, this may inspire a perception of martyrdom in which believers' "resistance to military duties actually increases because they believe – rightly or wrongly – that their faith is 'targeted.'"¹⁵² By denying a religious accommodation request, commanders may inadvertently validate the perception that service members are being persecuted for their faith.

The perception of service members being persecuted for their faith, or the systematic exclusion of religious groups due to denial of accommodations, conflicts directly with the Janowitzian perspective. Central to the civic-republican ideal is widespread participation in the military, which in turn fosters civic virtues. By denying religious freedoms to service members, the military can overtly or implicitly hinder a particular group of citizens from contributing to sustaining democratic values and the protection of democratic society. Additionally, denial of specific religious accommodations can inadvertently deter citizens from joining the military due to negative perceptions, which affects the military's ability to recruit prospective trainees.

This discussion highlights some of the negative consequences of denying religious accommodations. However, commanders should continue to evaluate accommodation requests on a case-by-case basis. To blanketly approve exemptions to

¹⁵² Frey, 84.

military compliance would turn the “commander-subordinate relationship on its head and be completely contrary to the notion of an ordered and disciplined fighting force.”¹⁵³

Commanders must be careful to prevent service members from taking advantage of this accommodation process. As noted by Foreman, “there is the occasional soldier who has no real dilemma of conscience, but who is merely looking for legal technicalities to avoid unpleasant duty.”¹⁵⁴

Such episodes may include service members who prefer not to adhere to current uniform regulations and standards. For instance, a soldier who sees another soldier with a beard, consistent with Norse faith, may attempt to make the same claim despite not being a devout Heathen. Huntington would view this scenario as degrading the military profession, which is essential for the state’s security. He states that the military profession requires “cooperation, organization, [and] discipline,” and the military man emphasizes the importance of the group over the individual because of his “duty to serve society...and...the nature of the means which he employs to carry out this duty.”¹⁵⁵ Strict adherence to the commander-subordinate relationship is essential. Thus, it is vital for commanders to carefully consider each accommodation request and determine whether it should be approved.

A beneficial aspect of religious accommodations is that the military has steadily increased religious diversity, analogous to civilian society. Janowitz states that “the ‘civilianization’ of the military profession and of the parallel penetration of military forms into civilian social structures”¹⁵⁶ is critical for maintaining an effective and

¹⁵³ Frey, 89.

¹⁵⁴ Foreman, “Religion, Conscience and Military Discipline,” 27.

¹⁵⁵ Huntington, *The Soldier and the State*, 63.

¹⁵⁶ Janowitz, *The Professional Soldier*, xi.

professionalized military. The process of accommodating religions and increasing recognition of faith groups shows how the military has adapted to societal norms and incorporated them into its organization. In fact, religious minorities have “gradually gained increasing social acceptance during the twentieth century”¹⁵⁷ as a result of their participation in the armed forces. This increase is due to the “linkage between military service and first-class citizenship, a connection embodied in the ‘citizen-soldier’ ideal of civic republicanism.”¹⁵⁸ Maintaining religious accommodations ensures “servicemembers of all faiths are an integral part of American military life and affirms the military’s role as an assimilative national institution which has historically served to counter prejudice.”¹⁵⁹

How the experience of religious minorities differs from that of racial minorities or women in the military is religious minorities were never overtly denied the possibility of service. Instead, some may have been discouraged from service due to conflicts between military service and religious beliefs. Indeed, such conflicts differ significantly from what civilians encounter. When civilian employees cannot maintain compliance in the workplace due to their religious beliefs, they can resign. Military members do not have that option. Since the service member is “under lawful order and a continuing service obligation,”¹⁶⁰ compliance is expected. Petitioning to be released from service is available, but service members will still have to comply with military regulations until their separation is approved. This difficulty illustrates how the perspectives of

¹⁵⁷ Corbett, “For God and Country: Religious Minorities Striving for National Belonging through Community Service,” 228.

¹⁵⁸ Snyder, “The Citizen-Soldier Tradition and Gender Integration of the U.S. Military,” 186.

¹⁵⁹ Brougher, “Military Personnel and Freedom of Religion: Selected Legal Issues,” 1.

¹⁶⁰ Frey, “Serving Two Masters: A Scheme for Analyzing Religious Accommodation Requests in the Military,” 67.

Huntington and Janowitz collide. Religious diversity is increasing due to the recognition of more faith groups, but service members must adhere to military regulations and codes of conduct. There is a continuing tension between these two perspectives that is difficult to resolve by sticking to one set of principles. Nevertheless, there is a tendency to move towards more inclusive measures, reminiscent of Janowitz, but with the caveat that they must not negatively affect military effectiveness.

Further discussion of religious accommodation cases illuminates this point. There will always be some tradeoff between individual liberties and mission requirements. Yet, as the military has evolved over the decades, Janowitzian principles have increasingly been adopted over Huntingtonian ones. One landmark case regarding religious accommodations for service members was *Goldman v. Weinberger* in 1986. Captain Simcha Goldman, an ordained rabbi, served as a clinical psychologist at March Air Force Base, CA. When Goldman testified in a court-martial, he wore a yarmulke with his uniform. Until that point, surprisingly, the Air Force had not addressed this practice of Goldman. The court-martial prosecutor filed a complaint stating that Goldman violated Air Force regulations that prohibited the wearing of headgear indoors. The hospital commander on the base ordered Goldman to stop wearing his yarmulke, which he refused, arguing the regulation prohibited him from exercising his religious right. The case was brought before the Supreme Court, which determined that the “strict scrutiny” test did not apply to this case because the unique nature of military service requires “far more [deference] than constitutional review of similar laws or regulations designed for civilian society.”¹⁶¹ Therefore, to accomplish the mission, the Air Force was justified in

¹⁶¹ *Goldman v. Weinberger*.

their need to “foster instinctive obedience, unity, commitment, and esprit de corps.”¹⁶²

Consistent with the Huntingtonian perspective, the military necessity of uniformity prevailed.

A more recent case, *Singh v. McHugh* (2015), illustrates how the military has been forced to adopt a more Janowitzian perspective, but not entirely. Iknoor Singh, a Sikh student at Hofstra University, was refused enrollment in the United States Army Reserve Officer Training Corps (ROTC) program unless he shaved his beard, removed his turban, and cut his hair. These requirements were in accordance with the Army’s grooming and uniform regulations. Singh submitted a religious accommodation request, but it was denied. In response, Singh filed a lawsuit claiming that the denial of the accommodation violates the RFRA. The case was brought before the U.S. District Court for the District of Columbia, which ruled in favor of Singh. The majority opinion states that the Court accords “substantial deference to the Army’s judgments concerning the essential role that uniformity plays in military training and effectiveness.”¹⁶³ However, given the tens of thousands of exceptions already made to the grooming and uniform standards, “the Army’s refusal to permit [Singh] to...[adhere] to his faith cannot survive the strict scrutiny that RFRA demands.”¹⁶⁴ Singh was granted temporary accommodation of grooming and uniform standards, and allowed to enroll in ROTC.

Although the military attempted to adhere to Huntingtonian principles, the Court felt that judicial deference, in this case, was not justified. As noted by Frey, “[a]lthough pre-*Singh* precedent apparently favored military discipline over religious liberty, the

¹⁶² *Goldman v. Weinberger*.

¹⁶³ *Singh v. McHugh*.

¹⁶⁴ *Singh v. McHugh*.

wrong court may have a sympathetic judge who cannot understand why discipline negates a simple beard or head covering – particularly when the new DoD Instruction [DoDI 1300.17] appears to favor accommodation.”¹⁶⁵ At the same time, it does not entirely demonstrate acceptance of Janowitzian principles. The Court was not convinced of the operational need of the Army to restrict Singh’s religious liberties as an ROTC cadet, who would be conducting his duties in an academic environment. However, the Court recognized that the military still maintains legitimate authority over Singh if the circumstances changed, requiring him to shave due to combat purposes. Thus, the military retains elements of Huntington’s perspective, but these must be articulated effectively to warrant denial of religious accommodations.

The Military Chaplaincy

Another area of importance to the discussion of religious freedom can be found within the military chaplaincy. Providing religious services for military members is essential because of the “pervasive social force” that religion has “both on and off the battlefield.”¹⁶⁶ With the constant threat of war and the possibility of death, service members, by extension, may have a closer relationship to religion. Janowitz concurs with this point, noting that “strong belief in the inevitability of violence should go hand in hand with a strong acceptance of orthodox religion.”¹⁶⁷ The connection between the military and religion can become complicated when chaplains conduct “character development” or “character guidance” training. This training instills fundamental values and character traits consistent with military ethics and morals. For example, the “Army

¹⁶⁵ Frey, “Serving Two Masters: A Scheme for Analyzing Religious Accommodation Requests in the Military,” 91.

¹⁶⁶ Klocek and Hassner, “War and Religion,” 1.

¹⁶⁷ Janowitz, *The Professional Soldier*, 265.

Ethic” is defined as “the evolving set of laws, values, and beliefs, embedded within the Army culture of trust that motivate and guide the conduct of trusted Army professionals who are bound together in common moral purpose.”¹⁶⁸ These values include loyalty, duty, respect, selfless service, honor, integrity, and personal courage.¹⁶⁹ Supporters of this training state that it acts as a substitute for “the parental and community influence which would ordinarily influence the character development of young soldiers” and create a “strong moral and patriotic disposition in soldiers in order to enable them to perform under the terrifying and strenuous conditions of mortal combat.”¹⁷⁰ Despite the training refraining from direct connections to religion, relying on chaplains to provide this training may give the impression of proselytizing.

Apart from the direct connection between religion and warfare, there are functional similarities between religion and the military institution. Huntington states:

Religion subordinates man to God for divine purposes; the military life subordinates man to duty for society’s purposes. In its severity, regularity, discipline, the military society shares the characteristics of the religious order. Modern man may well find his monastery in the Army.¹⁷¹

To Huntington, the military and religion reinforce necessary attributes in one another. Huntington states that during the late twenties and thirties when many believed that Americans were “abandoning its moral anchor and venturing out into a chaotic sea of pragmatism and relativism,”¹⁷² the military was looked to as an example of desirable values and moral codes. Even today, the bond between the military and religion is as strong as it was in Huntington’s time.

¹⁶⁸ Headquarters, Department of the Army, *Army Regulation 600-100 (Army Profession and Leadership Policy)*, 2.

¹⁶⁹ Headquarters, Department of the Army, 31.

¹⁷⁰ Foreman, “Religion, Conscience and Military Discipline,” 44.

¹⁷¹ Huntington, *The Soldier and the State*, 465.

¹⁷² Huntington, 310.

What differentiates the military from the everyday citizen is the access service members have to religious services and means of worship. Military installations are “isolated communities of culturally diverse people whose right of freedom of religion has been limited for the sake of the mission.”¹⁷³ Due to their military obligations, service members may not be able to attend religious services while on extended training events or deployed. Therefore, service members would be deprived of religious or spiritual guidance without an established chaplaincy. In this sense, the military is a “separate society” in which a distinctive religious establishment must be created to ensure military effectiveness, indicative of Huntington’s perspective.

The chaplaincy is also a unique institution because it is a “government-funded program with the specific purpose of providing religious services to members of the U.S. military.”¹⁷⁴ From this perspective, it could be argued that the creation of the chaplaincy violates the Establishment Clause. In 1985, the U.S. Court of Appeals for the Second Circuit ruled on this subject in *Katcoff v. Marsh*. Two Harvard law students filed a lawsuit against the Secretary of the Army, claiming the Army Chaplaincy Program violated the Establishment Clause. Although they recognized the necessity to protect soldiers’ Free Exercise rights, they advocated for the Army to use volunteer or contracted chaplains.

The Court found that “if Congress did not establish an Army chaplaincy, it would deny soldiers the right to exercise their religion freely, particularly given the mobile and deployable nature of the nation’s armed forces.”¹⁷⁵ Service members are separated from

¹⁷³ Sugg, “Religion in Military Society: Reconciling Establishment and Free Exercise,” 158.

¹⁷⁴ Brougher, “Military Personnel and Freedom of Religion: Selected Legal Issues,” 12.

¹⁷⁵ *Katcoff v. Marsh*.

their traditional religious communities, and the chaplaincy was established to alleviate this burden. The Court further stated that this accommodation for service members was reinforced by the War Powers Clause of the U.S. Constitution:

when a matter provided for by Congress in the exercise of its war power and implemented by the Army appears reasonably relevant and necessary to furtherance of our national defense it should be treated as presumptively valid and any doubt as to its constitutionality should be resolved...in favor of deference to the military's exercise of discretion.¹⁷⁶

Therefore, the Court determined that the chaplaincy was a permissive accommodation because it alleviated the religious burden to service members. The military is entitled to deference in establishing policies to maintain order and discipline.

In addition to the constitutionality of the chaplaincy, it is also essential to understand the chaplain's role within the military organization. Military chaplains are not just "advocates of spiritual, moral, and ethical maturity and resiliency" but also considered "militarily essential and inherently governmental in nature."¹⁷⁷ These two aspects are further explained in Army Regulation 165-1 (Army Chaplain Corps Activities):

The Army requires the capability to provide religious support and the capability to advise commanders on the impact of religion. These two required capabilities reflect the dual role of the Chaplain Corps: professional military religious leader and professional military religious staff advisor.¹⁷⁸

Chaplains are not merely civilian clergy who don a military uniform. They must commission into the officer corps and learn to be simultaneously effective chaplains and military officers. They are not exempt from military regulations and standards. Most chaplains are embedded in military organizations in "Unit Ministry Teams" (UMT) at all

¹⁷⁶ *Katcoff v. Marsh*.

¹⁷⁷ Otis, "An Overview of The U.S. Military Chaplaincy: A Ministry of Presence and Practice," 4.

¹⁷⁸ Headquarters, Department of the Army, *Army Regulation 165-1 (Army Chaplain Corps Activities)*, 6.

levels of command. These teams are augmented by enlisted religious support staff to assist with religious administration and programming. The nature and role of UMTs dictate that:

[t]heir positions may not be civilianized or contracted because all chaplains and religious affairs specialists are subject to deployment to the combat environment. Because of their deployable status it is imperative that chaplains be able to provide pluralistic religious care and leadership advisement that cannot be required of a civilian clergy member.¹⁷⁹

Other roles that chaplains provide include pastoral, family, and post-traumatic stress disorder (PTSD) counseling, humanitarian project support, funeral honors assistance, ethics education, intelligence collection and targeting, and liaising with local religious leaders within an area of operation.¹⁸⁰ These roles and responsibilities illustrate not only the religious but military role chaplains perform.

The 2007 federal district court case, *Larsen v. U.S. Navy*, illustrates the challenges that face the practices of the military chaplaincy. Three non-liturgical Protestant ministers challenged the U.S. Navy's hiring process stating that it was inadequate to meet the constitutional requirements afforded to service members. The ministers claimed that the Navy relied on a "thirds policy" where chaplains were hired from three categories: (1) Roman Catholic, (2) Protestant liturgical, and (3) non-liturgical Christian and Special Worship. The Navy was unconstitutionally showing preferential treatment to specific faith groups by adhering to this hiring policy. However, the Court found that the challenge against the Navy's hiring policy was moot because it was an outdated and now-abandoned policy. However, the Court did evaluate the Navy's current faith group-

¹⁷⁹ Headquarters, Department of the Army, 6.

¹⁸⁰ Otis, "An Overview of The U.S. Military Chaplaincy: A Ministry of Presence and Practice," 7.

neutral policy, which considers the following factors in determining whether a chaplain is hired:

the breadth of locations where Navy personnel serve; the unique circumstances of Naval service, which involves personnel isolated on ships sailing all over the world; the various functions and tasks of chaplain officers outside of religious services including assistance to those of other faith groups and even no faith groups; the need to keep accession, promotion, and retention in line with other naval communities; the need to prevent shortages of qualified clergy; [and] the need to maintain capacity to respond to events requiring quick access to chaplains¹⁸¹

These requirements, which articulated a link between the chaplaincy and operational, strategic, and tactical objectives, were deemed constitutional. The Court found that “the Navy’s interest in developing a chaplaincy is akin to the Air Force’s needs in mandating standards of uniformity at play in *Goldman*...[therefore]... the relaxed scrutiny employed in *Goldman* is the appropriate level of judicial scrutiny”¹⁸² to be used in this case. This ruling means that “since the military is not constitutionally *required* to organize and maintain a chaplaincy program, it need not satisfy every single service member’s free-exercise needs”¹⁸³ but only promote the free exercise of religion. Therefore, the Navy’s chaplaincy program was constitutional.

Another controversial issue within the military chaplaincy is the requirement for chaplains to endorse pluralism. DoDI 1304.28, “The Appointment and Service of Chaplains,” states that military chaplains must be

willing to function in a pluralistic environment and directly and indirectly support the free exercise of religion by all Service members, their family members, and other persons authorized to be served by military chaplains.¹⁸⁴

¹⁸¹ *Larsen v. U.S. Navy*.

¹⁸² *Larsen v. U.S. Navy*.

¹⁸³ Kenworthy, “Military Speech.”

¹⁸⁴ Department of Defense, “Department of Defense Instruction 1304.28,” 7.

Chaplains must hold religious worship services that typically follow their religious background. However, tension arises because chaplains also must ensure religious services “take a pluralistic approach to some extent, so that any servicemember may be assisted by an available chaplain, regardless of denomination.”¹⁸⁵ Although the military is not allowed to determine the contents of religious services overtly, chaplains are still constrained by including these pluralistic components.

The pluralistic nature of the chaplaincy is consistent with Janowitz’s observations. He notes that “[r]eligious practices are fashioned to serve the military community. Every person is assumed to have a religious affiliation. But differences in denomination among Protestants, and between Protestants and Catholics, are de-emphasized, for the military community prefers a nondenominational military church.”¹⁸⁶ The military must refrain from seeming to endorse one specific religion in order to accommodate all faith groups. In this way, the military chaplaincy is different from a traditional church or parochial ministry. Not only do chaplains rotate in and out of a specific church, dependent on military operational need, but chaplains are “not ‘called’ by a church as such; [they are] under contract to the U.S. government.”¹⁸⁷ Because funding for the military chaplaincy is not dependent on individual contributions or donations but the taxpayer, commanders have ultimate authority and responsibility to preserve service members’ right to the free exercise of religion. Formal chapel services are offered to specific religious denominations on military installations, but religious services also must be provided in more expeditionary manners. Less traditional services may be held in tents, trucks,

¹⁸⁵ Brougher, “Military Personnel and Freedom of Religion: Selected Legal Issues,” 15.

¹⁸⁶ Janowitz, *The Professional Soldier*, 203.

¹⁸⁷ Otis, “An Overview of The U.S. Military Chaplaincy: A Ministry of Presence and Practice,” 5.

temporary shelters, or whatever venue is most suitable for service members' participation. As Otis states, "[t]he military chaplain is unique and remarkable in that he/she is committed to serve God and Man in the most variable and difficult of circumstances."¹⁸⁸

The issue of pluralism begins to have further ramifications when overlaid with other DoD policies, such as the repeal of "Don't Ask, Don't Tell" (DADT). As noted in a DoD report:

the reality is that in today's U.S. military, people of sharply different moral values and religious convictions...and those who have no religious convictions at all, already co-exist, work, live, and fight together on a daily basis. The other reality is that policies regarding Service members' individual expression and free exercise of religion already exist, and we believe they are adequate. Service members will not be required to change their personal views and religious beliefs; they must, however, continue to respect and serve with others who hold different views and beliefs.¹⁸⁹

In these situations, chaplains are required to provide religious support to service members who, according to their faith, believe that homosexuality is a sin and are required by God to condemn it as such.¹⁹⁰ In response to the repeal of DADT in 2010, the Chaplain Alliance for Religious Liberty and the Alliance Defending Freedom petitioned Congress to protect chaplains against negative repercussions resulting from these differing religious beliefs. Congress included section 533 to the NDAA for 2013, which states:

No member of the Armed Forces may – (1) require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain; or (2) discriminate or take any adverse personnel action against a chaplain, including denial of promotion, schooling, training, or assignment, on the basis of the refusal by the chaplain to comply with a requirement prohibited by paragraph (1).¹⁹¹

¹⁸⁸ Otis, 5.

¹⁸⁹ Department of Defense, "Report of the Comprehensive Review of the Issues Associated with a Repeal of 'Don't Ask, Don't Tell,'" 12.

¹⁹⁰ Department of Defense, 12.

¹⁹¹ National Defense Authorization Act for Fiscal Year 2013, sec. 533.

The inclusion of this clause allows chaplains the latitude to deny religious services to service members without fear of negative consequences. If the chaplain cannot provide appropriate services, they must refer the service member to another chaplain or professional who may accommodate that individual. This capability enables chaplains to adhere to their religious tenets and service members to receive religious support or counseling. This scenario aligns with the Janowitzian perspective. Military regulations or restrictions do not force one set of service members or another to leave the military based on religious or cultural beliefs. As a more inclusive military, it is necessary to afford all citizens and military members equal ability to participate. Similarly, Huntington's perspective would support these protections because they ensure that the effectiveness of the military is maintained through supporting both chaplains and service members in total.

Summary

This section has examined religious rights restrictions in two domains of the military: (1) accommodations for religious practices and (2) the military chaplaincy. The analysis of religious accommodations showed a tendency for the military to implement more elements of the Janowitzian perspective by excusing service members from military policies, practices, or duties due to religious reasons. This point is illustrated by the military formally recognizing more faith groups and issuing a new Department of Defense Instruction (DoDI 1300.17) outlining the accommodation process. Nevertheless, as indicated by the discussion of *Singh v. McHugh*, some aspects of Huntington's perspective are still present. If the military can adequately articulate the negative

operational impacts of a religious accommodation, it can be denied. Thus, military necessity will take precedence.

Similarly, the military chaplaincy was established because of the unique nature of military service and the challenges that service members face with mission requirements. Therefore, consistent with the Huntingtonian perspective, a distinct chaplaincy is required. However, due to the religious diversity within the military, chaplains are required to adopt a pluralistic approach. Chaplains must refrain from endorsing one specific religion in order to accommodate all faith groups. Therefore, the support of a more inclusive, religiously diverse military is more consistent with the Janowitzian perspective.

Chapter 3: American Civilian and Military Rights Conception

Introduction

Chapter 2 illustrated how the military imposes rights restrictions on service members' freedom of speech and freedom of religion. Why do service members accept these controls? Understanding the difference between the military conception of individual rights, as compared to the rest of American society, is essential to answering this question. For this analysis, the broader American conception of rights will be referred to as "civilian" instead of "American" to distinguish between American *non-military personnel* and American *military personnel*. This chapter will first examine initial entry training (IET) that all trainees must undergo before entering the military. During this period of indoctrination, the military seeks to foster a transition in which trainees' understanding of rights shifts from the civilian (individualistic and absolute) to the military (collective and qualified) conception. Furthermore, by working towards a common purpose and being exposed to the beneficial outcomes of administrative controls on rights, I will demonstrate why service members are less likely to resist restrictions than the average citizen. These restrictions are necessary for maintaining military effectiveness, protecting the state, and thus preserving the individual rights of the rest of American citizens.

Enabling the Transition: From Civilian to Military

Military initial entry training (IET), commonly referred to as "basic training" or "boot camp," significantly impacts the process of reframing civilians' identity and rights perceptions. The structure of IET is considered a "total institution" – a "place of

residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life.”¹⁹² This type of organization instills strict rules, norms, and schedules, determined by a single authority and enforced by the staff of that organization. The military focuses on training and education to indoctrinate “impressionable” citizens into service members. These trainees provide “nearly blank slates on which the military can inscribe values, both great and small.”¹⁹³ The Navy indicates this objective, stating that basic training “induct[s] recruits into the profession-of-arms by inculcating them with a set of guiding principles and core attributes.”¹⁹⁴ Similarly, the Army’s initial military training (IMT) mission is to “transform civilian volunteers into professional Soldiers who are disciplined, fit, acculturated and combat ready.”¹⁹⁵ Therefore, IET provides ideal conditions to facilitate the transition from the civilian conception of rights to the military conception.

Individualistic to Collective

One of the most notable features of American civilian rights rhetoric is that it is individualistic. This individualistic nature is embedded in the American faith, “in the power of individuals to shape their own destinies through their exercises of freedom.”¹⁹⁶ Alexis de Tocqueville made this observation during his visit to the United States in 1831. He notes that Americans, as democratic citizens, “owe nothing to anyone, they expect so to speak nothing from anyone; they are in the habit of always considering themselves in

¹⁹² Goffman, *Asylums*, xiii.

¹⁹³ Krebs, *Fighting for Rights*, 6.

¹⁹⁴ Department of the Navy and Recruit Training Command, *Basic Military Training Core Competencies Manual*, 4.

¹⁹⁵ Headquarters, Department of the Army and Training and Doctrine Command, *Training and Doctrine Command Regulation 350-6 (Enlisted Initial Entry Training Policies and Administration)*.

¹⁹⁶ Schuck and Wilson, *Understanding America*, 629.

isolation, and they willingly fancy that their whole destiny is in their hands.”¹⁹⁷ An advantage to democratic individualism is social mobility and the freedom to pursue whatever interests you desire. Democratic people, as compared to those in an aristocracy, are not constrained by the social order of class. There is minimal inherited wealth and class privilege, which puts the responsibility to accumulate wealth and standing within society on the individual.

Americans’ acceptance of what Tocqueville terms “the American philosophic method” predisposes citizens to “seek the reason for things by themselves and in themselves alone.”¹⁹⁸ This fundamental precept gives way to an inherent distrust for authority. Thus, Americans rely on public opinion or amongst “those like themselves”¹⁹⁹ as a source of truth. Because people within a democratic society are more similar to one another, in “equality of condition” and enlightenment, it is more plausible that the truth will be found “on the side of the greatest number.”²⁰⁰ However, this reliance on public opinion can have negative consequences. Like Tocqueville and the Framers, John Stuart Mill believes that the main threat to liberty is not a tyrannical oligarch but rather the oppression of the minority.²⁰¹ The independence of the individual “is, of right, absolute...the individual is sovereign.”²⁰² The government’s interference with individual freedom is only warranted in order to prevent harm to others. Therefore, the shaping of rights sacrifices the concept of the common good in preference for more “individual” or “particular” rights.

¹⁹⁷ Tocqueville, *Democracy in America*, 484.

¹⁹⁸ Tocqueville, 403.

¹⁹⁹ Tocqueville, 408.

²⁰⁰ Tocqueville, 409.

²⁰¹ Mill, *On Liberty*.

²⁰² Mill, 23.

The civilian conception of rights is also shaped by the differentiation between positive and negative rights – the difference between being helped by the state and being let alone by the state.²⁰³ The Constitution was written in a way to promote negative liberties because the Framers were “not concerned that government might do too little for the people, but that it might do too much to them.”²⁰⁴ Americans have cherished negative liberties, “freedom from government restraint” over positive liberties, “which imagines government as the source and shaper of moral community and guarantor of the resources necessary to develop individual capacity and social fulfillment.”²⁰⁵ Individual freedom is necessary because “genius can only breathe freely in an atmosphere of freedom.”²⁰⁶ However, when the Constitution was written, the Framers took Americans’ sustained commitment to civic duty, family, and religion for granted. Over decades, these community ties and associations have weakened, promoting interest in personal gain above the public good.

Military service and training seek to foster a transition from the individualistic component of civilian rights rhetoric to the notion of a collective good. During IET, the military brings together “individuals of various backgrounds in common cause and in a collaborative spirit,” enabling the breaking down of divisions based on ethnicity, race, religion, or socio-economic class. This socialization and working towards a common purpose instills a sense of solidarity and limits feelings of individualism. A sense of group membership grows “out of the imposition of matching uniforms and haircuts, the

²⁰³ Glendon, *Rights Talk*, 91.

²⁰⁴ Glendon, 91.

²⁰⁵ Schuck and Wilson, *Understanding America*, 629.

²⁰⁶ Mill, *On Liberty*, 125.

use of group punishments, and the denial of privacy.”²⁰⁷ Trainees are forced to undergo extensive physical training oriented around combat, sleep deprivation, and behavior modification due to varying degrees of personal humiliation and psychological intimidation.²⁰⁸ Although this more “transformative” method of indoctrination has lessened in recent decades, military cadre are still required to instill in trainees a sense of military culture and mores through enforcement of universal standards.²⁰⁹ For service members to protect the democratic values of their citizens and democratic society, individualism must be limited because it directly “work[s] against military effectiveness.”²¹⁰ This socialization process elicits a change in identity, during which “the individual actually becomes a soldier.”²¹¹

Upon completion of IET service members ideally “constitute a fraternity of...citizens who [love] their community and...[are] willing to think of the common good rather than just their own individual interests.”²¹² Military service attempts to solidify this transition through the citizen-soldier tradition, consistent with the Janowitzian perspective and civic-republicanism. The citizen-soldier ideal is committed to liberty, camaraderie, the common good, civic virtue, and the rule of law. According to this tradition, if “citizens want the rights and liberties that come with living in a free society, they must also share the duties of defending that society from its antidemocratic

²⁰⁷ Snyder, “The Citizen-Soldier Tradition and Gender Integration of the U.S. Military,” 191.

²⁰⁸ Gutmann, *The Kinder, Gentler Military*, 46–50; Snyder, “The Citizen-Soldier Tradition and Gender Integration of the U.S. Military,” 191.

²⁰⁹ Gutmann, *The Kinder, Gentler Military*, 67–68.

²¹⁰ Snyder, “The Citizen-Soldier Tradition and Gender Integration of the U.S. Military,” 190.

²¹¹ Snyder, 191.

²¹² Snyder, *Citizen-Soldiers and Manly Warriors*, 87.

enemies.”²¹³ Hence, military service is seen as a “sign of one’s full membership in the political community as well as evidence of one’s worthiness for membership.”²¹⁴

As citizens engage in martial practices, they acquire virtues “necessary for self-government aimed at the common good – selflessness, courage, camaraderie, patriotism, and civic virtue.”²¹⁵ The institutional format of the military transcends “individual self-interest in favor of a presumed higher good” because members are following a calling expressed “in words like ‘duty’ and ‘honor’ – that sets them apart from the broader society.”²¹⁶ Therefore, military service provides a mechanism to place the commitment towards the collective good above the individual.

Absolute to Qualified

In addition to being individualistic, civilian rights rhetoric is absolute – it is the “language of no compromise.”²¹⁷ Americans’ tendency to view rights in absolute terms stems from the historical and philosophical context of property rights. In *Two Treatises of Government*, John Locke claims that people are born into a state of nature. The state of nature is “a state of perfect freedom to order their actions and dispose of their possessions and persons, as they think fit...without asking leave, or depending upon the will of any other man.”²¹⁸ However, people enter a civil or political society to escape conflicts that arise in the state of nature. This allows for the “enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society.”²¹⁹ According to Locke, the right to property is the primary

²¹³ Snyder, “The Citizen-Soldier Tradition and Gender Integration of the U.S. Military,” 187.

²¹⁴ Krebs, *Fighting for Rights*, 17.

²¹⁵ Snyder, *Citizen-Soldiers and Manly Warriors*, 8.

²¹⁶ Moskos, “A New Concept of the Citizen-Soldier,” 664.

²¹⁷ Glendon, *Rights Talk*, 9.

²¹⁸ Locke and Shapiro, *Two Treatises of Government*, 101.

²¹⁹ Locke and Shapiro, 158.

natural right and the cornerstone for people consenting to civil society and the emergence of government. From this evolved the position that the purpose of government is to protect individuals' natural rights of life, liberty, and property. Similarly, Charles de Montesquieu describes, in *The Spirit of the Laws*, how political liberty does not exist in a state of unlimited freedom. Instead, "political liberty of the subject is a tranquility of mind arising from the opinion each person has of his safety...[and]...in order to have this liberty, it is requisite the government be so constituted as one man need not be afraid of another."²²⁰ Maintaining law and order to protect political liberty and property is thus the purpose of government.

These philosophical underpinnings had a significant influence on the Framers of the Constitution. As noted by Glendon, these viewpoints fused "with certain political factors that helped to make property the cardinal symbol of individual freedom and independence in the United States."²²¹ Some of the most prominent fears at the time were centered around property rights and the control that states and government officials had under the Articles of Confederation. Hostilities associated with "territorial disputes,"²²² "competitions of commerce,"²²³ the "public debt of the Union,"²²⁴ and "aggressions on the rights of those States whose citizens are injured by them"²²⁵ would lead to growing contempt between states. It could be assumed that war, "not of parchment, but of the sword"²²⁶ would occur if the nation were to remain a confederacy and not adopt the new form of government. Therefore, property was the central right at risk in the newly

²²⁰ Montesquieu, *The Spirit of the Laws*, 159.

²²¹ Glendon, *Rights Talk*, 24.

²²² Hamilton et al., *The Federalist*, 34.

²²³ Hamilton et al., 37.

²²⁴ Hamilton et al., 38.

²²⁵ Hamilton et al., 39.

²²⁶ Hamilton et al., 40.

formed republic in which government officials were popularly elected.²²⁷ As stated in *The Federalist*, “[g]overnment is instituted no less for protection of the property, than of the persons, of individuals.”²²⁸

The rhetoric of absolute property rights has also influenced modern rights discourse. In many cases during the twentieth century involving health and safety in the workplace, labor movements, and child and female laborer protections were centered around contractual and property rights.²²⁹ If the courts were to interfere with contracts between employees and employers, they would inadvertently hinder people’s ability to begin to acquire property by earning money. The direct connection between property rights and other rights may not be as overt today as in the past, but remnants of this language are still present. In America, when we want to protect something, “we try to get it characterized as a right...[and] when we specially want to hold on to something (welfare benefits, a job), we try to get the object of our concern characterized as a property right.”²³⁰ This trend of “proptertization” has been effective, “evolving gradually to encompass intangibles, such as securities (including stocks, bonds, futures, and options) and ideas, appropriately known as ‘intellectual property’ (including trademarks, patents, and copyrights).”²³¹

The tendency to look at rights in absolute terms evolved over time by connecting property and other individual rights. At its foundation, the Framers constructed the

²²⁷ Glendon, *Rights Talk*, 24.

²²⁸ Hamilton et al., *The Federalist*, 351.

²²⁹ Glendon, *Rights Talk*, 26.

²³⁰ Glendon, 31.

²³¹ Wilkinson, “The Dual Lives of Rights: The Rhetoric and Practice of Rights in America,” 285.

American government to protect the minority rights of citizens against oppression by the majority. *The Federalist* notes (with my emphases):

The diversity in the faculties of men, *from which the rights of property originate*, is not less an insuperable obstacle to an uniformity of interests. The protection of these faculties is the *first object of government*. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the *influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.*²³²

As individuals acquire more property, they also gain more influence and the ability to form a majority faction. Therefore, the Constitution must “guard one part of the society against the injustice of the other part” because if a majority is united by a common interest, “the rights of the minority will be insecure.”²³³ This concern was the impetus for the system of checks and balances and the separation of powers among the legislative, executive, and judicial branches of government.

Furthermore, constitutional protections for individual liberties, other than property rights, are seen in the adoption of the Bill of Rights. The first ten Amendments to the Constitution describe many rights in “absolute and unconditional language.”²³⁴ Most notably, the First Amendment states (with my emphasis), “Congress shall make *no* law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press...”²³⁵ The Sixth Amendment guarantees that citizens “in *all* criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process

²³² Hamilton et al., *The Federalist*, 55.

²³³ Hamilton et al., 333.

²³⁴ Wilkinson, “The Dual Lives of Rights: The Rhetoric and Practice of Rights in America,” 282.

²³⁵ U.S. Constitution, amend. 1.

for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”²³⁶ Finally, the Eighth Amendment prohibits *all* “cruel and unusual punishment.”²³⁷ Additionally, as identified by Wilkinson, the few rights “that *do* admit of nuance – such as the Fourth Amendment’s protection only against ‘unreasonable’ searches and seizures and the Eighth Amendment’s prohibition only of ‘excessive’ bail and fines seem exceptional in contrast to other unwavering pledges of absolute rights.”²³⁸ Thus, civilian rights rhetoric tends to formulate rights in a “stark, unqualified, fashion.”²³⁹

However, Glendon states that viewing rights in this way promotes “unrealistic expectations, heightens social conflict, and inhibits dialogue that might lead toward consensus, accommodation, or at least the discovery of common ground.”²⁴⁰ Absolutist language makes it difficult for those of opposing opinions to engage in public or political discourse and hinders progress towards peaceful coexistence. A way to limit the effects of absoluteness is to maintain openness and concern for others, commitment to civic equality and dignity, and compassion towards differing political views.²⁴¹ Furthermore, viewing rights in absolute terms can also be detrimental when exercising those rights can negatively affect society. Some qualifications are necessary to curb inappropriate applications of these rights. Examples include regulations over pornography and weapons. Therefore, “though human beings exchange part of their natural liberty for civil liberty...when they enter society, good government restrains their natural liberty only so far as is necessary for the general welfare.”²⁴²

²³⁶ U.S. Constitution, amend. 6.

²³⁷ U.S. Constitution, amend. 8.

²³⁸ Wilkinson, “The Dual Lives of Rights: The Rhetoric and Practice of Rights in America,” 282.

²³⁹ Glendon, *Rights Talk*, 40.

²⁴⁰ Glendon, 14.

²⁴¹ Taylor, “Jane Addams and Democratic Citizenship,” 143.

²⁴² Glendon, *Rights Talk*, 43.

This qualified approach to rights distinguishes military rights rhetoric from the civilian conception. Like the challenges associated with individualism, the military also attempts to break down adherence to absolute rights to ensure military effectiveness. As referenced earlier, the military imposes strict rules, norms, and schedules during IET. Many of these rules expressly restrict the personal liberties of trainees. Throughout IET, trainees are afforded more privileges as they demonstrate self-discipline and the ability to accept responsibility. However, as noted in U.S. Army Training and Doctrine Command (TRADOC) Regulation 350-6, the additional freedoms are “privileges, not rights, and as such, are withheld, modified, or withdrawn based upon performance, mission, and program requirements.”²⁴³

Common restrictions that are imposed are prohibiting the use of cell phones or other electronic devices, restricting the ability to wear civilian clothes and the use of tobacco, banning the use of alcohol, and requiring the “battle buddy system” where all trainees must be accompanied by another trainee at all times. Although trainees may initially exhibit resistance to these controls, they begin to see the positive consequences over time. A simple illustration of this principle can be seen in restrictions on cell phone use. Trainees do not have access to their cell phones or other communication platforms during specific phases of IET, limiting their ability to communicate with the outside world. The use of cell phones or landlines is strictly at the discretion of the IET cadre. For instance, the Army allows between 10-30 minutes of cell phone use per week, but this may be separated into as many increments as the cadre permit. That could mean 10

²⁴³ Headquarters, Department of the Army and Training and Doctrine Command, *Training and Doctrine Command Regulation 350-6 (Enlisted Initial Entry Training Policies and Administration)*, 56.

minutes on Sunday evening or two minutes over five days. When cell phones are not in use, they are locked away and under the control of the IET cadre.

In addition to having “total control” over trainees, restricting the use of cell phones is a necessary means to build cohesive teams. Trainees are not distracted by what is going on at home and can focus on training requirements. Additionally, IET requires all trainees to perform “common tasks in a highly structured environment and in close quarters.”²⁴⁴ This environment forces trainees to communicate with one another, creating bonds and friendships that could be impeded if cell phones were still available. Furthermore, by interacting with people of different backgrounds, trainees learn how to “truly communicate with one another.”²⁴⁵

The adherence to qualified rights begins in IET with extensive restrictions on individual liberties and extends into follow-on military service. This component of military rhetoric tends to be intertwined with the acceptance of collectiveness, discussed earlier. Rights can be exercised, but only to the extent that they do not disrupt good order and discipline or military effectiveness. As noted by Feaver and Kohn, even in a society based on “civil liberty, personal autonomy, and democratic governance, military institutions must subordinate the individual to the group, and personal well-being to mission accomplishments. Members of the military must risk their lives and give up many personal freedoms to succeed in battle.”²⁴⁶ This aspect of rights understanding is illustrated through the construction of the Constitution concerning the military and through “judicial deference.”

²⁴⁴ Krebs, *Fighting for Rights*, 7.

²⁴⁵ Krebs, 7.

²⁴⁶ Feaver, Kohn, and Cohn, “Introduction,” 1.

The Framers understood that a standing army, unchecked, could pose not only an internal threat but also could be a catalyst for engaging in foreign conflicts. However, they believed that a small standing army was necessary to provide for the “common defense.”²⁴⁷ A “separation of powers” between the different branches of government was essential to safeguard against an unchecked military. These powers provide the basis of authority each branch has over the military. Article 1 states that Congress has the power to “raise and support armies”, to “provide and maintain a navy”, and “to make rules for the government and regulation of the land and naval forces.”²⁴⁸ Article 2 grants the power to the President as the “Commander in Chief of the Army and Navy of the United States,” to “make Treaties,” and ensure that “laws be faithfully executed.”²⁴⁹ Finally, Article 3 grants power to the Judiciary, which extends “to all cases, in law and equity, arising under this Constitution.”²⁵⁰ Not only do these Articles establish that the military is subordinate to civilian authority, but also control over the military amongst the branches is shared. Additionally, these Articles provide the basis of the authority given to the military to constrain individual rights. Service members can only exercise their rights within the confines permitted by civilian and military leadership.

The additional significance of Articles 1-3 is how they have been interpreted by the Supreme Court and established case law, enabling judicial deference to the military. The majority rulings emphasize how the military is a “specialized society separate from civilian society”²⁵¹ or a “specialized community governed by a separate discipline.”²⁵²

²⁴⁷ U.S. Constitution, Preamble.

²⁴⁸ U.S. Constitution, art. 1. sec. 8.

²⁴⁹ U.S. Constitution, art. 2. sec. 2-3.

²⁵⁰ U.S. Constitution, art. 3. sec. 2.

²⁵¹ *Parker v. Levy*.

²⁵² *Orloff v. Willoughby*.

Hence, the Courts have systematically deferred to the military to determine what is best because it is an area of government in which “the courts have less competence.”²⁵³ Judicial deference provides the military the latitude to control service members’ rights in a more restrictive way than any other segment of society. This interpretation is consistent with Huntington’s perspective of the military being an autonomous institution. These restrictions are necessary to ensure a mission-ready force prepared to protect the United States from any threat. Therefore, this conception reinforces the notion that qualified rights are preferred to absolute ones.

Summary

Throughout this chapter, I attempted to illustrate why service members accept military rights restrictions. The socialization period in IET is intended to instill a sense of collectiveness and solidarity and limit feelings of individualism. This fundamental shift advances the second transition from belief in absolute to qualified rights. Not only are individual freedoms severely restricted through IET, but trainees see firsthand the positive consequences that result from these controls. Thus, although restrictions are imposed, there are necessary advantages to doing so.

The transition from the civilian conception of rights to the military conception of rights also illustrates the continued connection between the Huntingtonian and Janowitzian perspectives. The citizen-soldier tradition, consistent with Janowitz, is presented in the discussion of collectiveness, and the notion of qualified rights demonstrates aspects of Huntington’s separate military society.

²⁵³ *Gilligan v. Morgan*.

Chapter 4: Conclusion

This paper has examined military rights restrictions on service members' First Amendment rights of (1) freedom of speech and (2) freedom of religion. The theoretical perspectives of Samuel Huntington and Morris Janowitz provided an analytical framework in which to understand the basis of the authority given to the military to impose these restrictions. Each of their perspectives offers alternative means of civilian control, leading to differing viewpoints on the extent to which the military should or should not adapt to changing civil society. Overlaying these positions over an analysis of operations security (OPSEC), dissent, religious accommodations, and the military chaplaincy has provided new insight into the enduring acceptance or the systematic elimination of military rights restrictions.

Chapter 1 laid out the fundamental differences between Huntington and Janowitz and provides the foundation for how rights restrictions would be understood under these two lenses. The following attributes categorize Huntington's perspective: (1) an *autonomous military establishment* where (2) civilians maintain *objective* control over the military; (3) military advice tends to be *transactional*, (4) the military remains *apolitical*, and (5) the military is *resistant to changes* to the military structure for fear that it will degrade military effectiveness. Therefore, rights restrictions viewed through this perspective will be *internally* focused, controlling service members at the *individual* level, and are systemically *reinforced*. The most illustrative way to see the Huntingtonian principles at work is through the notion of "judicial deference." The language in Supreme Court rulings emphasizes how the military is a "specialized society

separate from civilian society”²⁵⁴ or a “specialized community governed by a separate discipline.”²⁵⁵ Therefore, the Courts have systematically deferred to the military to determine what is best because it is an area of government in which “the courts have less competence.”²⁵⁶ Judicial deference provides the military the latitude to control service members’ rights in a more restrictive way than any other segment of society. These restrictions are necessary to ensure a mission-ready force prepared to protect the United States from any threat.

In contrast, the Janowitzian perspective has the following attributes: (1) an *integration* of both military and civilian spheres where (2) civilians maintain a more *subjective* version of control over the military; (3) the military engages in a more *collaborative* advisory process, (4) the military remains *apolitical*, and (5) the military must *adapt* to changes in civil society to maintain military effectiveness. Rights restrictions evaluated under this lens tend to focus on the potential impact on the ability of *groups of citizens* to participate in the military. Restrictions that prevent or hinder this participation will tend to be modified or *removed*. Finally, the military will address *external* or societal changes by incorporating aspects that strengthen the institution. The military community recognizes that it cannot detach itself entirely from the larger society and thus must evolve. The Janowitzian principles are steeped in the citizen-soldier tradition, emphasizing the connection between military service and civic participation. In an era of the All-Volunteer Force (AVF), every qualified citizen should share in the responsibility of military service. Therefore, any restrictions that impede citizens from

²⁵⁴ *Parker v. Levy*.

²⁵⁵ *Orloff v. Willoughby*.

²⁵⁶ *Gilligan v. Morgan*.

participation can negatively affect recruiting and maintaining competent and technically skilled segments of the American population.

As indicated above, the perspectives of Huntington and Janowitz have opposing emphases on what is most important. Huntington prioritizes military autonomy to ensure the protection of democratic society, whereas Janowitz prioritizes the integration of components of civil society into the military to protect democratic values. What becomes apparent in the discussion of rights restrictions in Chapter 2 is the tendency since the turn of the 21st century for the military to adopt more Janowitzian principles. This shift is illustrated in increased religious and faith group accommodations and accepting professional dissent amongst military officers. The movement away from the Huntingtonian perspective, which dominated the military in the Cold War era, is due to fundamental changes in the military institution.

Moskos et al. note that the contemporary military or “postmodern military” is characterized by five significant organizational changes: (1) increased inter-penetrability of civilian and military spheres, (2) the diminution of differences within the armed services based on service branch, rank, and combat versus support roles, (3) changes to the military mission from fighting conventional wars to non-traditional uses of military forces, (4) the use of military forces for international missions often authorized by entities other than the nation-state, and (5) the internationalization of military forces.²⁵⁷ Without the immediate threat of invasion, “Western states no longer need to buttress armed forces so distinctive from the social values of the larger society.”²⁵⁸ This distinguishing feature differentiates the “postmodern military” from the “late modern military” of the Cold War.

²⁵⁷ Moskos, Williams, and Segal, “Armed Forces After the Cold War,” 2.

²⁵⁸ Moskos, Williams, and Segal, 2.

Given this difference, the military must continue to integrate aspects of civil society to ensure that it is prepared to accomplish any mission effectively – whether the traditional defense of the homeland or non-traditional peacekeeping and humanitarian assistance. Additionally, the transition to the AVF has fundamentally shifted military values and norms. With the end of conscription, the military has become more reliant on marketplace factors in recruitment efforts. Therefore, the military must become more accommodating of changes in civil society to remain occupationally competitive with other non-military industries.

Incorporating more of the Janowitzian principles does not necessarily mean a complete disregard for the Huntingtonian ones. Burk states that it is essential for a new theory of civil-military relations to pay “equal attention to the need for protecting and sustaining democratic values within and beyond the nation state.”²⁵⁹ As the Huntingtonian perspective would argue, despite societal changes and evolving missions, the military remains a distinct society where “military values predominate.”²⁶⁰ These values include the enduring acceptance of a higher purpose above individual self-interest. Thus, the military must maintain some restrictions on individual liberties that allow the military to operate in a manner unique from other government institutions. One example of these controls is how religious accommodations are approved by a service members’ military commander and not blanketly authorized. Not having some control measures in place could lead to a deterioration in good order and discipline and potentially put the desires of the individual above the needs of the organization. Therefore, the military

²⁵⁹ Burk, “Theories of Democratic Civil-Military Relations,” 22.

²⁶⁰ Moskos, “Toward a Postmodern Military: The United States,” 27.

must always be cognizant of the adverse effects that removing restrictions can have on military effectiveness and continue to reach a balance between integration and autonomy.

An interesting finding of this analysis has been that despite opposing perspectives, Huntington and Janowitz agree on some aspects of military restrictions. One of the most visible ways that the military imposes restrictions over service members' freedom of speech has been through operations security (OPSEC) regulations. These regulations control the type of information that can be released to public forums to limit disruptions to military operations and protect the United States from harm. Both Huntington and Janowitz would agree that OPSEC regulations are necessary because of the direct link to military effectiveness. The potential impacts from releasing critical information outweigh the protection of service members' constitutional rights. Huntington and Janowitz also stress the importance of religion in the military and thus would be supportive of the military chaplaincy. Because military installations and missions tend to separate service members from the larger society, establishing a distinct military chaplaincy is necessary. The pluralistic nature of the chaplaincy also ensures religious support for service members of all faiths, which enables the military to maintain a strong fighting force.

Finally, Chapter 3 showed why service members accept military rights restrictions due to the transition from the American civilian rights rhetoric to a military conception of rights. During initial entry training (IET), trainees undergo an indoctrination period where the goal is to supplant the notion of individualism with a concern for the collective good. This socialization period where all trainees work towards a common purpose is intended to instill a sense of solidarity and limit feelings of individualism. This

fundamental shift advances the second transition from belief in absolute to qualified rights. Not only are individual freedoms severely restricted through IET, but trainees see firsthand the positive consequences that result from these controls. A simple illustration of this principle can be seen in restrictions on cell phone use during IET. Trainees do not have access to their cell phones during specific phases of IET, which limits their ability to communicate with the outside world. However, the benefit is that trainees are forced to communicate with one another and build cohesive teams. Thus, although the restriction is imposed, there are necessary advantages to doing so. Acknowledging this fact, coupled with the newly encouraged belief in the collective, provides the impetus for a shift from absolute rights to qualified ones. The transition from the civilian conception of rights to the military conception of rights also illustrates the continued connection between the Huntingtonian and Janowitzian perspectives. The “citizen-soldier tradition” components of the Janowitzian perspective are presented in the discussion of collectiveness, and the notion of qualified rights demonstrates aspects of Huntington’s separate military society.

Areas for future research include investigations into the impact of Huntington and Janowitz on the integration of women, homosexuals, and citizens of different races into the military. As mentioned by Moskos et al., a feature of the postmodern military is the increased incorporation of identity politics based on ethnicity, gender, and sexual orientation.²⁶¹ Examining the evolution of rights restrictions within these domains could provide further insight into the continued inclusion of Janowitz’s principles but with some limitations reminiscent of Huntington.

²⁶¹ Moskos, 27.

The central aim of this paper has been to expand the applicability of Huntington and Janowitz beyond the macro-level to the micro-level mechanisms that ensure the optimal operation of the military. The examination of rights restrictions shows the enduring importance of understanding the distinct principles of these two scholars. For decades, military leaders have accepted Huntington's model of "objective control," either explicitly or intuitively. However, continued exclusive adherence to this perspective could be damaging. Military leaders must become more versed in the work of Janowitz because of the inter-penetrability of the civilian and military spheres. Adapting to civil society changes will allow for a more competitive military in the occupational marketplace and ensure that the military remains operationally effective.

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